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Office of Proceedings
March 20, 2017
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March 20, 2017

BY E-FILING

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

Re: Norfolk Southern Railway Company – Abandonment Exemption – In
Durham County, North Carolina, AB-290 (Sub-No. 324X)

**Notice of Consummation & Transfer of Responsibility for Complying
with Salvaging Conditions**

Dear Ms. Brown:

On May 9, 2016, Norfolk Southern Railway Company (“NSR”) filed a verified notice of exemption (“Notice”) under 49 C.F.R. part 1152 subpart F – Exempt Abandonments And Discontinuances Of Service And Trackage Rights for NSR to abandon rail service over approximately 1.9 miles of rail line extending from milepost DP 0.3 to milepost DP 2.2 in Durham County, North Carolina (the “Line”). Notice of the exemption was served and published in the Federal Register on May 27, 2016 (81 Fed. Reg. 33,727) (“May 27th Decision”). The Notice became effective on June 28, 2016.

Over the past 10 months, NSR has been in negotiations to sell the Line to The Conservation Fund (“CF”) after NSR’s abandonment authority became effective.¹ NSR initially executed an agreement to sell the Line to CF on June 21, 2016.² NSR and CF closed the sale on February 3, 2017. The purpose of this letter is to notify the Board that NSR is consummating its abandonment authority, prior to salvage; and, as result, NSR and CF have executed Amendment 4 to the PSA to transfer responsibility for salvaging the line from NSR to CF.

¹ NSR is the fee simple owner of the underlying right-of-way and the NSR Line.

² The Agreement of Purchase and Sale (“PSA”) has been amended four times. On January 30, 2017, Amendment 4 was executed to transfer salvage responsibility for the Line from NSR to CF.

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In a decision served June 3, 2016, the Board's Office of Environmental Analysis ("OEA") issued its Environmental Assessment, which recommended that the Board impose three self-executing salvage conditions.³ The Board issued a decision on June 27, 2016 imposing the three recommended conditions ("June 27th Decision").⁴ The exemption became effective June 28, 2016. As indicated by the June 27th Decision, the conditions imposed by the Board must be satisfied prior to commencing salvage.

Under existing precedent, a condition imposed under the National Environmental Policy Act ("NEPA") that is related to salvage activities is not a regulatory barrier to consummation of abandonment authority.⁵ As explained by the Board in its Consummation Decision, "a notice of consummation may be filed prior to satisfying ... salvage condition[s];" however, "filing a notice of consummation in that situation does not remove the condition, which must still be satisfied if and when salvage activities are conducted." *Id.* Moreover, when consummation of a line subject to NEPA conditions is sold prior to the owner satisfying the salvaging conditions imposed, the successor interest must show that it agrees to abide by the salvage conditions, by including the conditions in the instrument of conveyance. *Id.* at 5.

Because CF will acquire the NSR Line prior to salvage, and the salvage conditions have not yet been fulfilled, CF has agreed to abide by the salvage conditions. Consistent with the Consummation Decision, NSR and CF have executed Amendment 4 to the PSA (Instrument of Conveyance) requiring CF to abide by and fully comply with any salvage conditions imposed by the Board and to be solely responsible for any liabilities or obligations arising from such Board

³ A copy of the June 3, 2016 decision is attached as Exhibit A. The three conditions are as follows: (1) NSR shall consult with and notify the National Geodetic Survey ("NGS") at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to allow for the relocation of the station markers; (2) Prior to beginning salvage activities, NSR shall consult with the North Carolina Department of Environmental Quality ("NCDEQ") regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes, and comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation; and (3) Prior to beginning salvage activities, NSR will consult with the U.S. Fish and Wildlife Service ("USFWS") regarding the potential impact of the proposed abandonment on any individual Smooth coneflower or Michaux's sumac that may be present in the rail right-of-way, and, during salvage, follow the reasonable recommendations of USFWS to prevent impact to members of those species.

⁴ A copy of the June 27th Decision is attached as Exhibit B.

⁵ See Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Environmental Conditions, EP 678, FN 1 (April 23, 2008) ("Consummation Decision"), discussing Santa Clara Valley Transportation Authority – Abandonment Exemption—In Santa Clara and Alameda Counties, CA, AB-980X (Consummation Notice filed on May 8, 2007).

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imposed salvage conditions.⁶ Likewise, because NSR desires to consummate the abandonment and transfer the Line to CF, NSR hereby notifies the Board that in accordance with the provisions of 49 C.F.R. § 1152.29(e)(2) and the Board's May 27th Decision and June 27th Decision, NSR has consummated its abandonment authority and responsibility for complying with the salvage conditions has been transferred from NSR to CF.

Should you have any questions concerning this Notice of Consummation & Transfer of Responsibility for Complying with Salvaging Conditions, please contact the undersigned counsel for NSR.

Sincerely,



William A. Mullins
Counsel for Norfolk Southern Railway
Company

Enclosure

cc: Greg Summy
LaWada Poarch
Paul Hurt (The Consummation Fund)
North Carolina Utilities Commission
Rail Division Department of Transportation

⁶ Per the Consummation Decision, a redacted copy of the Instrument of Conveyance transferring salvage responsibility from NSR to CF is being submitted to the Board for inclusion in this proceeding. See Exhibit C.

45218
OEA

SERVICE DATE – JUNE 3, 2016

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

Docket No. AB 290 (Sub-No. 324X)

**Norfolk Southern Railway Company—Abandonment Exemption—
in Durham County, N.C.**

BACKGROUND

In this proceeding, Norfolk Southern Railway Company (NSR) filed a notice under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment a line of railroad in Durham County, North Carolina. The rail line proposed for abandonment extends approximately 1.9 miles from milepost DP 0.3 to milepost DP 2.2 in Durham, North Carolina (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

ENVIRONMENTAL REVIEW

NSR submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. NSR served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

NSR states that no local traffic or overhead traffic has moved over the Line for at least two years. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or of recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 290 (Sub-No. 324X).

Salvage Activities

If abandonment authority is granted in the proceeding, NSR intends to salvage rail and related track material. NSR or its contractors would remove the rail and track material from the roadbed and smooth the roadbed to a level surface. According to NSR, salvaged steel components would either be reused or sold as scrap and wooden crossties would be reused or disposed of in accordance with applicable laws and regulations.

NSR does not intend to remove any railroad ballast, alter the contour of the underlying roadbed, or change the existing drainage systems. No digging, burying, regrading, or other soil disturbance would occur.

There are three bridges on the Line. If the abandonment is approved, NSR does not intend to remove the bridges and would continue to maintain them until the abandonment process is complete.

NSR intends to sell the corridor intact in case there is interest in repurposing the right-of-way as a trail or for other public use.

Land Use

The Durham City-County Planning Department (DCCPD) and the City of Durham Transportation Department (DTD) each submitted comments stating that the proposed abandonment would be consistent with existing land use plans provided that the rail corridor remains intact. DCCPD and DTD also state that there are plans for the rail right-of-way to be purchased using a combination of federal, local, and private funds in order to repurpose the corridor as a multi-use trail. Based on the comments of DCCPD and DTD, OEA concludes that the proposed abandonment would be consistent with local land use plans and is not recommending any environmental mitigation regarding local land use.

The National Geodetic Survey (NGS) submitted comments stating that four (4) geodetic station markers are located in the vicinity of the Line and therefore could be disturbed by the proposed abandonment. Accordingly, OEA is recommending that the Board impose a condition on any decision granting abandonment authority in this proceeding to require NSR to consult with NGS prior to beginning salvage activities in order to allow for the possible relocation of geodetic survey markers that could be damaged or destroyed by salvage activities.

The Natural Resources Conservation Service (NRCS) submitted comments stating that, because the Line crosses agricultural land that has already been converted to urban use, the proposed abandonment would have no effect on farmland. Accordingly, no mitigation related to the conservation of agricultural land is recommended.

Because the Line is not located within a designated coastal zone, no mitigation regarding coastal zone management is necessary.

Water Resources

Based on OEA's review of available geospatial data, the Line does not cross any waterbodies or wetlands.² The rail right-of-way does, however, appear to cross a 100 year floodplain.³ NSR states that salvage activities would not alter the contour of the right-of-way or existing drainage systems. No ballast would be removed and no soil disturbance would occur as a result of the proposed abandonment.

NSR requested comments from the U.S. Army Corps of Engineers (the Corps) regarding potential impacts from the proposed abandonment on waters of the United States, including wetlands. The U.S. Army Corps of Engineers submitted comments concurring with NSR that a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) would not be required in connection with the salvage activities related to the proposed abandonment. Because salvage activities would be limited in scope and would be confined to any existing rail right-of-way, OEA concurs with NSR and the Corps that the proposed abandonment would not result in impacts to waters of the United States, including wetlands.

NSR submitted the Environmental Report to the North Carolina Department of Environmental Quality (NCDEQ) and the U.S. Environmental Protection Agency (USEPA) requesting comments regarding potential impacts of the proposed abandonment on waterways and water quality and specifically the need for a permit under Section 402 of the Clean Water Act (33 U.S.C. § 1251). NCDEQ submitted comments through the North Carolina State Environmental Review Clearinghouse. In its comments, NCDEQ states no permits related to water quality would be required. NCDEQ recommends, however, that NSR repair and stabilize any exposed or eroding drainage ditches associated with the Line to prevent sediment loss beyond the railroad right-of-way.

Because salvage activities would be limited in scope and confined to the existing rail right-of-way, OEA concurs with NSR that proposed abandonment would not result in impacts to water resources. In order to ensure that NCDEQ's concerns are addressed, however, OEA is recommending a mitigation condition requiring NSR to consult with NCDEQ before beginning salvage activities and to comply with the reasonable recommendations of NCDEQ.

Solid Waste and Hazardous Materials

NSR states that no known hazardous waste sites or spill exist within or adjacent to the rail right-of-way. OEA's review has confirmed that there are no federally listed Superfund sites in the vicinity of the Line.⁴

² U.S. Fish and Wildlife Service, National Wetlands Inventory, <http://www.fws.gov/wetlands/Data/Mapper.html> (last visited May 31, 2016).

³ Federal Emergency Management Agency Flood Map Service Center, <https://msc.fema.gov/portal> (last visited May 31, 2016).

⁴ Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited May 31, 2016).

In its comments, NCDEQ identifies eighteen (18) sites located within one mile of the Line that are listed in NCDEQ's database of sites where hazardous materials have been produced, handled, or spilled. NCDEQ recommends that the site files be reviewed to ensure that appropriate precautions are incorporated into any construction activities that encounter potentially contaminated soil or groundwater. OEA conducted a search of NCDEQ records and determined that none of the sites identified by NCDEQ are located within or immediately adjacent to the rail right-of-way.

Because salvage activity related to the proposed abandonment would be confined to the rail right-of-way and would not involve digging, regrading, or otherwise disturbing the soil underlying the Line, OEA believes that the proposed abandonment would not result in any impacts related to hazardous materials or hazardous wastes, including impacts related to the sites identified by NCDEQ. In order to ensure that NCDEQ's concerns are addressed, however, OEA is recommending a mitigation condition requiring NSR to consult with NCDEQ before beginning salvage activities and to comply with the reasonable recommendations of NCDEQ.

NCDEQ also recommends that NSR and its contractors make every feasible effort to minimize the generation of waste, the recycle materials for which viable markets exist, and to use recycled products and materials in the development of the project where suitable. NCDEQ notes that any waste generated during the implementation of the proposed abandonment should be disposed of at a solid waste management facility permitted by NCDEQ. NCDEQ recommends that NSR require contractors involved in the proposed project to provide proof of proper disposal of all waste generated.

Based on the description of proposed salvage activities provided by NSR, OEA does not anticipate any impacts from the proposed abandonment related to solid waste. In order to ensure that NCDEQ's concerns are addressed, OEA is recommending a mitigation condition requiring NSR to consult with NCDEQ before beginning salvage activities regarding the disposal of wastes related to the proposed abandonment and to comply with the reasonable recommendations of NCDEQ.

Biological Resources

In its comments, the United States Fish and Wildlife Service (USFWS) on the proposed abandonment in which USFWS identifies two federally listed endangered species that may potentially occur in the vicinity of the Line. The two federally listed endangered species that USFWS identified are Michaux's sumac (*Rhus michauxii*) and Smooth coneflower (*Echinacea laevigata*).

The Smooth coneflower is a perennial herb typically found in open woods, glades, cedar barrens, and other areas characterized by abundant sunlight and limited competition in the herbaceous layer. Michaux's sumac is shrub that survives best in areas where disturbance woodlands has created an open area, such as along roadways and the edges of clearings.⁵ A

⁵ U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, https://www.fws.gov/raleigh/es_tes.html (last visited May 31, 2016).

little-used rail right-of-way would provide suitable habitat for both Michaux's sumac and the Smooth coneflower. It is therefore possible that individuals of this species may be present in the vicinity of the Line. Accordingly, OEA is recommending a condition requiring NSR to consult with USFWS prior to beginning salvage activities and to follow the reasonable recommendations of USFWS to prevent any potential impacts to Michaux's sumac and the Smooth coneflower.

Air Quality

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Accordingly, no mitigation regarding air quality is necessary.

Noise

Noise associated with salvage activities, if any, would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Accordingly, no mitigation related to noise impacts is necessary.

Summary

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is sending a copy of this EA to the following agencies for review and comment: NCDEQ and USFWS.

HISTORIC REVIEW

According to NSR, the 1.9 mile rail line proposed for abandonment, known as the "Durham Belt Line" or the "Duke Belt Line" was constructed beginning in approximately 1892. The rail line was constructed by the Duke family to circumnavigate the city of Durham, North Carolina and connect the Duke plant to other rail lines in Durham. Line was sold to Norfolk Western and Railway Company in 1899.

NSR served the Historic Report, including topographic maps of rail right-of-way (the Area of Potential Effect, or APE), on the North Carolina Department of Natural and Cultural Resources (the State Historic Preservation Officer or SHPO), pursuant to 49 C.F.R. § 1105.8(c). In its comments, the SHPO notes that the Line serves as a geographical boundary for a number of historic districts listed in or eligible for listing in the National Register of Historic Places (the National Register). The districts are:

- North Durham-Duke Park Historic District Boundary Increase I;
- North Durham-Duke Park Historic District;
- Woods Grocery/Pearl Mill Village Historic District Boundary Increase
- Pearl Mill Village Historic District;
- Foster and West Geer Streets Historic District; and
- Bright Leaf Historic District.

The SHPO states that, because all salvage activity related to the proposed abandonment would be performed within the rail right-of-way and because the contour of the roadbed would not be altered, the proposed abandonment would not adversely affect the historic districts listed above.

The SHPO also states that there are no known archaeological sites located within the vicinity of the proposed abandonment and that, based on the SHPO's knowledge of the project area, it is unlikely that any archeological resources eligible for listing in the National Register would be affected by the proposed abandonment. Accordingly the SHPO recommends that no archeological investigation be conducted in connection with the proposed abandonment. OEA has reviewed the available information in this proceeding and concurs with the SHPO's comments.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that no known historic properties listed in or eligible for inclusion in the National Register would be affected within the APE of the proposed abandonment. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's Historic Report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at www.stb.dot.gov.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area.⁶ The search did not identify any federally recognized tribes that may have knowledge regarding properties of religious and cultural significance within the right-of-way of the proposed abandonment.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Norfolk Southern Railway Company shall consult with the National Geodetic Survey (NGS) and shall notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers in order to allow for the relocation of the station markers by NGS.**
- 2. Before beginning salvage operations, Norfolk Southern Railway Company (NSR) shall consult with the North Carolina Department of Environmental Quality (NCDEQ) regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes. NSR shall comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation.**

⁶ National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited May 31, 2016).

3. **Before beginning salvage operations, Norfolk Southern Railway Company (NSR) shall consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment on any individual Smooth coneflower (*Echinacea laevigata*) or Michaux's sumac (*Rhu michauxii*) that may be present in the rail right-of-way. During salvage, NSR shall follow the reasonable recommendations of USFWS to prevent impact to members of those species.**

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption would not be affected.

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding the Board's abandonment process. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 290 (Sub-No. 324X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: June 3, 2016.

Comment due date: June 20, 2016.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

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SERVICE DATE – LATE RELEASE JUNE 27, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 324X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN DURHAM COUNTY, N.C.

Decided: June 27, 2016

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.9 miles of rail line between milepost DP 0.3 and milepost DP 2.2 in Durham County, N.C. (the Line). Notice of the exemption was served and published in the Federal Register on May 27, 2016 (81 Fed. Reg. 33,727). The exemption is scheduled to become effective on June 28, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on June 3, 2016, recommending that three environmental conditions be imposed on any decision granting abandonment authority. The environmental conditions would require NSR to: (1) consult with and notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to allow for the relocation of the station markers; (2)(a) prior to beginning salvage activities, consult with the North Carolina Department of Environmental Quality (NCDEQ) regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes, and (b) comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation; and (3)(a) prior to beginning salvage activities, consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment on any individual Smooth coneflower or Michaux's sumac that may be present in the rail right-of-way, and (b) during salvage, follow the reasonable recommendations of USFWS to prevent impact to members of those species.

OEA issued its final EA on June 22, 2016, noting that no comments to the EA were received by the June 20, 2016 due date and reiterating that the three previously recommended conditions be imposed. Accordingly, the three conditions recommended by OEA in the EA will be imposed.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on May 27, 2016, exempting the abandonment of the Line described above, is subject to the conditions that NSR shall: (1) consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to allow for the relocation of the station markers; (2)(a) prior to beginning salvage activities, consult with NCDEQ regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes, and (b) comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation; and (3)(a) prior to beginning salvage activities, consult with the USFWS regarding the potential impact of the proposed abandonment on any individual Smooth coneflower or Michaux's sumac that may be present in the rail right-of-way, and (b) during salvage, follow the reasonable recommendations of USFWS to prevent impact to members of those species.

3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Norfolk Southern Corporation
Real Estate
1200 Peachtree Street, NE - 12th Floor
Atlanta, GA 30309-3579

Ryan M. Hankins
Assistant General Attorney - Real Estate

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E-mail: ryan.hankins@nscorp.com

Mr. Paul Hurt, Assistant Secretary
The Conservation Fund
1655 N. Fort Myer Drive, Suite 1300
Arlington, VA 22209

January 30, 2017

Re: Norfolk Southern Railway Company – Abandonment Exemption – In
Durham County, NC, AB-290 (Sub-No. 324X),

Amendment 4, dated January 30, 2017

Prior Amendments: **Amendment 3, dated January 30, 2017;
Amendment 2, dated December 21, 2016; Amendment 1, dated
October 14, 2016 – To June 21, 2016 Agreement of Purchase and
Sale**

Dear Mr. Hurt:

Norfolk Southern Railway Company ("NSR") and The Conservation Fund ("Conservation Fund") (collectively the "Parties") are parties to an Agreement of Purchase and Sale dated June 21, 2016 ("Agreement"), as amended by the First Amendment dated October 14, 2016 ("First Amendment"), Second Amendment dated December 21, 2016 ("Second Amendment"), and Third Amendment dated January 30, 2017 ("Third Amendment") (collectively deemed the "Amendments") pursuant to which Conservation Fund agreed to acquire NSR's interest in real estate and trackage located from milepost DP .03 to milepost DP 2.2 and related non-rail parcels in Durham County, North Carolina (the "Premises"). The Parties now wish to amend the Agreement, as previously amended by the prior Amendments, by entering into this Amendment 4 ("Fourth Amendment"), the terms of which are contained in this letter.

Pursuant to the terms of the Agreement, as amended by the Amendments, on May 27, 2016, NSR filed a verified notice of exemption ("Notice") under 49 C.F.R. part 1152 subpart F – Exempt Abandonments to abandon approximately 1.9 miles of rail line between milepost DP 0.3 and milepost DP 2.2 in Durham County, North Carolina (the Line). Notice of the exemption was served and published in the Federal Register on May 27, 2016 (81 Fed. Reg. 33,727).

On June 3, 2016, the Board's Office of Environmental Analysis ("OEA") issued an environmental assessment ("EA"), which is attached hereto as Exhibit A and made a part hereof, recommending that the Board impose three conditions that must be satisfied prior to the commencement of salvage activities on the Line. Comments concerning the EA were due June 20, 2016. In the Final EA, issued June 22, 2016, OEA restated its original recommendations that NSR be required to consult with the National Geodetic Survey (NGS), the North Carolina Department of Environmental Quality, and the U.S. Fish and Wildlife Service.

On June 27, 2016, the Board reopened the proceeding and imposed the following conditions (See Exhibit B, Copy of June 27th Decision, which is attached hereto and made a part hereof):

1. NSR shall consult with and notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to allow for the relocation of the station markers;
2. Prior to beginning salvage activities, NSR shall consult with the North Carolina Department of Environmental Quality (NCDEQ) regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes, and comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation; and
3. Prior to beginning salvage activities, NSR will consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment on any individual Smooth coneflower or Michaux's sumac that may be present in the rail right-of-way, and, during salvage, follow the reasonable recommendations of USFWS to prevent impact to members of those species.

The June 27, 2016 decision ordered that the exemption is effective June 28, 2016, subject to the recommended environmental conditions. The imposition of such conditions, however, does not bar NSR from consummating the abandonment authority granted and transferring the Premises to Conservation Fund as long as Conservation Fund, or its successor in title that actually undertakes salvage activities (the "Salvaging Entity") agrees to fulfill the any Board imposed consultation or pre-salvage environmental conditions before undertaking any salvage activity. Accordingly, the Parties wish to enter into this Fourth Amendment to amend the Agreement, as previously amended by prior Amendments, so as to require the Salvaging Entity to satisfy the conditions imposed by the Board prior to its commencement of salvage activities for the Line and to be solely responsible for any liabilities or obligations arising from such Board imposed pre-salvage conditions.

More specifically, the Salvaging Entity agrees to the following:

1. Prior to the commencement of any salvage activities, the Salvaging Entity shall consult with the National Geodetic Survey ("NGS"), and if NGS identifies geodetic

station markers that may be affected by the proposed abandonment, and shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for the possible relocation of the markers;

2. Prior to the commencement of any salvage activities, the Salvaging Entity shall consult with the North Carolina Department of Environmental Quality (NCDEQ) regarding potential impacts from the proposed abandonment related to water quality, solid waste, and hazardous materials and wastes, and comply with the reasonable recommendations of NCDEQ to mitigate any potential impacts identified during consultation;
3. Prior to beginning salvage activities, the Salvaging Entity will consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment on any individual Smooth coneflower or Michaux's sumac that may be present in the rail right-of-way, and during salvage follow the reasonable recommendations of USFWS to prevent impact to members of those species.

By signing in the space below and returning one fully executed original to me for our records, Conservation Fund consents to this Fourth Amendment as an amendment to the Agreement, as previously amended by the prior Amendments, whereby Conservation Fund, on behalf of itself and its successors and assigns, agrees to abide by and fully comply with the three pre-salvage conditions imposed by the Board in the above referenced proceeding and to be solely responsible for any liabilities or obligations arising from such Board imposed pre-salvage conditions.

Respectfully,

By: Malcolm G. Roof
Printed Name: Malcolm G. Roof
Norfolk Southern Railway Company
Title: Real Estate Manager

Acknowledged and Accepted on By:

P. Hurt

Paul Hurt
The Conservation Fund
Assistant Secretary

cc: