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OEA

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-290 (Sub-No. 367X)

**Norfolk Southern Railway Company. — Abandonment Exemption —
in Erie County, NY**

BACKGROUND

On December 24, 2014, Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 C.F.R. § 1152.50 with the Surface Transportation Board (Board). NSR seeks exemption from the requirements of 49 U.S.C. § 10903 in connection with the proposed abandonment of a line of railroad and any associated common carrier obligation in Erie County, New York. NSR proposes to abandon approximately 1.60 miles of line within the townships of West Seneca and Cheektowaga, southeast of the city of Buffalo. NSR acquired the line from Consolidated Rail Corporation (Conrail) in 1999.

The portion of line proposed for abandonment extends from Milepost VK 3.90 near Scrivner Drive in the town of Cheektowaga to milepost VK 5.50 near Indian Church Road in the town of West Seneca. This short line segment is part of the former Gardenville Branch or Cutoff. The right-of-way ranges from 50-100 feet in width. According to NSR, the line does not contain federally granted right-of-way. A site map showing the rail line proposed for abandonment is attached to this Environmental Assessment (EA).

The landscape of the 1.60-mile section of line is generally a mix of suburban residential areas, wooded terrain and light industrial facilities. It traverses a fairly level grade. One bridge spans a stream at milepost 5.40 and the right-of-way crosses one road—Clinton Street. The line traverses U.S. Postal Service ZIP Code areas 14224 and 14227. According to NSR, the line has been out of service for over two years with no freight or passenger service. Inspection of aerial imagery shows that sections of track appear to have been previously removed and a former road crossing at Clinton Street is no longer operational. NSR reports that Conrail removed sections of the line prior to NSR's acquisition.

ENVIRONMENTAL REVIEW

In accordance with the Board's environmental rules (49 C.F.R. 1105), NSR submitted to the Board's Office of Environmental Analysis (OEA) a combined Environmental and Historic

Report, in which NSR concludes that the quality of the human environment would not be significantly affected as a result of the proposed abandonment. NSR served the report on a number of appropriate federal, state, and local agencies as required by 49 C.F.R. § 1105.7(b).¹ OEA has reviewed and investigated the record in this proceeding.

Proposed Salvage Activities

If the Board grants abandonment authority, NSR may proceed with salvage of materials. The proposed salvage will include removal of rails and ties but no ballast. Other than smoothing the roadbed after removal of track material, no soil disturbance, digging or burying would occur. NSR reports that steel rails would be reused or sold as scrap and crossties would be reused or disposed in accordance with federal and state laws and regulations.

Transportation System

According to NSR, no local or overhead traffic has moved over the line for more than two years, hence OEA expects no significant rail-to-truck diversions. Since no existing or future shipping would divert from the line, the proposed abandonment and discontinuance would not adversely affect existing regional or local transportation systems or patterns.

Energy

As no change in shipping would result from the abandonment, no effect is foreseen on the development, use and transportation of energy resources or recyclable commodities or transportation of ozone-depleting materials. The abandonment would not result in a diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. There would be no increase or decrease in overall energy efficiency.

Water Resources

The proposed abandonment lies within the Buffalo Creek and Lower Cayuga Creek watersheds, in an area of minimal topographic relief roughly seven miles east of Lake Erie. The right-of-way crosses Buffalo Creek, which flows directly into the lake. The only bridge on the segment proposed for abandonment spans this stream, which is listed by the state of New York as impaired with restriction for fish consumption and is subject to specific water quality standards.² The central portion of the line, vicinity of Empire Drive, passes near an 18-acre freshwater forest/shrub wetland just west of the right-of-way.³ This wetland may be related to a perennial

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-55 (Sub-No. 735X).

² See the Final New York State October 2012 (revised February 2013) Section 303(d) List of Impaired Waters at http://www.dec.ny.gov/docs/water_pdf/303dlistfinal12.pdf.

³ U.S. Environmental Protection Agency (<http://nepassisttool.epa.gov/>). See also U.S. Fish & Wildlife Service (<http://www.fws.gov/gis/data/national/index.html>).

stream that once ran through the right-of-way flowing westward towards an oxbow lake on the north side of Buffalo Creek.⁴ The line is not within a flood hazard zone.⁵

To address the proposed abandonment's potential to impact water resources, NSR consulted with the U.S. Army Corps of Engineers (COE), New York District, the New York Department of Environmental Conservation (DEC), and the U.S. Environmental Protection Agency (EPA), Region 2 Office, in New York City, as well as the headquarters office in Washington D.C. NSR indicates its belief that neither a National Pollutant Discharge Elimination System permit nor a Section 404 permit, both requirements under the Clean Water Act, are required since salvage would not involve ground disturbance in the area of Buffalo Creek. Neither the COE nor the EPA has responded regarding the need for permits, however. The New York DEC has responded, noting that any physical alteration of the Buffalo Creek bed or banks, within 50 feet of the stream, would require a permit from their office.

Based on NSR's proposal for salvage activities, OEA does not anticipate direct stream or wetland impacts. As the abandonment is proposed, no physical alteration of the stream or its banks would occur. No disturbance to the floodplain or banks of Buffalo Creek is required, as no alteration of the rail bed would result from salvage activities. No discharge or erosion of sediment or fill is anticipated, as no ground disturbance below grade would be necessary. While the DEC's comments provide guidance that allows NSR to proceed, the COE has yet to respond. The OEA is recommending a consultation condition for NSR to conclude consultation with the COE and to comply with the reasonable requirements of the Corps.

A concern relevant to Buffalo Creek was raised by the town of West Seneca. With interest in the bridge as a component of a pedestrian trail, the town previously investigated the bridge and found evidence of contamination (see **Safety and Hazardous Waste** below). Furthermore, the town notes ongoing flooding hazards to which the bridge may contribute. The town requests removal of the bridge by the railroad. OEA recommends a condition for NSR to consult with the town to address concerns about the safety of the bridge and flooding hazards. Additionally, we have included the office of the Ninth Coast Guard District on the service list for this proceeding to ensure that they receive a copy of this Environmental Assessment and have an opportunity to comment.

Land Use

The proposed abandonment would likely be consistent with existing or future land use adjacent to the right-of-way. NSR consulted with local governments, including the towns of Cheektowaga and West Seneca, as well as Erie County, to help assess land use impacts. Additionally, NSR consulted with the U.S. Department of Agriculture, Natural Resources

⁴ Buffalo SE, N.Y. Quadrangle. United States Geological Survey 1965. Map is based on aerial photographs and surveys conducted between 1942-1948.

⁵ U.S. Environmental Protection Agency (<http://nepassisttool.epa.gov/>).

Conservation Service (NRCS), the New York Department of State, the state's coastal zone management agency, and the National Geodetic Survey (NGS).

The proposed abandonment would be consistent with a Comprehensive Plan adopted by the town of West Seneca, though confusion regarding railroad ownership of the line has complicated planning efforts for a trail project. The town of West Seneca noted in a response to NSR that the line proposed for abandonment was previously assumed to be abandoned and not owned by the railroad. The line was included in a federal aid pathway project known as the Seneca Creek Pathway, sponsored by Erie County and administered by the New York State Department of Transportation. While planning for a trail was initially based on an assumption of an intact right-of-way, planners concluded that the rail right-of-way was established by easement and found no evidence of current or recent railroad ownership. Project planners believed that the right-of-way was previously abandoned and the property reverted to adjacent landowners. The presumed absence of an intact right-of-way conducive to trail use contributed to the termination of project planning and grant support. NSR reports no knowledge of any restriction on title to the property that would affect the transfer of title or the use of property for future use other than rail. NSR has yet to receive a response from the town of Cheektowaga or Erie County.

Regarding the potential for the abandonment to involve prime farmland, NSR consulted with the NRCS. The latter agency has yet to respond to NSR's notification. A review of records available from the town of West Seneca shows a small amount of prime agricultural land in the area of the right-of-way near Buffalo Creek.⁶ However much of the same area is zoned for industrial use. In their response to NSR, the Town of West Seneca did not express concerns about impacts to prime farmland. Given the non-agricultural land use of the project area, OEA does not believe the proposed abandonment would adversely affect agricultural activities; however, OEA recommends a consultation condition for NSR to consult with the NRCS to identify any prime agricultural land in the project area and minimize impacts to any such lands present.

NSR notified the NGS to determine if any geodetic survey markers may be affected by the abandonment. The NGS, which maintains the National Spatial Reference System, has yet to respond. OEA is recommending a consultation condition for NSR to consult with the NGS prior to conducting salvage activities in order to determine if any markers may be disturbed or destroyed.

Finally, NSR consulted with New York State Department of State, within which the Office of Planning and Development (OPD) maintains a coastal zone management program. NSR has yet to receive a response from the agency. NSR indicates that the right-of-way falls outside of any designated coastal zone management areas. OEA believes this is accurate based on a review of information available from the OPD.⁷ We have included the office of the OPD on

⁶ "Town of West Seneca: Generalized Existing Zoning" (2004) and "Town of West Seneca: Prime Farmland Soils" (2002), maps available online at <http://www.westseneca.net/>.

⁷ The New York State Coastal Management Program provides an estimation of official coastal area boundaries

the service list for this proceeding to ensure that they receive a copy of this Environmental Assessment and have an opportunity to comment.

Biological Resources

The proposed abandonment is not likely to adversely affect biological resources. The U.S. Fish & Wildlife Service (USFWS) lists neither endangered species nor critical habitat within Erie County, New York.⁸ NSR consulted with the USFWS and received a response from their New York Field Office acknowledging that the project will have no effect on endangered species and that no further consultation is necessary.

Air Quality and Noise

The proposed abandonment would have no significant effect on air quality in the Erie County area as rail traffic has ceased along the line and no future traffic would occur. Abandonment would not result in noise that would affect significant receptors such as public facilities and private residences. Noise and emissions associated with salvage activities would be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Safety and Hazardous Waste

at http://appext20.dos.ny.gov/coastal_map_public/map.aspx; Office for Coastal Management (<http://coast.noaa.gov/czm/mystate>).

⁸ <http://www.fws.gov/endangered/>.

NSR reports that the proposed abandonment is unlikely to affect public health and safety. With no future use of the line, the proposed abandonment would pose no safety risk from rail traffic. The one nonoperational road crossing no longer supports rail traffic. With the abandonment, NSR expects no future transportation of hazardous materials or chemicals nor is such transportation necessary for salvage activities. Finally, NSR reports no known hazardous waste sites or spills in the right-of-way.

Some evidence of potential contamination of the single bridge in the right-of-way and of the ground surface along the right-of-way is noted in comments submitted to NSR by the town of West Seneca. In planning for the Seneca Creek Pathway project described above, a survey conducted in 2005 found evidence of asbestos and lead contamination on the bridge crossing Buffalo Creek. Asphalt materials and paint from steel bridge elements and railroad ties were sampled. Asbestos was found in hard asphaltic material applied to the top of the steel beams supporting the deck and lead was found in paint applied to the steel walls of the bridge but not on the railroad ties. The survey also noted residual petroleum and preservatives (semi-volatiles) from railroad ties. The survey report included recommendations, for the purpose of the Seneca Creek Pathway, for soil sampling of the right-of-way for volatile and semi-volatile organics from stained soil areas.

In order to address the concerns of the town of West Seneca and the potential for contaminated materials or soils within the right-of-way, OEA recommends a consultation condition. Prior to commencement of any salvage activities, the railroad shall consult with the town of West Seneca to ensure that any concerns regarding potential contamination of the right-of-way are addressed. The railroad shall report the results of these consultations in writing to the OEA prior to the onset of salvage operations.

HISTORIC REVIEW

To facilitate compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 C.F.R. 800, NSR served a Historic Report on the State Historic Preservation Officer (SHPO), New York State Office of Parks, Recreation and Historic Preservation, Division for Historic Preservation, pursuant to 49 C.F.R. § 1105.8(c). Based on this report, OEA defines the Area of Potential Effects for this undertaking as the 1.6-mile right-of-way, varying from 50-100 feet wide, resulting in a total maximum area of approximately 19 acres. Section 106 of the NHPA requires consideration of the potential for a federally approved project to directly or indirectly affect historic properties, i.e., sites, buildings, structures that are eligible for or listed on the National Register of Historic Places (NRHP).

Like many railroads, the Gardenville Branch is part of an old rail line with a long history. According to NSR, the history of the line dates to 1895 when a rail bypass was designed for the city of Buffalo. In that year, the Terminal Railway of Buffalo was chartered as a subsidiary of the New York Central and Hudson River Railroad and in 1898 the line opened as the Gardenville

Branch or Cutoff. This line and other smaller railroads consolidated into the New York Central Railroad in 1914, and in 1968 the latter merged with the Pennsylvania Railroad, forming the Penn Central Transportation Company (Penn Central). Much of the Penn Central rail inventory, including the old Gardenville Cutoff, assimilated into the formation of Consolidated Rail Corporation (Conrail) in 1976. Thereafter, in 1999, Norfolk Southern Corporation (parent company of NSR) acquired the line.

While it was once part of a significant rail network in the Buffalo area, the short section of line proposed for abandonment is unlikely to possess historical significance. The line that remains today is a remnant of a much larger and more elaborate local rail component for New York Central. The Gardenville Branch once connected with the entire rail network around Buffalo and included in the immediate project area a large rail yard and engine maintenance facility.⁹

Today the line terminates near the town of Cheektowaga and is reduced to a single track. The yard and structures that once stood in the area have been removed and the area redeveloped. The partial line remaining is of a standard design without exceptional representation of railroad engineering and the overall integrity of materials, setting, and feeling have all been weakened as components of the rail line, including ties, rails, ballast have likely been replaced through regular maintenance and as the surrounding landscape has changed and modernized. The bridge at Buffalo Creek is a two-track, two span, simple box girder with concrete piers on each end and one in the center of the creek. NSR reports that the bridge was constructed in 1897 at the time of the initial establishment of the Gardenville Branch. By itself the bridge lacks any specific historical significance and, as a simple, functional design, it has no distinguishable traits representing a typical time, method of construction or the work of a master. OEA considers the line proposed for abandonment ineligible for the NRHP.

Beyond consideration of the rail bed and bridge, the proposed abandonment is unlikely to affect archaeological sites that may be eligible for the NRHP. NSR notes that the right-of-way was disturbed in the original construction. Historic maps show a rail yard just north of Buffalo Creek, suggesting even greater disturbance than evident today. Based on NSR's commitment to avoid ground disturbance in salvage operations, OEA believes the project has no potential to affect archaeological sites.¹⁰

NSR submitted their Historic Report to the New York SHPO for comment to initiate the Section 106 process. In their report, NSR states their belief that the line is not historically significant. In response to NSR's Historic Report, the SHPO concluded that the undertaking will result in No Historic Properties Affected.

⁹"Buffalo Railroads", Stephen G. Meyers and Michael J. Connor, Arcadia Publishing, Charleston, SC, 2011.

¹⁰ An archaeological survey of the right-of-way conducted for the local Pathway Project found no evidence of sites and a significant level of prior disturbance. The study recommended no additional archaeological investigations. See information submitted by the Town of West Seneca in NSR's Environmental Report.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), OEA has determined that approval of the abandonment would have no effect on historic properties. This finding is based on NSR's consultation with the SHPO, the absence of historic properties in the APE, and the lack of potential to affect archaeological sites.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Native American Graves Protection and Repatriation Act, Online Native American Consultation Database and the U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, to identify federally-recognized tribes that may have ancestral connections to the land now part of Erie County, New York.¹¹ The search indicated that three tribes have traditional cultural ties to this area: Delaware Nation (Oklahoma); Seneca Nation of New York; Tonawanda Band of Seneca Indians of New York. OEA will ensure that these tribes receive a copy of this EA and have an opportunity to review and comment.

CONDITIONS

OEA recommends imposition of the following conditions on any decision granting abandonment authority:

1. Prior to commencement of any salvage activities, the railroad shall consult with the town of West Seneca to ensure that any concerns regarding potential contamination of the right-of-way and bridge at Buffalo Creek and safety or flooding hazards associated with the bridge are addressed. The railroad shall report the results of these consultations in writing to the OEA prior to the onset of salvage operations.
2. Prior to commencement of any salvage activities, the railroad shall consult with the COE regarding its permitting requirements and, if applicable, shall comply with the reasonable requirements of the COE.
3. Prior to the commencement of salvage activities, NSR shall consult with the NRCS to identify any prime agricultural land in the project area and minimize impacts to any such lands present.
4. Prior to commencement of any salvage activities, NSR shall consult with the NGS. NSR shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic survey markers in order to plan for the possible relocation of the survey markers by NGS.

¹¹ U.S. National NAGPRA Program (<http://grants.cr.nps.gov/nacd/index.cfm>); U.S. Department of Housing and Urban Development (<http://egis.hud.gov/tdat/Tribal.aspx>).

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed and if the recommended mitigation measures are imposed, NSR's abandonment of the portion of a segment of the former Gardenville Branch between milepost VK 3.90 and VK 5.50 in Erie County, New York, will 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 should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the notice of exemption Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the Federal Register notice. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. 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 Jeff Irwin, 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. 367X) in all**

correspondence, including e-filings, addressed to the Board. If you have any questions regarding this Environmental Assessment, please contact Jeff Irwin, the environmental contact for this case, by phone at (202) 245-0299, fax at (202) 245-0454, or e-mail at Jeffrey.Irwin@stb.dot.gov.

Date made available to the public: January 16, 2015.

Comment due date: February 2, 2015.

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

Attachment