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ENTERED
Office of Proceedings
August 19, 2022
Part of
Public Record

August 19, 2022

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment, Hudson and Essex
Counties, NJ, AB-290 (Sub-408X)

Trails Use Agreement Reached

Dear Ms. Brown:

Pursuant to 49 CFR § 1152.29(h), please find enclosed a jointly-filed notice that a trails use agreement has been reached for the line proposed for abandonment in the above-captioned proceeding. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: wmullins@bakerandmiller.com or if I am unavailable you may contact Crystal Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,

/s/ **William A. Mullins**

William A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Hanna Chouest, Scott Plum
Robert S. Guzek, Director – OTPLA, State of New Jersey, DEP
Chloe Gogo, DAG – State of New Jersey, OAG, Division of Law

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 408X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT IN HUDSON AND ESSEX COUNTIES, NEW JERSEY**

**NOTICE OF CONSUMMATION OF
TRAIL USE AGREEMENT**

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**Attorneys for Norfolk Southern Railway
Company**

Dated: August 19, 2022

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Norfolk Southern Railway Company, a Virginia corporation (“NSR”), and the State of New Jersey, Department of Environmental Protection, (“NJDEP”),¹ hereby submit this jointly-filed notice pursuant to 49 CFR § 1152.29(h), confirming that the Parties have entered into an interim trail use and railbanking agreement, as of August 19, 2022, for the entire 8.6 miles of subject rail line proposed for abandonment, extending from milepost WD 2.9 to milepost WD 11.5 and (the “Line”) in Hudson and Essex Counties, NJ.²

A replacement NITU³ covering the Line, as supported by the NJDEP’s June 20, 2022 Statement of Willingness to Assume Financial Responsibility, was served by the Board on June 30, 2022.

¹ Collectively, NSR and NJDEP are referred to as the “Parties.”

² A copy of the June 30, 2022 replacement Notice of Interim Trails Use (“NITU”), establishing NJDEP as the new trails proponent, is included herein as Exhibit A.

³ The original NITU proponent was Open Space Institute Land Trust, Inc. (“OSI”). The original NITU was published in a decision served by the Board on September 29, 2020. See Decision ID 50406. In a decision served on September 3, 2021, the Board extended the period for OSI and NITU to negotiate a trails use agreement to September 29, 2022. See Decision ID 50933. On June 21, 2022, OSI requested that the Board reopen the abandonment exemption, vacate the existing NITU, and issue a replacement NITU substituting NJDEP as the proposed trail sponsor. The request was accompanied by a June 20, 2022 statement from NJDEP expressing its willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and

As required by 49 CFR § 1152.29(a)(2), I hereby certify on behalf of NSR and NJDEP that NJDEP has assumed full responsibility for: (i) managing the Premises; (ii) any legal liability arising out of the transfer or use of the Premises; and (iii) the payment of any and all taxes that may be levied or assessed against the Premises.

The agreement covers the entirety of the approximately 8.6 mile Line. Per the requirements of 49 C.F.R. § 152.29(h), a map of the Line is attached as Exhibit B. The filing of this joint notice has been authorized by NJDEP. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/ William A. Mullins

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**Counsel for Norfolk Southern Railway
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cc: Parties of Record
Eric M. Hocky
NJDEP, OTPLA
Hanna Chouest
Scott Plum

Dated: August 19, 2022

for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29.

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Exhibit A – June 30, 2022 NITU Decision

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
HUDSON AND ESSEX COUNTIES, N.J.

Decided: June 29, 2022

By decision and notice of interim trail use or abandonment (NITU) served on September 29, 2020, the Board authorized Norfolk Southern Railway Company (NSR) to abandon an approximately 8.6-mile rail line, extending from milepost WD 2.9 in the City of Jersey City, to milepost WD 11.5 in the Township of Montclair, in Hudson and Essex Counties, N.J. (the Line), subject to trail use, historic preservation, environmental, and standard employee protective conditions. The NITU authorized a one-year period for Open Space Institute Land Trust, Inc. (OSI), as proposed trail sponsor, to negotiate with NSR for interim trail use/rail banking of the Line's right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d). A decision served on September 3, 2021 extended the NITU negotiating period until September 29, 2022.

On June 21, 2022, OSI requested that the Board reopen the abandonment exemption, vacate the existing NITU, and issue a replacement NITU substituting the New Jersey Department of Environmental Protection (NJDEP) as the proposed trail sponsor. The request includes a copy of the extant NITU and a statement of NJDEP's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. NJDEP acknowledges that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By letter filed on June 21, 2022, NSR notified the Board that it consents to the substitution of NJDEP as the proposed trail sponsor.

The request complies with the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the proceeding will be reopened and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on September 29, 2020 is vacated.

3. A replacement NITU is issued to NJDEP as the new interim trail sponsor for the Line's right-of-way effective on the service date of this decision and notice, for a period of one-year from the service date, until June 30, 2023.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

7. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by June 30, 2023, interim trail use/rail banking may be implemented. If no agreement is reached, NSR may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

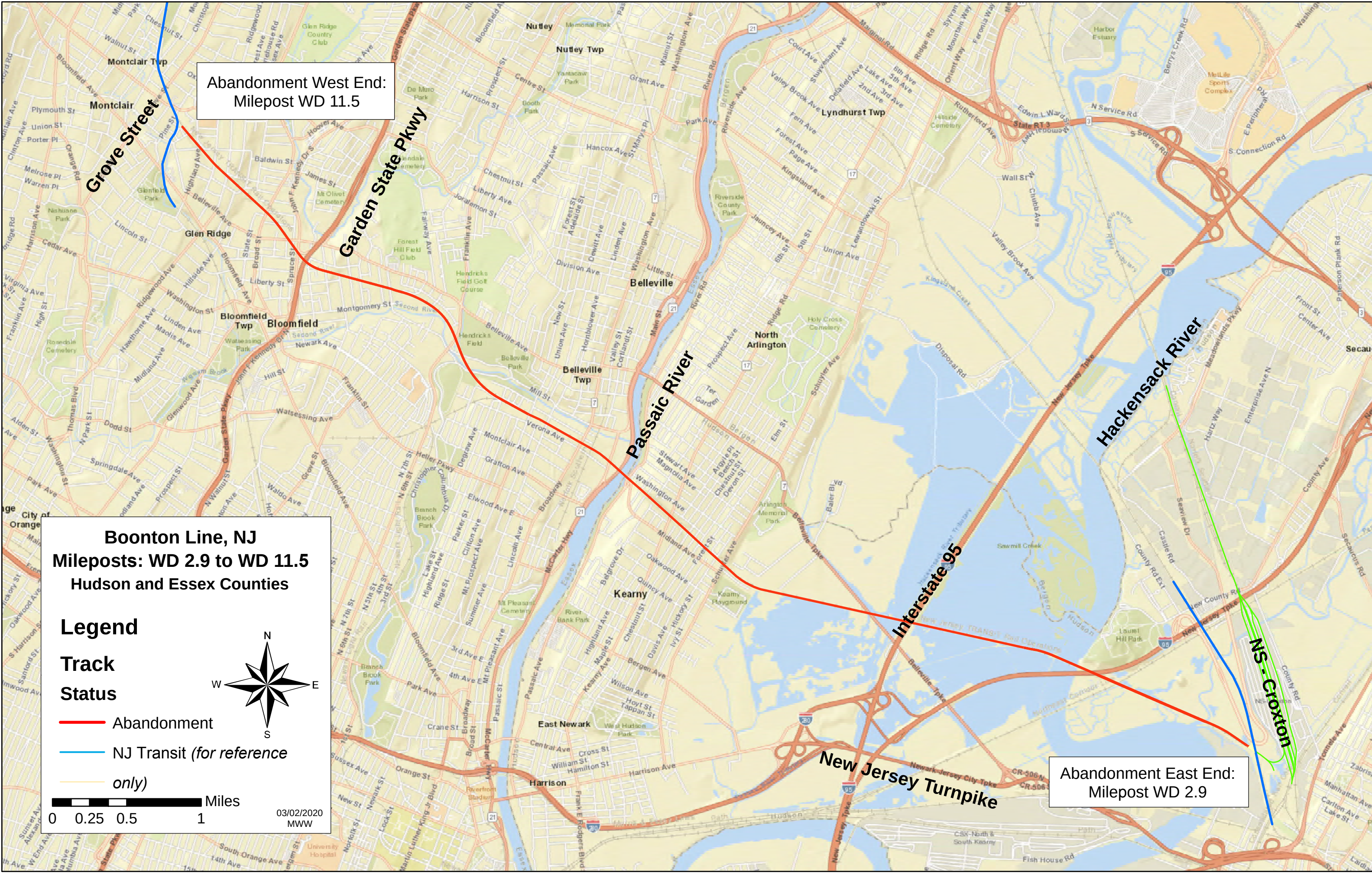
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Exhibit B - Map



Abandonment West End:
Milepost WD 11.5

Abandonment East End:
Milepost WD 2.9

Boonton Line, NJ
Mileposts: WD 2.9 to WD 11.5
Hudson and Essex Counties

Legend

Track

Status

- Abandonment
- NJ Transit (for reference only)

Miles

00.250.51

03/02/2020
MWW