

EXHIBIT D



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Via Email – michael.mcclellan@nscorp.com

Via Email – william.graham@nscorp.com

Michael R. McClellan
Vice President Strategic Planning
Norfolk Southern Railway Company
650 West Peachtree Street NW
Atlanta, GA 30308

William Graham
Manager Construction
Norfolk Southern Railway Company
650 West Peachtree Street NW
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RE: Village of Voorheesville, New York
December 16, 2021 Settlement Agreement
Illegal Lot Line Adjustment (1 Countryside Lane)
August 25, 2025 Water Tap Request

Dear Mr. McClellan:

This firm represents the Village of Voorheesville, New York (the “Village”) in connection with the above referenced matter.

We are in receipt of Collier Engineering and Design’s (“Collier”) August 25, 2025 water tap request for a “crew training building” that is proposed to be located at “approximately 86 School Road”—which is apparently the name Collier gives to a portion (the “Illegal Carveout”) of property, located at 1 Countryside Lane in the Village, that Norfolk Southern Railway Company (“Norfolk Southern”) seeks to merge into its own lands. We are also in receipt of Mr. Graham’s September 10, 2025 correspondence regarding the proposed “training building”.

Mr. Graham’s correspondence states that “Norfolk Southern is exempt from local land use regulations in connection with this project”—which will purportedly “support railway operation” in the Village. Setting aside the accuracy of this assertion—in the context of the particular project Norfolk Southern seeks to undertake, and the construction of Norfolk Southern’s “training building” on adjacent commercial property—it goes without saying that 1 Countryside Lane (which is a Large Scale Business within the Industrial Zone, requiring a minimum lot size of five (5) acres) is itself subject land use regulations in the Village. And Norfolk Southern’s status as a rail carrier does not eliminate the regulation that 1 Countryside Lane is subject to.

A Lot Line Amendment of any kind in connection with 1 Countryside Lane clearly requires that a waiver be obtained from the Planning Commission. Such Amendments are only available

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under limited conditions; including a determination that “such a waiver would not adversely affect the site development or alter the essential character of the Village. Absent a waiver for a Lot Line Amendment for 1 Countryside Lane, Subdivision Review is expressly required for an adjustment to the boundaries of that lot. And a subdivision requiring the “extension of municipal facilities” —which, based on Collier’s purported water application on behalf of the non-existent “approximately 86 School Road,” this subdivision does—is deemed to be a Major Subdivision.

Perhaps it is not surprising that the RP-5217 (Real Property Transfer Report) and the TP-584 (Combined Real Estate Transfer Tax Return) that Norfolk Southern caused to be filed with the County of Albany falsely state that 1 Countryside Lane is “vacant land”—and that both forms are filed under the Tax Map designation for 1 Countryside Lane (61.18-3-3.1), not Norfolk Southern’s own property or a new parcel. The RP-5217 also falsely states that “Planning Board with Subdivision Authority Exists” for the Illegal Carveout; and inexplicably indicates that one (1) entire parcel was conveyed—but also that “Part of a Parcel” consisting of “0.00 Acres” was transferred.

Had Norfolk Southern accurately described what it was purporting to do by way of the Illegal Carveout from 1 Countryside Lane—without a stamped and approved Subdivision Map from the Village or review by the County Planning Board—the forms presumably would have been rejected by the County Clerk. As it is, we note that no 911 address has been issued for “approximately 86 School Road” because that property does not, in fact, actually exist. And the proposed Illegal Carveout from 1 Countryside Lane would cause it to be a non-conforming lot under current zoning.

In any event, please allow this correspondence to confirm that the Village in no way considers Norfolk Southern’s attempted Illegal Carveout from 1 Countryside Lane legitimate or recognizable. If the owner of 1 Countryside Lane, or someone authorized to act on that owner’s behalf, seeks to submit appropriate applications to the Village we are happy to review the same. In that context we can consider the potential impacts of the Illegal Carveout on the existing commercial uses operating out of 1 Countryside Lane—and the extent to which an Area Variance may be necessary. In the meantime, we consider the unauthorized work that you have commenced on the Illegal Carveout portion of 1 Countryside Lane unlawful. And the “Stop Work Order” that has been issued by the Village’s Code Enforcement Officer will remain in effect.

In addition to the invalidity of the Illegal Carveout, moreover, and the lack of merit to the claim that the owner of 1 Countryside Lane can avoid necessary reviews and/or variances that may be required for whatever transaction or project he may be considering, we also note that Norfolk Southern’s rumored, intended use of the proposed “crew training building” is entirely inconsistent with Norfolk Southern’s prior commitments to the Village—and representations that Norfolk Southern has made to both the Village and the Surface Transportation Board in the past.

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As you undoubtedly know, by correspondence dated July 20, 2021 the Village had previously communicated to the Surface Transportation Board the significant concerns that the Village had with CSX's proposed acquisition of Pan-Am Systems, Inc—and the proposed construction of a new level junction between the existing CSX rail lines and the unused Norfolk Southern line. Among the Village's concerns was that the level junction and reactivated Norfolk Southern line would exacerbate longstanding quality-of-life and public safety concerns associated with existing train traffic.

As a result of the Village's opposition to the proposed transaction, in December 2021, CSX and Norfolk Southern entered into a "Settlement Agreement" with the Village to address the Village's concerns. Pursuant to Section 2(e) of that Settlement Agreement, which was promptly filed with the Surface Transportation Board, Norfolk Southern expressly agreed to "stage its trains and to operate through the NSR Crossing in such a manner to minimize potential impacts on the Village." In addition, Norfolk Southern agreed to "meet with Village and County public safety personnel to discuss how best to address and accommodate any public safety challenges that may result from the reestablishment of" Norfolk Southern's connection with the CSX rail line.

"[I]n consideration of the representations, warranties and agreements of CSX[] and [Norfolk Southern] as set forth" in the Settlement Agreement—which were the result of extensive negotiations between the parties—the "Village [] withdr[e]w its prior opposition to the Proposed Transaction and its request for conditions to the S[urface] T[ransportation] B[oard]'s approval." The Surface Transportation Board then expressly cited to the Settlement Agreement in its April 14, 2022 decision on the railroads' proposed acquisitions and mergers; and specifically ordered that the proposed transaction be approved, subject to the Settlement Agreement.¹

It is our understanding that Norfolk Southern now seeks to use its proposed "crew training building" as a location where Norfolk Southern's trains will be brought to a complete stop—and crews swapped out—within the Village. Such a use of the Illegal Carveout from 1 Countryside Lane will clearly result in substantial disruption and a regular threat to the health, safety and welfare of the Village and its residents and businesses.

In particular, trains travelling in a westerly direction will block all three surface crossings within the Village for extensive periods of time—as Norfolk Southern's 1.7 mile long specialty trains are brought to a stop; paused at the "crew training building"; and then brought back up to speed from that complete stop, until the last of the cars at the rear of each train clears the Village crossings. Similarly, trains travelling in an easterly direction will block multiple crossings to the west of the Village (in the Town of Guilderland) while they are stopped and paused. And will then block crossings within the Village as the trains attempt to get back up to speed and clear the community.

¹ Surface Transportation Board Docket No. FD 36472, Decision No. 9

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During these periods of time, Norfolk Southern's proposed facility will effectively result in the Village being split in half—with half of Village residents and businesses (including the youth sports facilities operating out of 1 Countryside Lane) being cut off from emergency and other services. This presents an obvious threat to public health, safety and welfare—and is completely inconsistent with Norfolk Southern's prior representations (including to the Surface Transportation Board) that it would “minimize potential impacts on the Village” that could result from Norfolk Southern's reopened level junction with the CSX rail line.

In this regard, we also note that while Norfolk Southern may, itself, be exempt from certain state and local regulations under the Interstate Commerce Commission Termination Act, it is well settled by the Courts and by the Surface Transportation Board that federal law does not preempt all local requirements—especially where public health and safety is at issue. “[L]ocal bodies retain certain police powers which protect public health and safety,” and municipalities “may exercise traditional police powers over the development of railroad property.” To the extent a local government's requirements are “non-discriminatory regulations” that “protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on substantive questions,” A railroad is required to abide by such regulations and processes that a local government has in place. Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005).

At no time during the Village's negotiations with Norfolk Southern—including prior to the December 2021 Settlement Agreement that has been submitted to the Surface Transportation Board—did Norfolk Southern indicate that it sought to bring its 1.7-mile-long specialty trains to a stop within the Village. To the contrary, Norfolk Southern has consistently represented—both verbally and in writing—that its trains would be traveling at speeds of up to 25 miles per hour.

Finally, with multiple at-grade rail crossings within its municipal boundaries, the Village has a long history of working with the railroads—and, to the extent necessary, regulators—to ensure that that Village and its residents and business are adequately protected from trains blocking crossings for extended periods of time. By Order dated June 12, 1951, for example, the New York State Public Service Commission imposed limitations on railroads operating within the Village to reduce the amount of time that vehicular traffic was stopped at crossings. This Order, which was prompted by a Petition being filed by Village residents, cited to engineer's findings and recommendations that found crossing gates being lowered for as long as 12 to 24 minutes was unreasonable. Similarly, by Order dated June 13, 1962, the Commission approved certain modifications to the grade crossings that were requested by the railroads. The modifications were expressly conditioned, however, on the railroads preventing unnecessary traffic delays at each crossing.

We are not aware of any subsequent Order—from the State of New York or any other regulatory body—that relieves Norfolk Southern of its obligations to minimize delays at crossings.

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And we believe that Norfolk Southern's apparent intent to regularly bring its 1.7 mile long specialty trains to a complete stop within, or even adjacent to, the Village—so that its crews can access the “crew training building”—is completely inconsistent with same.

We are happy to discuss with you further how Norfolk Southern can “best address and accommodate any public safety challenges that may result from” the reestablishment of Norfolk Southern's connection with the CSX rail line that passes through the Village. We cannot concede, however, to Norfolk Southern's apparent attempt to exempt neighboring property owners and business from basic necessary and appropriate municipal approvals. Nor do we believe that Norfolk Southern's rumored, proposed use for the Illegal Carveout are consistent with Norfolk Southern's clear obligations under law, prior regulatory Orders or the parties' prior Settlement Agreement.

Thank you in advance for your attention to this matter. We look forward to hearing from you regarding same.

Very Truly Yours,

GLEASON, DUNN, WALSH & O'SHEA, P.C.

By: 

Richard C. Reilly, Esq.

RCR/aa

cc: Mayor Richard Straut, Village of Voorheesville
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