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September 9, 2016

VIA FIRST CLASS MAIL and
ELECTRONIC MAIL

Ms. Danielle Gosselin
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RE: STB Finance Docket # FD 34797 – Sub Docket 1
New England Transrail, LLC
Comments of Wilmington, Massachusetts on Updated Petition

Dear Ms. Gosselin:

In response to Ms. Rutson's August 11, 2016 letter to Wilmington Town Manager Jeffrey Hull, I enclose the original of the following document for consideration by the Office of Environmental Analysis:

Comments of Wilmington, Massachusetts on Updated Petition for Exemption
of New England Transrail, LLC

I understand that this filing with your Office will be reflected on the environmental docket for this proceeding but not directly on the docket of the Board.

Please contact me with any questions or concerns you or Ms. Rutson may have about this filing, or if there is additional information you would like us to provide at this stage of the proceedings.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'D. Deutsch', written over a horizontal line.

Daniel R. Deutsch



Ms. Danielle Gosselin
Surface Transportation Board
September 9, 2016
Page 2

DRD:smd

Enclosure

cc: Jeffrey M. Hull, Town Manager

Distribution List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34797 – Sub Docket 1

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Petition
For an Exemption from 49 U.S.C. § 10901 To Acquire, Construct and Operate As A Rail
Carrier On Tracks and Land in Wilmington and Woburn, Massachusetts**

**COMMENTS OF WILMINGTON, MASSACHUSETTS ON UPDATED PETITION FOR
EXEMPTION OF NEW ENGLAND TRANSRAIL, LLC**

TABLE OF CONTENTS

- I. NET’S UPDATED PETITION AND PLAN ARE SO DEFICIENT AS TO EVADE APPROPRIATE REVIEW AND THE PROPOSED BUILD-OUT IS UNREALISTIC.**

- II. NET FAILS TO EVEN OUTLINE STORMWATER TREATMENT CONTROLS, WHICH WOULD BE UNUSUALLY COMPLICATED AND MIGHT BE INFEASIBLE AT THIS SITE.**

- III. THE UPDATED PETITION DOES NOT ADEQUATELY OR CREDIBLY DESCRIBE PROPOSED EXCAVATION, GRADING, AND SITE DEVELOPMENT.**

- IV. NET’S OPEN-ENDED LIST OF COMMODITIES AND PROPOSED HANDLING OF HAZARDOUS LIQUIDS ARE TROUBLING, IN LIGHT OF THIS SITE’S EXISTING UNREMEDiated GROUNDWATER POLLUTION, GROUNDWATER PROTECTION DISTRICT, AND ADJACENT CONSERVATION-RESTRICTED AREA.**

- V. NET'S DEVELOPMENT PLAN JEOPARDIZES THE SUBSURFACE DAPL CONTAINMENT STRUCTURE, WHOSE INTEGRITY IS ESSENTIAL BUT HAS EVADED RELIABLE ASSESSMENT DURING THE SUPERFUND PROCESS.
- VI. NET FAILS TO PROVIDE DATA NEEDED TO EVALUATE ITS PROJECT'S IMPACT ON TRAFFIC, ACCESS, AND PUBLIC SAFETY. HOWEVER, THERE IS REASON TO BE VERY CONCERNED.
- VII. THE DUBIOUS LOCATION AND POOR DESIGN OF THE PROPOSED FACILITY THREATEN HARM TO WETLANDS AND OTHER SENSITIVE RECEPTORS. HERE AGAIN, THE UPDATED PETITION IS DEFICIENT.
- VIII. NUISANCE, AIR QUALITY, AND NOISE IMPACTS FROM THE PROPOSED LARGE TRANSLOADING OPERATION ARE CERTAIN TO OCCUR, BUT NET'S DATA DOES NOT PERMIT THOSE TO BE SCOPED.
- IX. NET'S RELIANCE ON EPA'S "COMFORT/STATUS" LETTER IS MISPLACED.
- X. PREVIOUS USES OF THE PROJECT SITE HAVE SEVERELY IMPACTED THE ENVIRONMENT AND PUBLIC HEALTH. THEY CANNOT WITHSTAND FURTHER SEVERE IMPACTS FROM A DEVELOPMENT THAT IS SO INADEQUATELY DISCLOSED AND EXAMINED.
- XI. THE BOARD SHOULD EITHER DENY NET'S UPDATED PETITION AS NON-COMPLIANT WITH ITS MAY 12, 2016 DECISION AND DISMISS THIS PROCEEDING, OR REQUIRE NET TO FILE A NEW PETITION WITH FAR MORE DETAILED INFORMATION AT THE RISK OF DISMISSAL.

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**COMMENTS OF WILMINGTON, MASSACHUSETTS ON UPDATED PETITION FOR
EXEMPTION OF NEW ENGLAND TRANSRAIL, LLC**

The Town of Wilmington respectfully submits these Comments on the Updated Petition for Exemption filed with the Surface Transportation Board (“STB”) by New England Transrail, LLC (“NET”) on June 24, 2016 (“Updated Petition”).¹

**I. NET’S UPDATED PETITION AND PLAN ARE SO DEFICIENT AS TO EVADE
APPROPRIATE REVIEW AND THE PROPOSED BUILD-OUT IS
UNREALISTIC.**

Commenting on the Updated Petition is no routine or easy task, because the petition and accompanying site plan are grossly simplistic and lack meaningful detail in almost every respect. NET’s project warrants especially (perhaps uniquely) rigorous scrutiny. It would be situated on an active Superfund Site and has been proposed before that Site is fully characterized and remedial options have been explored. Despite the obvious need for a responsible and detailed presentation, the petitioner again has shortchanged the administrative process.

Among other defects, NET’s “Site Plan”:

- is not signed or sealed by an engineer or surveyor;

¹ These Comments are filed within the period established by the August 11, 2016 letter to Wilmington from STB’s Office of Environmental Analysis.

- shows no proposed finish contours; and
- comprises a single sheet, with no supplements depicting detailed existing conditions and environmental receptors, proposed drainage controls and structures, or engineering details.

Under cover of its superficial plan and project description, NET mischaracterizes the project as “limited in scope.” In fact, NET proposes a large facility (up to “60 rail cars” and 600 truck trips per day) with a variety of transportation and transloading operations, on a site NET itself once described as “constrained.” Indeed, the site contains sensitive wetland receptors, is burdened by unresolved contamination issues, houses an important subsurface containment structure whose integrity is in doubt, is affected by on-going discharges to surface water that have yet to be mitigated, is hydrologically connected to the contaminated Maple Meadow Brook aquifer resulting in closure of municipal drinking water wells, is tied to on-going adverse impacts to private water supply wells that are not yet fully understood, and abuts land under common ownership that is protected against disturbance and development by an environmental and open space restriction.

NET’s filing reflects a lack of commitment to fair disclosure and to the letter and spirit of this Board’s May 12, 2016 directive to submit a complete application. That Decision noted the “troubled history” of the project site, the old age of the case before it (NET originally filed more than 10 years ago), and the change in NET’s proposed use of the site from solid waste handling to commodity transloading. STB therefore instructed NET to “fully describe its current proposal for the acquisition, construction and operation of track, terminal facilities, or any other activities that it anticipates will take place on the site.” The Decision called for a “complete and updated petition . . .” The Updated Petition’s lack of detail inhibits thorough review by EPA -- whose

comfort/status letter was based on a preliminary conceptual sketch that also lacked any meaningful detail -- and hobbles useful other comment and evaluation by STB.

The rudimentary petition and site plan do not locate or describe several necessary or proposed components of a facility -- and the project design would not accommodate them:

- Storm water management system: NET intends to pave 23 acres of the 32-acre site (and to cover the balance with buildings and structures) in order to “minimize” infiltration into already contaminated soil and groundwater. Yet, NET does not explain how it would treat and manage the enormous burden of storm water and contaminated runoff from more than one million square feet of impervious surfaces, trucking and transloading operations, and railroad equipment maintenance activities. In point of fact, the site cannot physically accommodate all of the paving and structures NET proposes, much less adequate storm water treatment and controls (such as detention/retention basins, wet basin treatment, forebays, and other appropriate BMP’s). Many types of subsurface storm water structures are not feasible at this site because of the severe constraints on excavation and disturbance of existing contaminated soils and the shallow ground water table. While dedicated land thus is needed for storm water controls, NET has not allotted that in its site plan. According to NET’s own data, the total area in square feet of just the proposed access roads and buildings (1,440,000 -- not including 16,000 linear feet of track, or railroad mechanical infrastructure, storage tanks, water tanks, and the other features that NET lists separately) exceeds the square footage of the entire 32-acre site (1,393,920).

- Pads and berms for the proposed “above ground” tanks: These tanks ostensibly would store liquid commodities after delivery and before transloading. Those liquids would include flammable “natural gas liquids” and other hazardous materials (albeit not hazardous waste). The location and manner of construction of such tanks and related protective structures

is essential for this site, which cannot bear further releases of hazardous or other materials. Yet, NET does not clearly describe the location and design of such devices. If the storage tanks would comprise the three lozenge-shaped tanks on the NET plan – and STB should not be forced to “read between the lines” of NET’s filing – that location is problematic. It directly abuts wetlands within the conservation-restricted 20 acres under common ownership.

- “Train rail car/equipment maintenance areas”: NET proposes this additional operation as incidental to rail transloading but does not explain how it would be wedged into the site and integrated with rail operations. This is significant for two reasons. First, not all “equipment” maintenance may be integral to the proposed rail operations, for purposes of STB jurisdiction.² Second, depending on its location and scale, that additional activity would exacerbate the impacts of the proposed project on local traffic, access, noise, air pollution, and surface and ground water quality. Here again, NET’s dissembling prevents meaningful assessment of the environmental issues arising from its petition.

- Space to allow NET to move buildings or infrastructure, either temporarily or permanently, if that became necessary due to interference with or access for the continuing Superfund site assessment, follow-up investigation, and remedial actions: EPA’s May 2015 and November 2015 filings with STB stressed that, if the project were permitted, NET would have to preserve access to areas of the Superfund Site as necessary for those purposes. Industrial redevelopment of the entire site with no margin for adjustment would make that impossible, yet that is what NET’s plan reflects. Even postponing development of the land over the DAPL containment area (NET’s “Phase II proposed warehouse for railroad cross-docking operations”) does not address the need to accommodate future investigative and remedial actions elsewhere

² It appears that NET would service for a fee not only vehicles and equipment used in its transloading operations at the site but also others not used in those operations.

on the site. Delays in making Superfund accommodations or a lack of available space would compromise the clean-up process and the site itself.

It would be improper for NET to maximally build out the site and then cite a self-imposed hardship when addressing alternatives analysis for storm water treatment or responding to requests by EPA to accommodate Superfund site activities. As the regulatory gatekeeper, STB should not countenance a proposal that invites such logistical problems and after-the-fact manipulation. That is especially important where environmental impact review would occur in the unusual context of an incomplete Superfund proceeding.

II. NET FAILS TO EVEN OUTLINE STORMWATER TREATMENT CONTROLS, WHICH WOULD BE UNUSUALLY COMPLICATED AND MIGHT BE INFEASIBLE AT THIS SITE.

Even if NET's plan had allocated sufficient space for storm water treatment, it remains unclear how that would be constructed. Engineering adequate storm water controls for an operation of this scale and complexity is very difficult to begin with. Doing so in the circumstances of this site could be impossible. As with any industrial development, both quantity and quality of storm water must be addressed.

A. Quality Controls.

Stormwater runoff from impervious surfaces associated with NET's proposal, if not managed properly, will result in water quality impairments of waters of the United States of America (40 CFR 230). The proposed use, combined with the lack of identified stormwater management controls, will increase the discharge of pollutants to wetlands, harm wildlife, and threaten public health and safety.

The proposed use is considered a Land Use with Higher Potential Pollutant Loads (LUHPPLs) under Standard 5 of the Massachusetts Stormwater Policy. As defined by that

Policy and associated regulations, LUHPPLs include industrial sector uses such as: storage of hazardous materials, storage of liquid petroleum products, transportation facilities, fleet storage, high intensity parking lots, vehicle service and equipment cleaning, railroad yards, and railroad equipment maintenance. Whether or not the Policy strictly applies to a petition before STB, the mix of contaminants in the stormwater load for this proposed project would be much larger than usual and require much more than standard controls.

Specifically, stormwater runoff would be in direct and regular contact with oil, grease, hazardous substances, and other pollutants. Any stormwater management system structural Best Management Practices (BMPs) associated with this site must be designed to very specific and stringent specifications to provide adequate water quality and limit the risk of contaminated discharge. This is not achieved simply by adding “oil/water separator treatment manholes,” as NET’s petition implies. Oil/water separators are pretreatment devices designed as “offline” systems. Properly designed separators typically are designed to bypass higher magnitude storm events to limit the re-suspension of pollutants trapped in the device. Thus, any significant storm event seemingly would discharge stormwater runoff from 32 acres of impervious surfaces without any treatment or energy dissipation. Oil/water separators are not considered terminal treatment practices suitable for stormwater discharges from a LUHPPL. If it proceeds with the environmental impact review process, STB should require NET to provide a detailed stormwater management plan with acceptable measures for pretreating, treating, and safely discharging stormwater runoff from the proposed development. The plan also should include the locations and design details of all outfall structures to assess whether such areas are suitable for receiving that discharge.

As stated in EPA's November 6, 2015 letter to STB, "EPA has data confirming the presence of contamination in the groundwater beneath and to the west of the property." The petition states that groundwater depth is approximately six (6) to nine (9) feet below existing grade. Properly designed oil/water separators have an inside dimension of at least four (4) feet below the inlet invert elevation. Using standard inlet pipe cover requirements, this would place excavation depth well within the depth of groundwater. At a bare minimum, the proponent should provide detailed grading and drainage plans identifying all drain inlets, invert elevations, oil/water separator locations, and outlet pipes. NET also should provide a section detail of the proposed oil/water separator for review.

Again, however, oil/water separators alone are wholly inadequate stormwater quality control measures for a project of this type and scale at a site of this nature.

B. Quantity Controls.

As noted, the proposed plan calls for 32 acres of impervious area, of which 23 acres would be paved. The volume and velocity of runoff from impervious surfaces to this degree, if not managed properly, can cause significant adverse impacts to adjacent land owners, sensitive wetlands, and water bodies. STB should require NET to provide a complete hydrological analysis (as is typical for any new development) for both the pre-development and post-development conditions to ensure that the project will not alter existing drainage patterns, increase peak discharge rates, or cause offsite flooding to any adjacent land owner (or the immediately adjacent conservation-restricted area).

The entire site appears to slope down gradient from Eames Street to the wetland ecosystem located south of the proposed development area. Typical stormwater inlets that collect runoff from paved surfaces (catch basin grates) have a limited capacity. A catchment area associated with a drain inlet typically is limited to approximately one-quarter ($\frac{1}{4}$) of an acre

to minimize stormwater ponding in a standard engineering practice design storm event. NET's documents do not identify the location or size of stormwater inlets from pavement surfaces. This omission is critical, as undersized or improperly sited storm drain inlets can cause uncontrolled discharges to on-site areas determined to be unsuitable for accepting any runoff to avoid spread of existing contamination.

III. THE UPDATED PETITION DOES NOT ADEQUATELY OR CREDIBLY DESCRIBE PROPOSED EXCAVATION, GRADING, AND SITE DEVELOPMENT.

NET claims it would excavate to a maximum depth of four (4) feet below finished grade, but with grading and compaction of soils, it would be difficult not to invade the relatively shallow water table. Groundwater at this site lies approximately 6 to 9 feet below the current grade. Maintaining sufficient vertical separation across a 32-acre site would be difficult. As noted above, it also may be impossible in the construction of storm water controls. In passing, NET refers to the "average elevation" at two (2) generalized areas of the site. It provides no detailed data or contour plans, despite the importance of the groundwater issue and the wealth of elevation data generated during the Superfund site investigation.

The proposed extensive excavation, grading and site development activities for this project will alter the local ground water flow regime. That is problematic for this site in particular, which lies on a regional hydraulic divide, includes multiple groundwater plumes, and contains contaminated ground water (EPA Operating Unit "OU3") that has not yet been assessed or remediated.

Further, NET does not mention any plan to manage the soils that it would excavate. The Updated Petition merely says it will re-use soils on site to the extent possible. There is no discussion of stockpiling soils on site or removing contaminated soils that may be encountered.

Nor does NET address removal of existing structures, disused chemical tanks, and pipelines at this Olin Chemical site. Even if a responsible plan might address those concerns, NET's further omissions are troubling.

IV. NET'S OPEN-ENDED LIST OF COMMODITIES AND PROPOSED HANDLING OF HAZARDOUS LIQUIDS ARE TROUBLING, IN LIGHT OF THIS SITE'S EXISTING UNREMIEDIATED GROUNDWATER POLLUTION, GROUNDWATER PROTECTION DISTRICT, AND ADJACENT CONSERVATION-RESTRICTED AREA.

The list of materials that the proposed facility would transload is open-ended and subject to change. That calculated vagueness raises several concerns.

While the Updated Petition states that NET would not handle "hazardous waste," hazardous materials are another matter. NET's previous STB filings equivocated but the current petition states that NET would accept hazardous materials, including specifically "natural gas liquids." NET offers no plan to address the risks inherent in handling such materials. It merely proposes to temporarily store all bulk liquids in holding tanks within a bermed area. Because any risk of spillage through derailment or other accident is unacceptable at this site, NET has the burden to address this matter in meaningful detail. As noted above, if hazardous liquids are to be stored in the three barely distinguishable, lozenge-shaped tanks on the plan, those tanks' location adjacent to the 20-acre conservation-restricted land is problematic.

The Updated Petition also states that NET would not unload bulk liquids within the Groundwater Protection District. However, it does not identify where on the site such unloading would occur.³ This is no trivial matter at a Superfund site whose groundwater is known to be contaminated but has not been fully characterized. The unusual regulatory context complicates decisions about where and how to handle volatile liquids.

³ NET also should be required to identify any potential storage or handling of liquids that could be reactive with an asphaltic surface.

NET's proposed transloading of natural gas liquids and other hazardous materials also puts at risk the public health and safety of residents near the site and along the roads to be traveled by trucks (and rail cars) that would transport it through this populous suburb. The separation of the project site from major truck routes and highways compounds that risk.

V. NET'S DEVELOPMENT PLAN JEOPARDIZES THE SUBSURFACE DAPL CONTAINMENT STRUCTURE, WHOSE INTEGRITY IS ESSENTIAL BUT HAS EVADED RELIABLE ASSESSMENT DURING THE SUPERFUND PROCESS.

NET's project threatens the integrity of the 4-acre subsurface DAPL containment area.⁴ At best, the development plan is premature and incomplete. EPA has been non-committal regarding protection of that state-mandated and aging subsurface slurry wall designed to contain the diffuse aqueous layer of contaminants ("DAPL"). In relation to NET, EPA has declared only that "any future use of the containment area must be compatible with any permanent cap or other remedy . . ." Eventual determinations about the slurry wall and the design of a permanent cap above it may prohibit or require modification of NET's proposed huge structure (on the order of 300 feet long and 200 feet wide) and cross-docking operations area there. One likely scenario is

⁴ As Wilmington explained in previous comments: The containment structure was installed to prevent lateral migration of a diffuse layer of contaminants. NET presumes that the slurry wall structure, which extends down to bedrock, would remain intact in the face of the proposed construction and railroad operations. However, that is a tenuous proposition; recent groundwater data in an area adjacent to the slurry wall is suggestive of leaks in the structure and no information has been provided about site loading and vibrations associated with the proposed railroad operations. Moreover, it is unclear what agency, state or federal, would regulate this important but aging feature of the contaminated site going forward.

As Wilmington's geotechnical consultant has explained to STB in this proceeding, "[f]rom a contamination perspective, the Containment Area is the most significant existing source and represents the greatest potential exposures associated with the 51 Eames Street property." Yet, as GeoInsight also notes, the risk assessment for the Containment Area in Olin's Remedial Investigation Report did not contemplate construction over that area, and plans for the permanent capping of the Containment Area have not been developed.

In addition, recent technical reports show that surface water quality at and near the Olin property continues to be adversely impacted by Site-related contaminants and will need to be included in the remedial evaluation conducted under the feasibility study. The feasibility study evaluation has not been initiated, however. As such, EPA has not identified how this condition will be addressed and remedied. Redevelopment of the property is likely to contribute storm water to the already contaminated surface water features, which will complicate the feasibility study evaluation and any subsequent remedial actions.

the eventual removal of the DAPL from the containment area, which will require a significant on-site presence and infrastructure for several years. Yet, the Updated Petition does not identify any alternative plan or design, nor explain whether and how the proposed facility could function without the “Phase II proposed warehouse for railroad cross-docking operations.”

The aging containment structure was not designed to withstand the weight and movement of several dozen loaded rail cars and hundreds of trucks above it each day. Whether it could sustain that load, or is intact even now, is very much unknown. Within the past few months, a hydrostatic study of the slurry wall has failed, forcing investigators to evaluate the integrity of the structure in some other way.

These features of NET’s proposal alone render it unacceptable.

VI. NET FAILS TO PROVIDE DATA NEEDED TO EVALUATE ITS PROJECT’S IMPACT ON TRAFFIC, ACCESS, AND PUBLIC SAFETY. HOWEVER, THERE IS REASON TO BE VERY CONCERNED.

The likely traffic and access impacts of the proposed facility are very concerning. NET provides so little information that meaningful assessment is impossible. Even rudimentary data is missing. To permit a reliable evaluation, NET would need to identify its proposed operating days and hours; staff count and transportation needs; reliable peak hour truck traffic volumes for a new facility; origin and destination information adequate to evaluate traffic distribution patterns; existing traffic counts and projected background data for area roads; traffic load data for comparable facilities; anticipated changes to levels of service on surrounding roadways (many of which already have severely stressed or failing intersections and above-average crash rates, according to a recent traffic impact analysis); on-site truck, non-truck and pedestrian pathways and turning radii; the number and timing of existing and required new rail runs; locations of facility-related rail switches; and other detailed information.

In any event, the impacts of an NET facility on surrounding roads and bridges would be considerable. The site does not lie directly on a major thoroughfare. Hundreds of trucks each day therefore would have to negotiate side streets on their way to and from highways. NET has not even alluded to the practical and financial burdens presented by such traffic, nor offered to mitigate the impact in any way.

Public safety impacts also will be considerable, given the exceedingly large number of trips made each day by facility-related tractor trailers. Contrary to NET's statements, the site's abutters include residential neighborhoods. Even the placement of NET buildings and rail cars close to Eames Street presents safety concerns due to compromised sight lines. Moreover, the considerable separation of the facility from main truck routes and highways compounds the risks to public health and safety due to a constant flow of heavy traffic to, from, and around the site. Those risks also would spike as a result of new, heavy freight runs on railroad tracks that are now employed very lightly.

VII. THE DUBIOUS LOCATION AND POOR DESIGN OF THE PROPOSED FACILITY THREATEN HARM TO WETLANDS AND OTHER SENSITIVE RECEPTORS. HERE AGAIN, THE UPDATED PETITION IS DEFICIENT.

Significant harm to the natural environment also is probable, due to the scale of the proposed project and its proximity to wetlands and other ecological receptors. Wetlands are protected under federal law, as well as state and local law. The waters of the United States on and adjacent to the site are more extensive than shown on the GIS layer and on NET's plan. The scale and level of detail on those plans are grossly inadequate. All jurisdictional wetlands and other receptors need to be identified by type and their borders flagged on engineer-surveyed plans, which also must clearly depict elevation data, water flow directions, and ultimate proposed discharge locations.

Notably, NET is proposing to run rail tracks (and possibly locate holding tanks) adjacent to the conservation-restricted parcel to the south; to erect and operate a warehouse for railroad cross-docking completely over the footprint of the West Ditch⁵; and to locate buildings and tracks over streams and other jurisdictional waters. The Updated Petition does not allude to these environmental issues, much less propose replication of disturbed wetlands or other mitigation. Even wetland areas that NET's plan shows as "excavated" would be protected if they meet applicable resource definitions. The precise location of wetland and water body boundaries is needed in order to even begin to evaluate whether wetland alterations can be avoided and, if not, the extent of the proposed alterations and the resulting replication that would be necessary to meet regulatory requirements. That and other data, including facility design and construction process information, also is needed to evaluate whether and how a facility -- if it is feasible to begin with -- is designed to minimize off-site impacts. For example, parcels along nearby Jewel Drive have stormwater management systems linked to streams that would be impacted by an NET project.

Among other mechanisms, wetlands will be significantly impacted by increased stormwater loading. That is true unless designs can be developed to mitigate pulsed loading, which would be very hard to accomplish at this site. One area impacted will be the South Ditch. There are on-going discharges of site contaminants to that area that are not well understood. It is difficult to imagine how the site could be developed without using existing drainage of South Ditch as part of stormwater control. Yet, any additional discharge of stormwater to South Ditch will exacerbate conditions and complicate eventual remedial options there.

Finally, as noted earlier, the proposed facility is too expansive for this site. NET's proposed design does not leave space to accommodate adequate stormwater controls and

⁵ Rudimentary measurement indicates that impacts to the West Ditch would exceed one-half (1/2) acre.

temporary or permanent adjustments necessary for the Superfund process. Similarly, the design does not leave space to implement any wetland replication that may be required to mitigate the proposed large-scale disturbance and elimination of resource areas.

VIII. NUISANCE, AIR QUALITY, AND NOISE IMPACTS FROM THE PROPOSED LARGE TRANSLOADING OPERATION ARE CERTAIN TO OCCUR, BUT NET'S DATA DOES NOT PERMIT THOSE TO BE SCOPED.

The Updated Petition does not disclose the proportions of commodities it would handle, the types of trucks contemplated, its proposed days and hours of operation, the number and timing of rail runs (e.g., day or night), the design of the proposed cross-docking warehouse, the scale of the proposed railroad equipment maintenance operations, or other information essential to identify the types and magnitude of nuisance, noise, and air quality impacts likely to result from a facility.

Those impacts nonetheless are likely to be considerable and, cumulatively, could prove intolerable. Contrary to NET's statements, the site is abutted by and near residential neighborhoods and other uses vulnerable to such impacts. Moreover, as noted, facility-related trucks would traverse other areas of homes and light businesses. Because the few existing railroad tracks at the site are not in use, there are no railroad-related background impacts to compare to those anticipated from the proposed daily movement, unloading, loading, coupling, and decoupling of 60 rail cars and locomotives. Additional noise and litter will result from 600 daily truck trips, rail equipment maintenance activities, dumping and loading a wide range of commodities, and operation of the cross-docking warehouse. Diesel fumes from innumerable trucks and locomotives also would have a substantial adverse impact on local air quality and nearby residents.

If STB proceeds with the environmental impact analysis, it should require much more detailed information from NET in this regard.

IX. NET'S RELIANCE ON EPA'S "COMFORT/STATUS" LETTER IS MISPLACED.

In a weak effort to reassure the Board of its intentions on environmental matters, NET states that it will fulfill the requirements for bona fide prospective purchaser (BFPP) status outlined in EPA's May 2015 "comfort/status" letter. This is a red herring. Not only does NET fail to explain how it would perform each required action, but BFPP status only affords regulatory protection to a prospective purchaser. It does not ensure the environmental soundness of a facility. Indeed, in its November 6, 2015 follow-on letter to STB, EPA explained that "[t]he Comfort/Status Letter was issued for informational purposes to explain the environmental conditions at the Site, as known by EPA as of the date of the letter, and to suggest reasonable steps that NET should take at the Site . . . The Comfort/Status Letter does not make any representations that the Property is appropriate for any particular development or reuse." (EPA letter, at p. 5) ⁶

X. PREVIOUS USES OF THE PROJECT SITE HAVE SEVERELY IMPACTED THE ENVIRONMENT AND PUBLIC HEALTH. THEY CANNOT WITHSTAND FURTHER SEVERE IMPACTS FROM A DEVELOPMENT THAT IS SO INADEQUATELY DISCLOSED AND EXAMINED.

NET proposes to build on a site that is especially vulnerable to any risk of further groundwater or other contamination.⁷ NET thus assumed the burden to demonstrate whether and

⁶ Redevelopment that is not designed and executed to eliminate the risk of significant further pollution of soils, surface water, or groundwater would be inappropriate, not only because of the compounding effects of new impacts on previous impacts (some of which still have not been characterized) but also because the inevitable commingling and transformation of waste streams and contaminants would complicate the allocation of responsibility as between existing potentially responsible parties and the new developer.

⁷ As the Board is aware, Olin Chemical Company and its predecessors operated the site for many decades, during which industrial spoils were dumped into open swales. MassDEP investigated the site until EPA assumed

how the proposed facility can be constructed and operated to prevent such impacts.

Wilmington's residents – and especially residential neighbors of the site -- have borne the environmental risks, hazards, and mistakes at the project site. Olin Chemical's contamination of soils, surface water, and groundwater both on and off the Site resulted in the closure of the majority of Wilmington's public drinking water wells, requiring the purchase of alternative municipal water supplies and the provision of bottled water for people in nearby homes. Those conditions persist. Among the most harmful contaminants at the Site is n-nitrosodimethylamine (NDMA). The presence of that human carcinogen was not known until the Commonwealth of Massachusetts's site investigation was well underway. It was the discovery of NDMA that forced Wilmington to close five of its nine public drinking water wells. NDMA has been detected in groundwater not only on the Olin property but also under land to the west and southwest of the property. Even though EPA issued a comfort letter to NET, it still has not yet identified the specific area on the site where NDMA originated or the transport characteristics of NDMA that has caused contamination of off-site private drinking water wells.

The lack of clarity – regarding both the existing site-related contamination and the many crucial aspects of NET's Updated Petition addressed above -- should be concerning for the STB. It is of great concern to Wilmington residents. Because STB has exclusive jurisdiction to evaluate most aspects of a rail-based development proposal, only the Board may address Wilmington's interests in this process.

The project's impact on the surrounding community must be examined with special care, insofar as NEPA mandates environmental justice review. The neighborhoods along Woburn

jurisdiction and assigned it to the National Priorities List. More than 240 chemical constituents were identified, and laborious sampling, testing and analysis initially failed to disclose the most toxic of those chemicals. The decades-long site investigation and remediation process remains incomplete.

Street, Eames Street, and Cook Avenue have been impacted disproportionately by past contamination of this site and by other environmental harms.

There can be no permanent resolution of the community's concerns without, among other assurances, a safe public water supply. The prospect of major redevelopment at this complex and unresolved Superfund Site within close proximity to residential neighborhoods is therefore deeply unsettling to residents and their elected officials, including its Board of Health which is charged with protecting public water resources and the health of residents. Equally concerning is the prospect that the environmental bona fides of the project might be reviewed by this Board not only before there has been a full vetting of the mandatory Superfund criteria and possible remedial options, but also on the basis of information as deficient and incomplete as that provided in the Updated Petition.

XI. THE BOARD SHOULD EITHER DENY NET'S UPDATED PETITION AS NON-COMPLIANT WITH ITS MAY 12, 2016 DECISION AND DISMISS THIS PROCEEDING, OR REQUIRE NET TO FILE A NEW PETITION WITH FAR MORE DETAILED INFORMATION AT THE RISK OF DISMISSAL.

STB's May 12, 2016 Decision emphasized that granting NET permission to file an Updated Petition was no assurance that a project would be deemed exempt or environmentally appropriate. The burden lay squarely on NET to supply STB – and the interested parties – with a “complete” petition that included data concerning the proposed facility and operations, and existing conditions, detailed enough to permit appropriate comment and to warrant the time and expense of a high-level environmental impact review. This proceeding already has lasted too long and drained too many public resources to tolerate a petition that falls short of that. Likewise, the Superfund Site on which NET wants to build and operate a facility has sustained

too much damage and been too incompletely addressed to forego a diligent review for redevelopment.

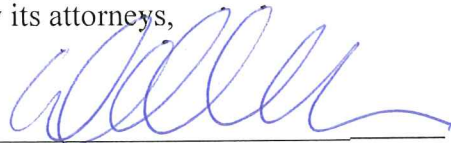
EPA and STB have indulged NET by affording it the opportunity to petition for exemption, despite its poor track record reporting relevant information and the inconclusive status of the Superfund RI/FS process. NET's failure to follow through responsibly is an affront to this administrative process.

Wilmington respectfully requests the Board to (i) deny NET's Updated Petition as non-compliant and dismiss this proceeding, or (ii) require NET to file promptly a new petition with far more detailed, specified information at the risk of dismissal.

Respectfully submitted,

TOWN OF WILMINGTON,

By its attorneys,

A handwritten signature in blue ink, appearing to be 'Daniel R. Deutsch', written over a horizontal line.

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Dated: September 9, 2016

CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that on this date, a true copy of the foregoing **Comments of Wilmington, Massachusetts on Updated Petition for Exemption of New England Transrail, LLC**, was served by first class mail, postage prepaid, to the following:

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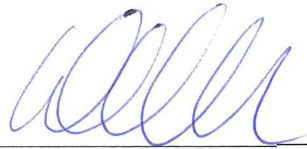
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