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North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

July 5, 2005

Section on Environmental Analysis (SEA), Room 3219
Surface Transportation Board
1925 K Street, NW
Washington D.C. 20423-001

*received
7/14/05*

AB-290 (SUB-NO. 262)

SUBJECT: Proposed Railway Abandonment Near Lee Creek, Beaufort County

Dear Environmental Analysis Section:

We received the notice (Notice) that Norfolk Southern Railway Company (NSR) proposes to obtain approval from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost WL 26.7 and Milepost WL 31.3 near Lee Creek in Beaufort County, North Carolina. The Notice requests that we comment on the attached environmental report for the proposed railway abandonment.

Beaufort County is one of North Carolina's twenty coastal counties within the meaning of the Coastal Zone Management Act (CZMA) of 1972 as amended. The State of North Carolina has a certified coastal management program. Consequently, proposed projects (such as the proposed rail line abandonment) must be carried out in conformance with the State's enforceable coastal policies. The Division of Coastal Management is the NC State agency responsible for reviewing a proposed project's conformance with the State's certified coastal program. Attached is a copy of the letter that we sent to NSR on the environmental assessment. Also attached is our handout on submitting, by an applicant for a Federal permit/license, a consistency certification to the Division of Coastal Management. Please feel free to contact me at 252-808-2808 if you have any questions. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

Stephen Rynas, AICP
Federal Consistency Coordinator

400 Commerce Avenue, Morehead City, North Carolina 28557-3421
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net



North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Michael F. Easley, Governor

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July 1, 2005

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

SUBJECT: Proposed Railway Abandonment Near Lee Creek, Beaufort County

Dear Mr. Western:

We received the notice (Notice) that Norfolk Southern Railway Company (NSR) proposes to obtain approval from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost WL 26.7 and Milepost WL 31.3 near Lee Creek in Beaufort County, North Carolina. The Notice requests that we comment on the attached environmental report for the proposed railway abandonment.

Beaufort County is one of North Carolina's twenty coastal counties within the meaning of the Coastal Zone Management Act (CZMA) of 1972 as amended. The State of North Carolina has a certified coastal management program. Consequently, proposed projects (such as the proposed rail line abandonment) must be carried out in conformance with the State's enforceable coastal policies. The attached environmental assessment, on page 3, has a section devoted to the coastal zone. Additionally, Appendix B (Agency Letter) displays the "*Recipient List*" for the environmental assessment. The information contained in these sections is dated and incomplete. The Division of Coastal Management recommends that the "*Coastal Zone*" section and the "*Recipient List*" be updated in this environmental assessment and all subsequent environmental assessments.

1. The Division of Coastal Management (DCM) is the North Carolina State agency responsible for evaluating projects in North Carolina under the CZMA. The environmental assessment notes that NSR consulted with the NC Division of Water Quality but does not reference the Division of Coastal Management. While the Division of Water Quality plays an important role in the State's coastal program, it

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is the Division of Coastal Management that is responsible for reviewing proposed projects, such as the proposed rail abandonment, under the CZMA.

2. The Division of Coastal Management has relocated to Morehead City, North Carolina at the address at the bottom of the first page. Please update the “*Recipient List*” in Appendix “B”.
3. Though the environmental assessment has a section devoted to the “*Coastal Zone*”, this section does not adequately describe the proposed rail abandonment within the context of the Federal consistency review process.
 - a. DCM suggests that the “*Coastal Zone*” section be modified to evaluate whether the proposed rail abandonment would or would not have an effect on any coastal use or any coastal resource. Please see 15 CFR 930.11(g) for the definition of coastal effects. Should the proposed project have a coastal effect and require a Federal approval¹, then NSR would be required to submit a consistency certification to DCM pursuant to Subpart “D” of 15 CFR 930.
 - b. DCM suggests that the “*Coastal Zone*” section be modified to explain the role of the Surface Transportation Board under Subpart “D” of 15 CFR 930. Specifically that a consistency certification submission by NSR to DCM is triggered when there is a coastal effect and when a Federal license or permit is required. Section 15 CFR 930.51 51 states: “*“federal license or permit” means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to the applicant.*” Should this project require a Federal approval, as defined by Section 15 CFR 930.51, then a consistency certification to DCM by NSR will be required under Subpart “D” should there be any coastal effects.
 - c. DCM notes that the “*Coastal Zone*” section makes no references to the State’s certified coastal program nor does it discuss how the proposed rail abandonment would be consistent with the State’s coastal program. For example the “*Coastal Zone*” section does not evaluate the proposed rail abandonment with 15 NCAC 07M .0301 which notes that the public has traditional and customary access to enjoy and freely use public trust waters for recreational purposes². Therefore it is unknown as to whether the proposed rail abandonment would or would not be consistent with the State’s coastal program. DCM recommends that the “*Coastal Zone*” section be modified to explain how the proposed rail abandonment would be consistent with the enforceable policies of the State’s certified coastal program. The consistency process is summarized at: <http://coastalmanagement.noaa.gov>. The rules for how the consistency process operates are contained in 15 CFR 930, which can be found at: <http://www.gpoaccess.gov/cfr/index.html>. Specifically, Subpart “D” of 15 CFR 930 applies to your proposed project since it is an activity

¹ Page 4 of the environmental assessment notes that a Section 404 permit may be required from the U.S. Army Corps of Engineers (Corps). If an Individual permit is required from the Corps, the proposed rail abandonment will be subject to consistency review by DCM as there will be a coastal effect based on wetland impacts.

² DCM notes that Page 4 of the environmental assessment does discuss public access in the “*Alternative Public Use*” section, however public access was not evaluated within the context of the requirements of 15 NCAC 07M .0300.

requiring Federal assistance. An introduction to the State's coastal program can be found at <http://dcm2.enr.state.nc.us/Rules/rules.htm>. North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, and the land use plan of the County and/or local municipality in which the proposed project is located.

4. DCM notes that the environmental assessment has a section devoted to "*Alternative Public Use*" (page 4). The proposed project, though a rail abandonment, does involve at least one bridge that crosses a water body. Additionally, a replacement rail line may be built in the future that may potentially cross a water body. DCM recommends that the impact of the proposed rail abandonment and any contemplated construction of a new rail line evaluate the potential impact to public use of navigable waters.

Please feel free to contact me at 252-808-2808 if you have any questions. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,



Stephen Rynas, AICP
Federal Consistency Coordinator

Cc: Doug Huggett, Division of Coastal Management
Terry Moore, Division of Coastal Management
Steve Sollod, Division of Coastal Management

NORTH CAROLINA FEDERAL CONSISTENCY CERTIFICATION SUBMISSION GUIDANCE (SUBPART "D" 15 CFR 930)

This brochure provides guidance to non-Federal applicants applying for a U.S. Army Corps of Engineers Individual permit on how to submit a consistency certification to the State of North Carolina under the Coastal Zone Management Act (CZMA). This guidance does not apply when a CAMA permit is required for the proposed project. The suggested format for submitting a consistency certification under Subpart "D" of 15 CFR 930 is presented on the second page.

The Coastal Zone Management Act requires that any applicant for a Federal license or permit (in or outside of the coastal zone when the proposed project will affect any coastal uses or natural resources within the coastal zone) provide the Federal agency with a certification that the proposed activity complies with the enforceable policies of the State's approved coastal management program, and that the proposed project will be conducted in a manner consistent with that program. The applicant must also provide the N.C. Division of Coastal Management (DCM) with a copy of the certification, including all necessary supporting information and data. This information and data is specified in 15 CFR 930.58. The text of 15 CFR 930.58 is attached to this brochure for reference.



North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, and the land use plan of the County and/or local municipality in which the proposed project is located. The consistency process provides applicants with an opportunity to demonstrate how the proposed project will be consistent with the State's coastal management program.

State review will commence (15 CFR 930.60) when the State receives a copy of the consistency certification and all the information and data required by 15 CFR 930.58. The State has a maximum of six (6) months to either concur or object to the applicant's consistency certification. No license or permit can be granted by the Federal agency until the State has concurred with the applicant's certification. However, should the State fail to act within the six-month review period, concurrence can then be presumed. Applicants are encouraged to contact the Federal Consistency Coordinator at the address below for more information.

FURTHER INFORMATION

- N.C. Division of Coastal Management (DCM): www.nccoastalmanagement.net/rules/rules.htm
- Office of Coastal Resource Management: http://coastalmanagement.noaa.gov/pcd/federal_consistency.html
- Government Printing Office (15 CFR 930): www.gpoaccess.gov/cfr/index.html

CONTACT INFORMATION

Stephen Rynas
Federal Consistency Coordinator
NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557-3421
252-808-2808
stephen.rynas@ncmail.net



SAMPLE SUBMISSION FORMAT

The N.C. Division of Coastal Management (DCM) recommends a two-part submission consisting of a cover letter and a supporting document that contains the information required by 15 CFR 930.58. The text of 15 CFR 930.58 is attached for reference.

Cover Letter: The cover letter should state the purpose of the letter (a request for concurrence from DCM of the applicant's consistency certification) and then briefly describe the proposed project, its location, the type of Federal permit or license that has been applied for, a statement that the applicant has reviewed the State's coastal program (citing specific policies as appropriate), a statement that the proposed activity is consistent with the State's coastal management program and will be conducted in a manner consistent with the program (see below), and a statement referring to the supporting document for more detail.

Pursuant of 15 CFR 930.57(b), the cover letter must include the phrase: *"The proposed activity complies with the enforceable policies of North Carolina's approved management program and will be conducted in a manner consistent with such program."*

In the event the applicant is using a consultant as a point of contact, the cover letter should designate the consultant as an authorized representative.

Supporting Document: The supporting document should present the information required by 15 CFR 930.58 and should provide DCM with the data and analysis needed to document that the proposed project will be consistent with the State's coastal management program. DCM recommends that the State's coastal program be reviewed and that the project's compliance with specific policies be evaluated. For example, 15A NCAC 07M .0800 relates to the protection of water quality. The applicant must explain, as applicable, how the proposed project has been sited and designed to avoid and/or minimize any adverse impacts to water quality. The applicant should also describe how any unavoidable adverse impacts would be ameliorated. To the maximum extent practical, adverse impacts to coastal resources and coastal uses must be avoided. Impacts that cannot be avoided must be minimized and mitigated.

Areas of Environmental Concern: Section 113A-113 of the Coastal Area Management Act (CAMA) defines "Areas of Environmental Concern" (AECs). The proposed project's relationship to an AEC is important for determining the type of project review that DCM will conduct. DCM will review proposed development in a coastal county that is **outside** of an AEC and requires a Federal permit through the consistency process. However, should any portion of the proposed development occur **within** an AEC, then a CAMA permit would be required instead. The supporting document must evaluate whether any of the proposed development would occur within an AEC to determine whether the consistency process would be the appropriate form of DCM review.

Other State Permits: The supporting document should discuss other State permits that the proposed development may require, including the status of the permit applications. DCM suggests that any required State permits be obtained, if possible, by the applicant prior to initiating the consistency review process and that any issued permits be included as part of the supporting document. Addressing other State permits at the consistency stage minimizes the potential for "*late hits*" in the review process and aides the applicant in demonstrating implied conformance with the State's coastal management program.

Environmental Documents: If the proposed project requires the preparation of an environmental document, it can be used as the "*Supporting Document*" provided that it contains all the information required by 15 CFR 930.58.

Relevant Sections of 15 CFR 930

Version of January 2004

*(These citations have been reformatted and are therefore unofficial.
Go to <http://www.gpoaccess.gov/cfr/index.html> for the official version.)*

§ 930.57 Consistency certifications.

- (a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.
- (b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

- (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:
 - (1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);
 - (2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and
 - (3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.
- (b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.
- (c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.60 Commencement of State agency review.

- (a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

- (1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:
 - (i) The State agency's review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or
 - (ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the State's review period.
 - (2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.
 - (3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the sixmonth review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.
- (b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.