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Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

ENTERED
Office of Proceedings

James R. Paschall
Senior General Attorney



Writer's Direct Dial Number
(757) 629-2759
fax (757) 533-4872

JUL 13 2005

Part of
Public Record

July 8, 2005

via fax 202-565-9002 and mail - 9 total pages

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Docket No. AB-290 (Sub-No. 251X), Norfolk Southern Railway Company -
Abandonment Exemption - At Edenton, North Carolina, In Chowan
County, North Carolina - Notice of Exemption - Report on Environmental
Agency Consultations and Letter of Consummation of Abandonment

Dear Mr. Williams:

The notice of exemption served July 16, 2004 in the subject proceeding provided for a consummation deadline date of July 16, 2005 for NSR to exercise the exemption authority with respect to the involved 0.33-mile rail line at Edenton, NC. The Board's decision served August 20, 2004 imposed five environmental conditions on the abandonment of the line. In this letter, NSR reports on its consultations in satisfaction of the environmental conditions and provides notice of consummation of the abandonment, effective this date, unless the Board find that additional consultation or other conditions remain outstanding. In that case, NSR requests an extension of the consummation deadline until October 17, 2005 to allow sufficient time to take any further action that may be required to meet any outstanding conditions and to consummate the abandonment.

In a decision served May 9, 2005, the Board removed the Section 106 historic preservation process condition because upon NSR's presentation of further information to the North Carolina State Historic Preservation Officer, the SHPO stated that she concurred that the project will have no effect on historic resources.

The August 20, 2004 decision imposed three consultation conditions and a condition that NSR notify SEA of the results of the consultations. NSR representatives have had preliminary consultations with SEA and through this letter and attachments intend to complete the consultation process, provided SEA finds this satisfactory.

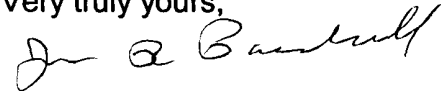
Honorable Vernon A. Williams
AB-290, Sub-No. 251X
July 8, 2005
Page 2 of 2

Although a small segment of track had been removed at Edenton, NC to accommodate Dominion Virginia Power Company's rehabilitation and upgrading of its electric transmission facilities, the trestle over Queen Anne Creek had not been removed as NSR originally reported or implied. Therefore, NSR has consulted with the Army Corps of Engineers concerning removal of the trestle over Queen Anne Creek. Attached to this letter is a copy of the U. S. Army Corps of Engineers jurisdictional determination with respect to the removal of the trestle over Queen Anne Creek, which we trust will satisfy the condition for consultation with the ACOE. (This also permitted the SHPO to consider the effect of the abandonment upon the structure which constituted a large part of this short segment of railroad line.)

Also enclosed are letters from the U.S. Fish and Wildlife Service regarding the absence of Federally listed threatened and endangered species in the vicinity of the line and from the North Carolina Department of Environment and Natural Resources with standard recommendations for bridge removal projects of this scope. The three letters together should satisfy the consultation conditions. By copy of this letter and the attachments via both fax and e-mail, we are advising SEA of the result of the consultations.

Because the deadline for consummation of the abandonment is imminent and because NSR believes that the conditions prescribed in the Board's order served August 20, 2004 have been satisfied, we ask the Board to accept this letter as a letter of consummation of the abandonment. If, however, the Board finds that some condition has not been satisfied by the consultations already made, as exemplified by the attachments to this letter, NSR asks for an extension of the consummation date for this abandonment to October 17, 2005 in order to provide sufficient time to satisfy any outstanding conditions and to take action to consummate the abandonment. Thank you for your consideration of this matter.

Very truly yours,



James R. Paschall

Enclosures

cc w/ encl. via fax 202-565-9000 and copy via mail - 9 total pages
Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh Field Office
Post Office Box 33726
Raleigh, North Carolina 27636-3726

April 30, 2004

Larry Western
Norfolk Southern Railway Company
Environmental Protection Department
110 Franklin Road, SE (Box 13)
Roanoke, VA 24042-0013

Dear Mr. Western:

Thank you for your March 26, 2004 letter regarding Norfolk Southern Railway's proposal to abandon the segment of rail between mileposts NS 73.67 and NS 74.00, a distance of 0.33 miles near State Route 1140 in Chowan County, Edenton, North Carolina. This letter provides the U.S. Fish and Wildlife Service's (Service) response pursuant to section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act).

Based on the information provided and other information available, it appears that your proposed project area does not contain any federally-listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Act. We believe that the requirements of section 7(a)(2) of the Act have been satisfied. We remind you that obligations under section 7 consultation must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner not previously considered; (2) this action is subsequently modified in a manner that was not considered in this review; or, (3) a new species is listed or critical habitat determined that may be affected by the identified action.

Thank you for the opportunity to review this project. If you have any questions or comments regarding our response, please contact Mr. Dale W. Suiter of this office at (919) 856-4520, Ext. 18 or Dale_Suiter@fws.gov.

Sincerely,

Dr. Garland Pardue
Ecological Services Supervisor



☒ North Carolina Wildlife Resources Commission ☒

Richard B. Hamilton, Executive Director

MEMORANDUM

TO: Richard P. Dietz
Norfolk Southern

FROM: Travis Wilson, Highway Project Coordinator
Habitat Conservation Program

DATE: May 6, 2005

SUBJECT: Removal of Norfolk Southern bridge spanning Queen Anne Creek

Biologists with the N. C. Wildlife Resources Commission (NCWRC) have reviewed the information provided and have the following preliminary comments on the subject project. Our comments are provided in accordance with provisions of the National Environmental Policy Act (42 U.S.C. 4332(2)(c)) and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d).

Our standard recommendations for bridge removal projects of this scope are as follows:

1. If temporary access roads or detours are constructed, they should be removed back to original ground elevations immediately upon the completion of the project. Disturbed areas should be seeded or mulched to stabilize the soil and native tree species should be planted with a spacing of not more than 10'x10'. If possible, when using temporary structures the area should be cleared but not grubbed. Clearing the area with chain saws, mowers, bush-hogs, or other mechanized equipment and leaving the stumps and root mat intact, allows the area to revegetate naturally and minimizes disturbed soil.
2. A clear bank (riprap free) area of at least 10 feet should remain on each side of the stream.

3. Sedimentation and erosion control measures sufficient to protect aquatic resources must be implemented prior to any ground disturbing activities. Structures should be maintained regularly, especially following rainfall events.
4. Temporary or permanent herbaceous vegetation should be planted on all bare soil within 15 days of ground disturbing activities to provide long-term erosion control.
5. Heavy equipment should be operated from the bank rather than in stream channels in order to minimize sedimentation and reduce the likelihood of introducing other pollutants into streams.
6. Only clean, sediment-free rock should be used as temporary fill (causeways), and should be removed without excessive disturbance of the natural stream bottom when construction is completed.
7. During subsurface investigations, equipment should be inspected daily and maintained to prevent contamination of surface waters from leaking fuels, lubricants, hydraulic fluids, or other toxic materials.
8. Anadromous species are found in this portion of Queen Anne Creek, including American shad and River herring. An in-water work moratorium from February 15 to June 15 is recommended for this project.

If you need further assistance or information on NCWRC concerns regarding bridge replacements, please contact me at (919) 528-9886. Thank you for the opportunity to review and comment on these projects.

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action Id. 200511025

County: Chowan

U.S.G.S. Quad: Edenton

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Norfolk and Southern Corporation, c/o Mr. Rick Dietz

Address: 175 Spring Street Southwest

Box 142

Atlanta, Georgia 30303

Telephone No.: (404) 529-1434

Property description:

Size (acres) _____

Nearest Town Edenton

Nearest Waterway Queen Anne Creek

River Basin Albemarle Sound

USGS HUC 03010205085030

Coordinates N 36.055904 W -76.605136

Location description Railroad bridge over Queen Anne Creek near Water Street in Edenton in Chowan County, North Carolina.

Indicate Which of the Following Apply:

- ☐ Based on preliminary information, there may be wetlands on the above described property. We strongly suggest you have this property inspected to determine the extent of Department of the Army (DA) jurisdiction. To be considered final, a jurisdictional determination must be verified by the Corps. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).
- ☒ There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- ☐ There are wetlands on the above described property subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
 - ☐ We strongly suggest you have the wetlands on your property delineated. Due to the size of your property and/or our present workload, the Corps may not be able to accomplish this wetland delineation in a timely manner. For a more timely delineation, you may wish to obtain a consultant. To be considered final, any delineation must be verified by the Corps.
 - ☐ The wetland on your property have been delineated and the delineation has been verified by the Corps. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.
 - ☐ The wetlands have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on _____. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- ☐ There are no waters of the U.S., to include wetlands, present on the above described property which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- ☒ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Elizabeth City, NC, at (252) 264-3901 to determine their requirements.

Action Id. 200511025

Placement of dredged or fill material within waters of the US and/or wetlands without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). If you have any questions regarding this determination and/or the Corps regulatory program, please contact Tracey L. Wheeler at (252) 975-1616 ex 24.

Basis For Determination: Queen Anne Creek exhibits an Ordinary High Water Mark as indicated by changes in soil character and absence of terrestrial vegetation and is hydrologically connected to Albemarle Sound.

Remarks: _____

Corps Regulatory Official: Tracey L. Wheeler

Date 05/26/2005

Expiration Date 05/26/2010

Copy Furnished:

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Norfolk and Southern Corporation	File Number: 200511025	Date: 05/26/2005
Attached is:		See Section below
☐ INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
☐ PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
☐ PERMIT DENIAL	C	
☒ APPROVED JURISDICTIONAL DETERMINATION	D	
☐ PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following notifies you of rights and options regarding an administrative appeal decision. Additional information may be found at <http://www.usace.army.mil/infocenters/corp/regulations-1330-AR/>.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II: REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Tracey L. Wheeler
US Army Corps of Engineers
Post Office Box 1000
Washington, North Carolina 27889
(252) 975-1616 ex 24

If you only have questions regarding the appeal process you may also contact:

Mr. Michael F. Bell, Administrative Appeal Review Officer
CESAD-ET-CO-R
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street, Room 9M15
Atlanta, Georgia 30303-8801

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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DIVISION ENGINEER:

Commander
U.S. Army Engineer Division, South Atlantic
60 Forsyth Street, Room 9M15
Atlanta, Georgia 30303-3490