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OEA

SERVICE DATE – SEPTEMBER 22, 2020

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

FINAL ENVIRONMENTAL ASSESSMENT

Docket No. AB 290 (Sub-No. 408X)

**Norfolk Southern Railway Company – Abandonment Exemption –
in Hudson and Essex Counties, N.J.**

ABANDONMENT TYPE

The time for comments on the Draft Environmental Assessment (Draft EA) has expired in this:

() Notice of Exemption (X) Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, Norfolk Southern Railway Company (NSR) filed a petition under 49 U.S.C. § 10502 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Hudson and Essex counties, New Jersey. The rail line proposed for abandonment extends approximately 8.6 miles from Milepost WD 2.9 in the City of Jersey City to Milepost WD 11.5 in the Township of Montclair (the Line). OEA served a Draft EA for this proceeding on August 18, 2020 for public review and comment. In the Draft EA, OEA recommended two environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

On July 29, 2020, Open Space Institute Land Trust, Inc. filed a request for a Notice of Interim Trail Use (NITU) to provide time to negotiate for interim trail use/rail banking pursuant to 16 U.S.C. § 1247(d) (Trails Act) and 49 C.F.R. § 1152.29. On August 7, 2020, NSR filed in support of the NITU request.

Comments on the Draft EA

On September 18, 2020, the New Jersey State Historic Preservation Office (SHPO) submitted a comment stating that if the Line goes into interim trail use, there would be no undertaking as defined under Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108), and therefore, no Section 106 consultation would be required.

Board authorization to abandon a rail line is a federal undertaking/action subject to the NHPA and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) because, if the railroad consummates the abandonment, the Board's jurisdiction over the line terminates. However, a rail line that is authorized for abandonment but railbanked under the Trails Act is not

abandoned for railroad purposes, and thus, the right-of-way remains under the Board's jurisdiction as part of the interstate rail system subject to potential reactivation of rail service for the duration of the interim trail use. Moreover, interim trail use under the Trails Act is non-discretionary—as long as the trail sponsor and the railroad satisfy the statutory requirements of the Trails Act, the Board does not have discretion to deny interim trail use. Accordingly, interim trail use under the Trails Act is not a federal action that is subject to environmental review under NEPA or a federal undertaking that is subject to review under Section 106 of NHPA. Therefore, when an interim trail use agreement is reached in an abandonment case, compliance with the historic preservation and environmental conditions imposed by the Board is not required while the line is utilized for interim trail use. Here, OEA is continuing to recommend that the Section 106 condition be imposed on any decision granting abandonment authority should an interim trail use/rail banking agreement not be reached or if reached, the interim trail use/rail banking agreement ends and the abandonment proceeds.

Conclusions

The Draft EA comment period has ended. Accordingly, OEA recommends that the following conditions be imposed on any decision granting abandonment authority:¹

1. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*) and the Board's environmental regulations at 49 C.F.R. § 1105.9, Norfolk Southern Railway Company (NSR) shall consult with the New Jersey Department of Environmental Protection, Coastal Management Program and obtain state coastal management consistency certification, if necessary. NSR 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.
2. Norfolk Southern Railway Company (NSR) 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. NSR shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the State Historic Preservation Office, any other Section 106 consulting parties that have been identified and the public. NSR 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.

¹ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

If the above conditions are imposed, OEA believes that the proposed action would not significantly affect the quality of the human environment.

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