

SERVICE DATE –JULY 19, 2019

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

Docket No. AB 1273X

**New York & Greenwood Lake Railway–Abandonment Exemption–
in Bergen and Passaic Counties, N.J.**

BACKGROUND

In this proceeding, New York & Greenwood Lake Railway (NYGL) filed with the Surface Transportation Board (Board) a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §10903 seeking to abandon approximately 1.1 miles of rail line extending between milepost 0.0 and milepost 1.1 in Bergen and Passaic Counties, New Jersey (the Line). The Line traverses United States ZIP Codes 07055 and 07026, and the right-of-way varies from 15 to 66 feet in width, of which portions lie within dedicated streets. The topography of the surrounding area is flat, and the Line travels through urban industrial and residential properties and crosses the Passaic River. Based on information in its possession, NYGL states that the Line does not contain federally granted right-of-way.

According to NYGL, the Line has not had a significant amount of traffic since 2009 when its last customer went out of business. NYGL states that in 2017, there was renewed interest to market the Line as a transload facility but that effort generated about eight carloads of traffic, which NYGL states is insufficient for it to make a profit and rehabilitate the track. The last movement of minimal traffic occurred in early 2018.

NYGL states that in 2017, the Line was purchased by Passaic Street Properties, LLC (PSP) through a tax foreclosure sale due to NYGL's failure to pay federal taxes. In 2018, PSP filed a notice of exemption with the Board in Docket No. FD 36187 to acquire the Line, which NYGL opposed. In its July 18, 2018 decision, the Board rejected PSP's notice, and NYGL and PSP then entered into negotiations. NYGL states that both parties have recently reached a settlement whereby NYGL has agreed to file for abandonment authority and forego rights to the real estate in exchange for a cash payment. Following abandonment, NYGL states that PSP and Passaic and Bergen Counties are interested in redeveloping the underlying real estate, and that no alternative actions have been considered. A map and photograph depicting the Line in relationship to the area served are appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

NYGL submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. NYGL served the environmental report on a number of appropriate federal, state, and local agencies as required by the Board's 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

As previously stated, the Line has not had a significant amount of traffic since 2009 when its last customer went out of business. The last movement of minimal traffic occurred in 2018. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or 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.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or if necessary, via construction of new access points to the right-of-way. If abandonment authority is granted, NYGL intends to remove the rail, track material, and cross ties only. NYGL does not intend to clear, grade or alter the topography in any way that would cause sedimentation or erosion, or the discharge of fill material. NYGL indicates that it would leave the bridge spanning the Passaic River in place following abandonment, as the City of Passaic plans to convert it to a pedestrian walkway that would connect parkland in Passaic with recreational land in Garfield.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

The National Geodetic Survey (NGS) commented that geodetic survey markers still present in the area could be disturbed by the proposed abandonment and provided a link to its new web-based program that contains a searchable data base and map of geodetic marker locations.² OEA searched the data base and found that there are no geodetic station markers

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 1273 (Sub-No. 0X).

² National Geodetic Survey Data Explorer <https://geodesy.noaa.gov/NGSDDataExplorer/> (last visited July 11, 2019).

within the rail line right-of-way proposed for abandonment. Therefore, no further consultation with NGS is recommended.

OEA has not received comments from the New Jersey Coastal Management Program (NJCMP) regarding the need to obtain a consistency determination, pursuant to the Coastal Zone Management Act (CZMA). However, according to the *Map of N.J. Coastal Municipalities*,³ the City of Passaic is located within the state's inland coastal boundary and federal actions that occur within this boundary, such as the proposed abandonment, require a determination that the project is consistent with the state's enforceable policies, pursuant to the CZMA (16 U.S.C. § 1451 *et seq.*). Accordingly, OEA is recommending a condition that would require NYGL to consult with NJCMP and obtain the necessary approvals prior to initiating the salvage process.

OEA has not received comments from the U.S. Army Corps of Engineers' (Corps) on whether a Section 404 permit under the Clean Water Act (33 U.S.C. § 1344) may be required. NYGL has stated that no in-stream operations would be required during salvage, and there would be no discharge of dredged or fill material into waters of the United States. The proposed abandonment contemplates only the removal of rail, track material and cross ties; no clearing, grading, or alteration of the topography would occur. Accordingly, OEA is not recommending any mitigation related to impacts to waters of the United States but is sending this EA to the Corps for review and comment.

The U.S. Fish and Wildlife Service's (USFWS) New Jersey Field Office commented that there are no federally listed species within the area of the proposed abandonment, pursuant to the Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*), and that no further consultation is necessary. Accordingly, OEA is not recommending any mitigation related to federally listed species.

The U.S. Environmental Protection Agency (USEPA) Region 2, commented that for the most part, it finds that the proposed abandonment would have no significant environmental impact. However, USEPA requested that NYGL provide additional information regarding the disposition of the bridge spanning the Passaic River. USEPA is concerned that if the bridge is left in place, absent any improvements, then deteriorating building materials used in the bridge's construction could become dislodged and drop into the river. As some of these materials could be toxic to the environment, USEPA provided an informational newsletter regarding interim remedies that have been previously used in the Passaic River for managing contaminated sediments. OEA notes that for environmental reviews, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency. This includes the diversion of traffic to other rail lines or transportation modes and the consequences of removing the track and related structures.⁴ As discussed above, NYGL would leave the bridge in place because the City of Passaic intends to convert it to a pedestrian walkway that would connect parkland in Passaic with recreational land in Garfield. This transaction would occur following NYGL's

³ Map of New Jersey Coastal Municipalities <https://www.nj.gov/dep/cmp/index.html> (last visited July 9, 2019).

⁴ *Iowa Southern R. Co. – Exemption – Abandonment*, 5 I.C.C.2d 496, 501 (1989), *aff'd*, *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990).

receipt of the Board's abandonment authority. The City is moving forward with these plans and held a public hearing on May 16, 2019 in this matter.⁵ Accordingly, any concerns regarding future actions associated with the bridge should be coordinated with the City of Passaic. As to the current condition of the bridge, NYGL states that the bridge was rebuilt in 1980 and that PBK Engineering recently inspected the bridge and found some deteriorated paint and minor corrosion but concluded that there are no structural defects. OEA believes that local entities are firmly committed to improving the area post abandonment and is sending this EA to the applicable governmental offices so that they may provide any updated information, as necessary.

Bergen County Department of Planning and Engineering (County) requests that the removal of rail, track materials and cross ties extend from the bridge eastward across River Drive and through the intersection of River Drive and Monroe Street. The County indicates that this would improve vehicular and pedestrian safety and flow through the intersection. The County plans to re-align and re-signal the traffic signal at this location during phase 2 of the City of Garfield's River Drive Corridor Improvement Project. OEA has since contacted NYGL for clarification on whether it intends to remove track at these locations as part of the proposed abandonment but has not received a response. Accordingly, OEA is recommending a condition that would require NYGL to consult with the County prior to initiating salvage.

OEA has not yet received responses from other agencies regarding potential environmental impacts associated with the proposed abandonment. Therefore, in addition to the agencies that commented, OEA is sending a copy of this EA for review and comment to the National Park Service; the U.S. Department of Agriculture's Natural Resources Conservation Service; the U.S. Army Corps of Engineers; the Office of the Governor; the New Jersey Office of Counsel and Land Use Planning; the New Jersey Department of Transportation; the Passaic County Administrator; the Passaic County Planning Department; the Passaic County Economic Development Department; the Bergen County Office of the County Executive; the Bergen County Planning and Economic Development Department; and the City of Passaic.

HISTORIC REVIEW

NYGL submitted a historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the New Jersey Department of Environmental Protection's Historic Preservation Office (SHPO) pursuant to 49 C.F.R. § 1105.8(c).⁶ The report indicates that the bridge spanning the Passaic River was originally built in 1885 but was

⁵ City of Passaic May 16, 2019 Scoping Presentation <https://www.cityofpassaic.com/bulletin> (last visited July 12, 2019).

⁶ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act (NHPA). Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found on the Board's website at [https://www.stb.gov/stb/docs/EnvironmentalDecisions/Delegation of 106 in Rail Abandonments.pdf](https://www.stb.gov/stb/docs/EnvironmentalDecisions/Delegation%20of%20106%20in%20Rail%20Abandonments.pdf).

completely rebuilt in 1980. NYGL does not believe that the bridge is eligible for inclusion on the National Register of Historic Places (National Register). NYGL also indicates that it is not aware of any prior subsurface ground disturbance or fill that might affect the archaeological recovery of resources within the area of the proposed abandonment.

OEA has not heard from the SHPO and therefore has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register.⁷ Accordingly, OEA is recommending a condition requiring NYGL to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of 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 project area.⁸ The database indicates that there are five federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way or APE of the proposed abandonment. The tribes are: Absentee-Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, Oklahoma; the Delaware Tribe of Indians; the Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin. OEA has included these tribes in the service list for this proceeding so that they may receive a copy of the EA for review.

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:

1. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*) and the Surface Transportation Board's (Board) environmental regulations at 49 C.F.R. § 1105.9, the New York & Greenwood Lake Railway (NYGL) shall consult with the New Jersey Coastal Management Program and obtain state coastal management consistency certification. NYGL may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to the Board's Office of Environmental Analysis and the Board has removed this condition.

⁷ The SHPO previously concurred that abandonment of the adjoining rail line segment between mileposts 1.1 and 1.8 in AB 1006X (EA served March 30, 2007 and SHPO reference #HPO-D2007-10 PROD) would not adversely affect any properties listed on or eligible for listing on the National Register.

⁸ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tadat/> (last visited July 11, 2019).

2. New York & Greenwood Lake Railway (NYGL) shall consult with the Bergen County Department of Planning and Engineering prior to initiating salvage activities to discuss where salvage would occur in relation to future road improvements.
3. New York & Greenwood Lake Railway (NYGL) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. NYGL shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the New Jersey Department of Environmental Protection's Historic Preservation Office (SHPO) and the public. NYGL may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that if the conditions above are imposed by the Board, 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 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 4-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 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 notice of exemption in the Federal Register. 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 (OPAGAC) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPAGAC directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

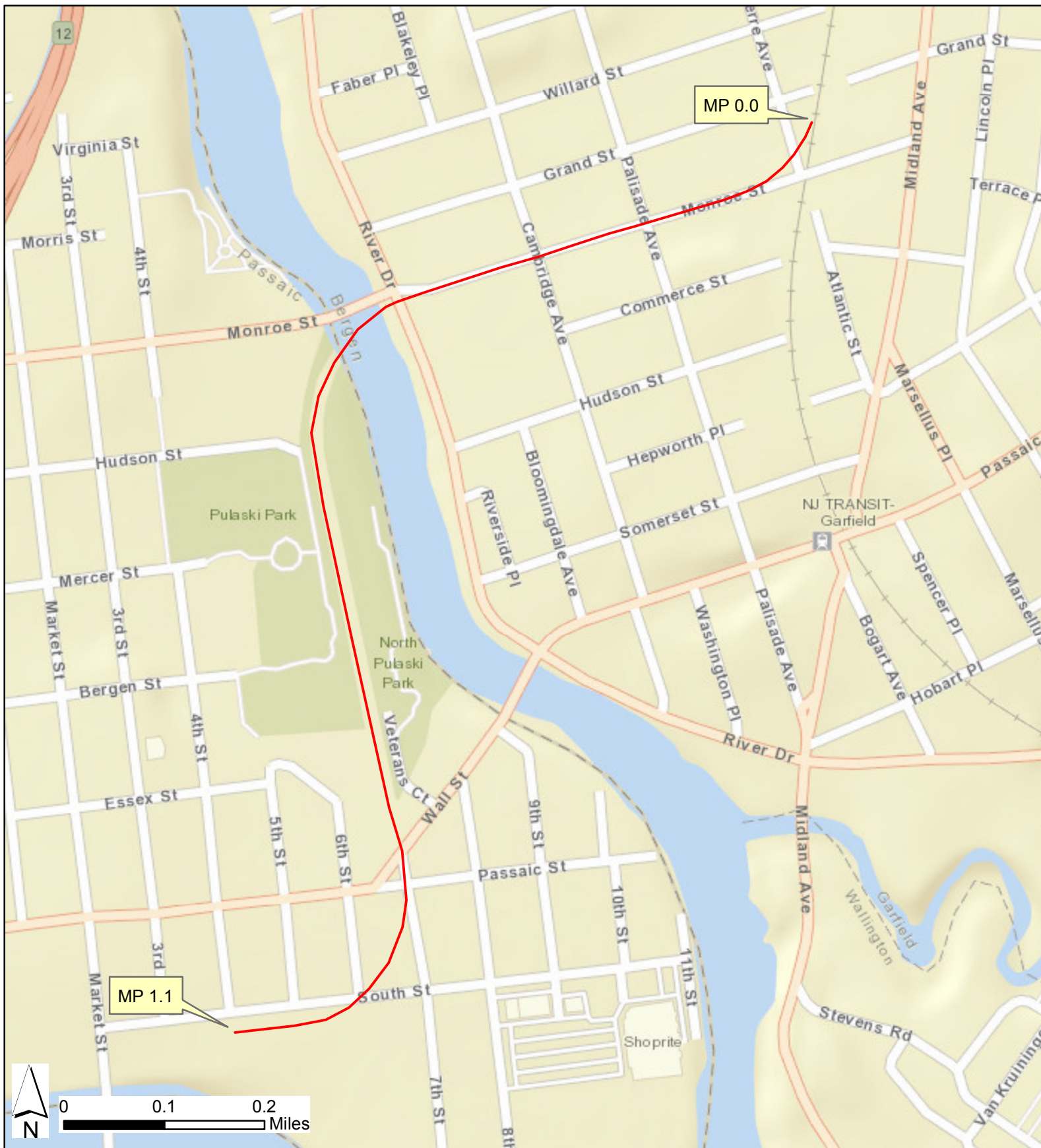
If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Diana Wood, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 1273 (Sub-No. 0X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Diana Wood, the environmental contact for this case, by phone at (202) 245-0302, fax at (202) 245-0454, or e-mail at Diana.Wood@stb.gov.

Date made available to the public: July 19, 2019.

Comment due date: August 19, 2019.

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

Attachments



Docket No. AB-1273X
Terminal Railroad
Abandonment Exemption
Bergen and Passaic Counties, NJ

Legend

— the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



Location in State



Rail bridge next to the Monroe Street Bridge

Source: <http://www.bridgesnyc.com/2011/06/monroe-street-bridge/> (accessed 7-11-2019)