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OEA

SERVICE DATE – AUGUST 18, 2020

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

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

**Norfolk Southern Railway Company – Abandonment Exemption –
In Hudson and Essex Counties, 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 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). Maps depicting the Line in relationship to the area served are 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 Line's right-of-way ranges from 25 to 300 feet. There are 16 bridges on the Line. Ten of the bridges were constructed in the 1890s and the remaining six bridges were built between 1926 and 1972. NSR intends to sell the Line with all rail, track material and bridges 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 stated that Hudson and Essex counties would eventually assume legal and financial responsibility for the trail to be developed over the Line.

According to NSR, the Line was originally constructed in 1872 by the Montclair Railway Company (MR). MR went through multiple foreclosures and reorganizations and was eventually leased by the Erie Railroad in 1896. 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 because 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)]¹ 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 in over a decade. 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 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, track materials and bridges intact. 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 (16 U.S.C. § 1531 *et seq.*). To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.² 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.

¹ 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" "408" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on June 19, 2020.

² U.S. Fish and Wildlife Service, Information for Planning and Consultation (IPaC), <https://ecos.fws.gov/ipac/location/index> (last accessed August 10, 2020).

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 (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 Clean Water Act 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. Nevertheless, 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. In a May 26, 2020 letter, NJDEP stated that the proposed abandonment would not have any adverse impacts on water quality and that permits under Section 402 of the Clean Water Act would not be required because salvage would not occur.

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.

In response to NSR's E&H Report, the Township of Montclair (Township) stated that the proposed abandonment is consistent with its long-range Master Plan, and the Township expressed support for the creation of a greenway on the Line.

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).³ In a July 16, 2020 email to NSR, the SHPO stated that three bridges and several miles of the Line have been identified as potentially eligible for listing on the New Jersey and National Registers of Historic Places (SHPO Reference: HPO Project #20-0922-1&2, HPO G2020-41). The three bridges are a drawbridge at Milepost 4.17 over the Hackensack River that was built in 1889; a swing span bridge at Milepost 7.57 over the Passaic River that was built in 1896; and a concrete span bridge at Milepost 8.85 over Branch Brook Park Drive and Second River that was built in 1932. In addition, 15 of the 16 bridges listed in the information provided by NSR are also older than 50 years of age.

The SHPO has not stated whether the proposed abandonment would constitute an adverse effect on these potentially eligible properties. Accordingly, OEA is recommending a condition requiring the railroad to 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) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. 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 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.⁴ 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.

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

³ 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 overviews historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

⁴ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed August 10, 2020).

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:⁵

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.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are 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.

⁵ 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 is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

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.⁶

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.⁷

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 Dave Navecky by email at david.navecky@stb.gov or by phone at 202-245-0294.

Date made available to the public: August 18, 2020.

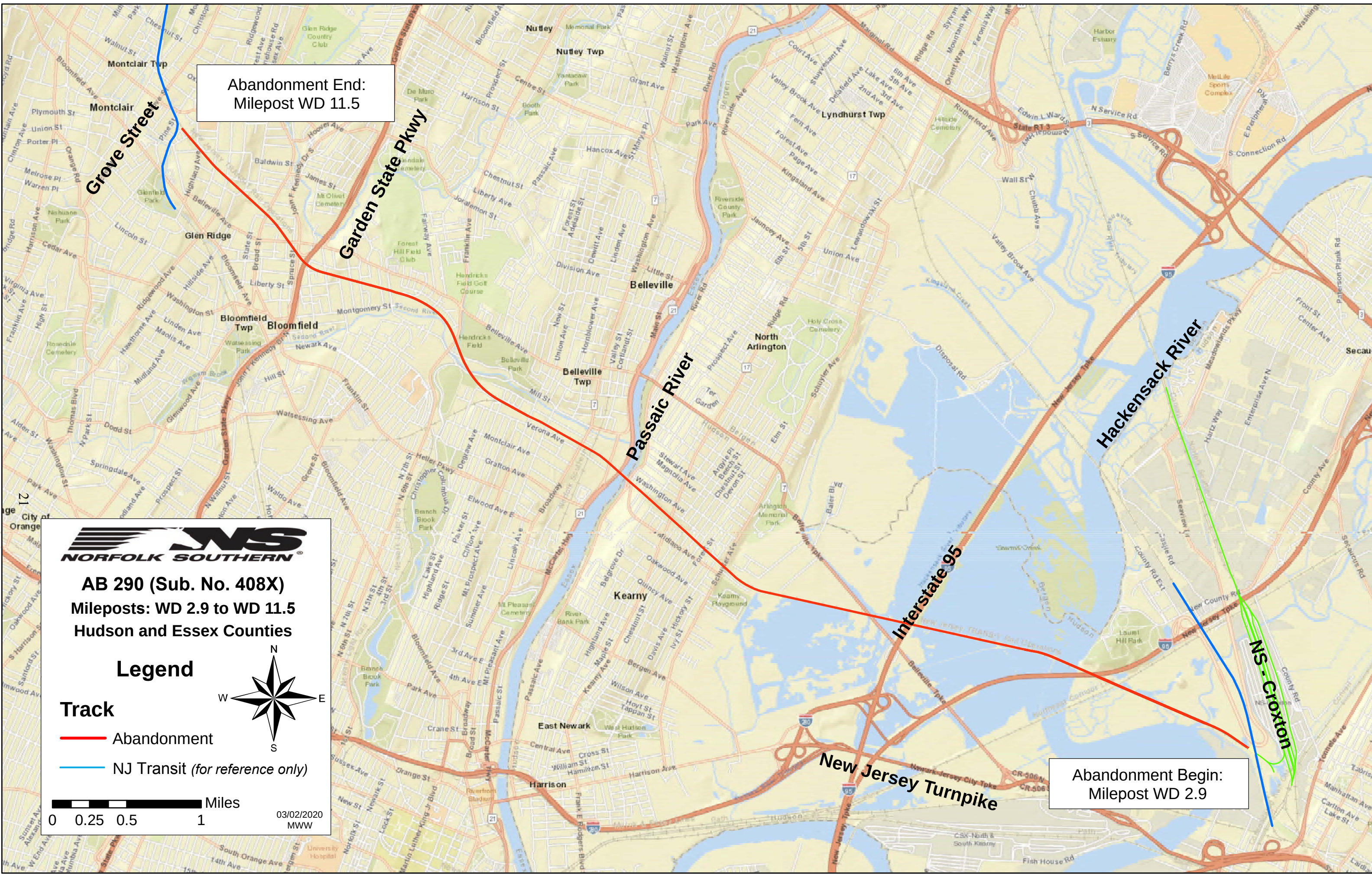
⁶ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "290" "408" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁷ Id.

Comment due date: September 16, 2020.

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

Attachments



Abandonment End:
Milepost WD 11.5

Abandonment Begin:
Milepost WD 2.9



AB 290 (Sub. No. 408X)
Mileposts: WD 2.9 to WD 11.5
Hudson and Essex Counties

Legend

Track

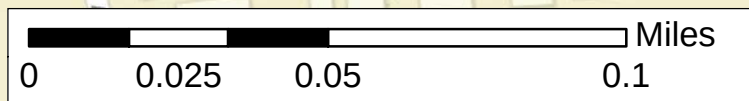
- Abandonment
- NJ Transit *(for reference only)*



03/02/2020
MWW

Abandonment West End

Abandonment West End
End: Mile Post WD 11.5

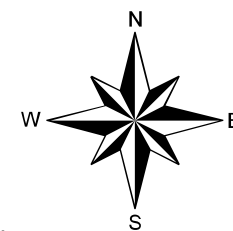


AB 290 (Sub-No 408X)
Mileposts WD 2.9 to WD 11.5
Hudson and Essex Counties

Legend

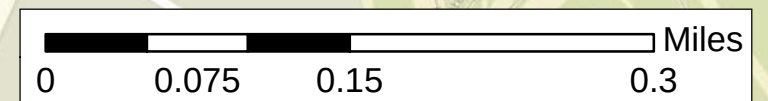
Track Status

- Abandonment
- NJT
- NS Tracks



Abandonment East End

Abandonment East End
Begin: Milepost WD 2.9



**PSE & G Hudson
Power Station**