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Office of Proceedings
August 17, 2020
Part of
Public Record

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August 17, 2020

BY 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 Exemption – In
Hudson and Essex Counties, New Jersey, AB-290 (Sub-No. 408X)

Dear Ms. Brown:

By later dated July 29, 2020, and entered into the public record on July 30, 2020, the Town of Kearny (“Town”) conditionally objected to the Norfolk Southern Railway Company’s (“NSR”) petition 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, New Jersey (the “Line”) on the basis that “abandonment of the Line could exacerbate [issues related to] maintenance and security, **particularly if the Line is sold to a party who does not agree to maintain the area and provide security that protects the residential neighborhoods.**” NSR is hereby replying to the Town’s comment.

As the Board is aware, NSR filed its abandonment to convey the Line’s right-of-way, pursuant to an interim trail use/rail banking agreement, to Open Space Institute Land Trust, Inc. (“OSI” or “Trail Sponsor”) so that the Line may be used for a public redevelopment project (“Project”). OSI is working with Hudson and Essex Counties on plans to redevelop the Line, create greenways, and provide for alternative modal access to various sites located along the Line, which would promote economic growth in the region. On July 29, 2020, OSI filed a notice of interim trails use for the Project, which NSR consented to on August 7, 2020. To date, the Board has received three comments supporting the Project and the Town’s comment.

NSR takes the concerns expressed by the Town seriously. Immediately upon receipt of the Town’s filing, NSR reached out to the Mayor and his staff to consult with them in an effort to resolve their maintenance and security concerns. Since that time, NSR personnel have repeatedly visited the site and have completed multiple maintenance and clean-up projects. NSR has a long history of working with the Town of Kearny on maintenance concerns stemming from

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the actions of trespassers along the Line and will continue to do so so long as the Line is owned by NSR. Furthermore, upon taking ownership of the Line, both Hudson and Essex counties will assume responsibility for the Line. They each have robust patrol divisions, who have responsibility for patrolling and ensuring the safety and security of parklands, which will include this future trail.

The Town's concerns should not impede the Board's review of NSR's application. While NSR understands the Town's concerns, such concerns fall outside of the statutory standards for granting or denying the abandonment. The Town appears to be asking the Board to place restrictions on the abandonment to address things that might happen in connection with the establishment of a trail. However, the Board's role and responsibilities under the Trails Act are quite limited. "If the requirements of the Trails Act have been met, [the Board] must allow trail use, no matter how compelling arguments to the contrary may be." See Detroit & Mackinac Railway Company – Abandonment Exemption – In Otsego and Cheboygan Counties, MI, AB-293 (Sub-No. 2X) (ICC served Feb. 25, 1992); see also Georgia Great Southern Division – Abandonment and Discontinuance Exemption – Between Albany and Dawson, In Terrell, Lee, and Dougherty Counties, GA, AB-389 (Sub-No. 1X), slip op. at 5-6 (STB served May 16, 2003) (Stating that the Board is not authorized to regulate activities over the actual trail, and has no involvement in the type, level, or condition of the trail that is used for a particular right-of-way).

Given that the Town's concerns are unrelated to the statutory standard for granting the abandonment, the proper avenue for Town to address them is to work such concerns out with the Trail Sponsor upon the establishment of a trail. In a prior case, the Board recognized that issues related to security and trails "are matters of local resolution, [which] do not affect [the Board's] consideration of trail use offers or agreements. See The City of Mineral Wells, TX, et. al. – Abandonment and Discontinuance Exemption – Between Mineral Wells and Weatherford, TX, AB-376X (ICC served Oct. 21, 1992).

NSR Respectfully requests that the Board not allow the Town's comment to delay this abandonment or implementation of the important public redevelopment project made possible by NSR's abandonment of the Line.

Sincerely,

/s/ **Crystal M. Zorbaugh**

Crystal M. Zorbaugh

Attorney for Norfolk Southern Railway Company

cc: Hanna Chouest and Laura Hoag (NSR)
Eric M. Hocky (Counsel for OSI)
Parties of Record