

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 290 (Sub-No. 407X)

**Norfolk Southern Railway Company – Abandonment Exemption –
In Bergen County, N.J.**

BACKGROUND

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 Bergen County, New Jersey.¹ The rail line proposed for abandonment extends approximately 1.2 miles from Milepost UQ 9.0 to Milepost UQ 10.2 (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the Board grants the exemption, the railroad would be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line is in a largely urban area of northeast New Jersey, and the width of the right-of-way ranges from 62 to 122 feet along the main track centerline. There are no bridges or structures on the segment to be abandoned. NSR intends to sell the Line with all rail and track material intact to the Open Space Institute Land Trust (OSI). Subsequently, OSI intends to partner with other parties to convert the Line to public use including trails. NSR states that Bergen County would eventually assume legal and financial responsibility for any trail that would be developed over the Line.

According to NSR, the Line was originally part of the Paterson and Hudson River Railroad (P&HR), which was incorporated in 1831. Construction of the P&HR began in Patterson, reaching present-day Passaic in May 1832, with formal service beginning in June 1832. Tracks reached the western side of the Bergen Hill in 1833, but the volcanic rock hill blocked the connection between the Meadows on the west and the Hudson River to the east. In cooperation with the New Jersey Railroad and Transportation Company (NJR), the P&HR

¹ NSR is also requesting an exemption from the offer of financial assistance procedures under Section 10904 as part of this proceeding. Therefore, to avoid any procedural questions, NSR is utilizing the petition for exemption process for both its request for abandonment authorization and its request to be exempted from 49 U.S.C. § 10904.

constructed the Bergen Cut, a 40-foot deep open route excavated through the ridge. The “Bergen Cut” opened in 1838 and served as the first and only rail route through the Bergen Hill to the Hudson River for over 20 years.

Concurrently, the New York and Erie Railroad (NY&E) was planning on building a line from the Great Lakes to the Hudson River, to compete with the Erie Canal. The approximate route was published in January 1835, with a line close to the New Jersey border in the Ramapo Valley near Suffern, New York. The P&HR as early as 1831 recognized the advantages of this connection with the planned NY&E. New York’s General Railroad Bill of 1850 permitted New York railroads to connect directly with railroads in other states. The day after that bill was approved, planning arrangements were made among the NY&E, the Union Rail Road Company, the Paterson & Ramapo Railroad, and then P&HR to create a direct rail link to Jersey City. Between 1852 and 1853 the tracks were all changed to match the Erie’s six-foot standard.

After several bankruptcies and name changes, the successor to the NY&E emerged as the New York, Lake Erie and Western Railway (NYLE&W) in 1875. Entering into foreclosure in 1895, the company was combined with the New York, Pennsylvania, and Ohio Railroad and other lines to form the Erie Railroad (Erie). The Erie Railroad merged with the Delaware, Lackawanna, and Western Railway in 1959 and became known as the Erie-Lackawanna Railroad (EL). Financial difficulties, including substantial destruction of EL’s physical plant from Hurricane Agnes in 1972, led to the acquisition of the Line by Consolidated Rail Corporation (Conrail) in 1976. Norfolk Southern Corporation, parent to NSR, subsequently acquired the Line from Conrail in 1999.

ENVIRONMENTAL REVIEW

NSR submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. NSR served the E&H Report on appropriate federal, state, and local agencies as required by the Surface Transportation Board’s (Board) environmental rules [49 C.F.R. § 1105.7(b)]² implementing the National Environmental Policy Act. The Board’s Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to NSR, traffic has not moved on the Line for over 20 years. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the

² The E&H Report is available for viewing on the Board’s website at <https://prod.stb.gov> by clicking “Search STB Records;” selecting “Filings” in the “Search for” dropdown menu; entering “AB” “290” “407” “X” sequentially in the four boxes for “Docket Number,” then selecting “Search.” The E&H Report was filed on October 14, 2020.

proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

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 the construction of new access points to the right-of-way. Should the Board authorize the proposed abandonment, NSR intends to convey the right-of-way to OSI with the Line's rail and track materials. Therefore, NSR does not plan to conduct any salvage activities.

NSR requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species under the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). USFWS responded on August 11, 2020, with a determination that no threatened or endangered species or critical habitat is listed in the project area. USFWS noted that this consultation fulfilled the requirements of the ESA. In addition, OEA searched the USFWS Information for Planning and Consultation (IPaC) system³ which confirmed that no threatened or endangered species or critical habitat is listed in the project area. Therefore, OEA has determined that the proposed abandonment would have no impact on federally listed threatened and endangered species. OEA is providing USFWS – New Jersey Ecological Services Field Office a copy of this Draft EA for review.

NSR requested comments from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) regarding potential impacts to prime farmland and prime farmland soils. Although NRCS has not responded to date, OEA does not expect the loss of any prime farmland or soils because of the urban nature of adjacent land uses.

The E&H Report was also submitted to the U.S. Environmental Protection Agency, Region 2 (USEPA) and U.S. Army Corps of Engineers, New York District (USACE) for comments on potential permitting requirements under the Sections 402 and 404 of the Clean Water Act (CWA) (33 U.S.C. §§ 1342 and 1344), respectively. To date, OEA has not received a response from either agency. OEA does not anticipate the need for permits under the CWA because NSR does not intend to salvage the Line, disturb any roadbed underlying the Line, or do any work in waters of the U.S. OEA is providing a copy of this Draft EA to the USEPA and USACE for review.

NSR requested comments from the New Jersey Department of Environmental Protection (NJDEP) regarding potential impacts from the proposed abandonment on water quality. To date, no response has been received. OEA does not expect any impacts to water quality as NSR does

³ U.S. Fish and Wildlife Service, Information for Planning and Consultation (IPaC), <https://ecos.fws.gov/ipac/location/index> (last accessed November 30, 2020).

not intend to remove or alter the contour of the roadbed underlying the Line to be abandoned through excavation or other ground-disturbing activities. There are no plans to undertake in-stream work or dredge and/or use any fill materials in connection with the proposed abandonment. OEA is providing NJDEP with a copy of this Draft EA for review.

The proposed abandonment is in the New Jersey coastal zone management area. NSR requested comments from the NJDEP, Coastal Management Program (State Coastal Zone Management Agency or CZMA) regarding the requirement for coastal management consistency certification under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*). To date, CZMA has not provided comments. Accordingly, we are recommending a condition prohibiting the railroad from consummating the abandonment or conducting salvage activities until completion of the CZMA consultation process.

NSR requested comments from the Borough of Rutherford, the Borough of East Rutherford, and Bergen County, on the consistency of the proposed abandonment with existing land use plans. No responses have been received to date. Accordingly, OEA is providing the Borough of Rutherford, the Borough of East Rutherford, and Bergen County with a copy of this Draft EA for review.

Because NSR does not intend to conduct any salvage activities, OEA concludes that there would be no air, water, or noise emission impacts from the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment:

- U.S. Fish and Wildlife Service, New Jersey Ecological Services Field Office,
- U.S. Environmental Protection Agency, Region 2,
- U.S. Army Corps of Engineers, New York District, and
- New Jersey Department of Environmental Protection, Coastal Management Program.

HISTORIC REVIEW

NSR served the E&H Report on the NJDEP, Historic Preservation Office (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁴ In a September 24, 2020 email to NSR, the SHPO stated that the Line had previously been determined eligible for the

⁴ 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. 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 at a link on the bottom of the Board's website overseeing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

National and New Jersey Registers of Historic Places and had been identified as a part of the Erie Railroad Main Line Historic District (SHPO Opinion 2/20/2003). The SHPO also noted that the Erie Railroad Main Line Historic District has no buildings, bridges, culverts, catenary, or rail present within the limits of the sections proposed to be abandoned. Finally, the SHPO concurred with the finding that, as proposed, the undertaking would have no adverse effect on historic properties. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.5(b), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places. The documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of the railroad's historic report, all relevant correspondence, and this Draft EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <https://prod.stb.gov>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁵ The database indicated that the following federally recognized Tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment:

- Delaware Nation, Oklahoma,
- Delaware Tribe of Indians, and
- Shawnee Tribe.

Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

CONDITIONS

OEA recommends that the following condition be imposed on any decision granting abandonment authority:⁶

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

⁵ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed November 30, 2020).

⁶ 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 this condition is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

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.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended condition is imposed, 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 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 Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

TRAIL 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 notice of the petition for 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). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁸

⁷ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "290" "407" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁸ Id.

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

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats. If you have any questions, please contact Alan Tabachnick by email at alan.tabachnick@stb.gov or by phone at 202-245-0367.

Date made available to the public: December 11, 2020.

Comment due date: January 10, 2021.

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

Attachments

