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December 1, 2011

ENTERED
Office of Proceedings

DEC 1 -- 2011

Part of
Public Record

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Finance Docket No. 35564 (Sub-No. 1X), *North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division—Lease Amendment – Norfolk Southern Railway Company*

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption by North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division ("NCVR"). Also enclosed are a check from NCVR for the filing fee of \$1,800, and a computer diskette containing the Notice in Word and pdf format.

Please time and date stamp the additional copy of this letter and the Notice and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for North Carolina & Virginia
Railroad Company, LLC, Chesapeake &
Albemarle Railroad Division

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

SEP 7

FINANCE DOCKET NO. 35564 (Sub-No. 1)

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41. *et seq.*

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Office of Proceedings

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Public Record

Scott G. Williams Esq.
Senior Vice President & General Counsel
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(904) 538-6329

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Attorneys for: NORTH CAROLINA &
VIRGINIA RAILROAD COMPANY, LLC.
CHESAPEAKE & ALBEMARLE
RAILROAD DIVISION

Dated: December 1, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35564 (Sub-No. 1)

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, *et seq.*

North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division (“NCVR”), a Class III carrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart F-Exempt Transactions Under 49 U.S.C. § 10902 for Class III Rail Carriers, with the Surface Transportation Board (the “Board”) for NCVR to amend the Lease and Option to Purchase Agreement dated as of February 28, 1990, as amended (the “Original Lease”) with Norfolk Southern Railway Company (“NSR”) covering 66 miles of railroad. The line runs between approximately milepost NS-8.0 at Chesapeake, VA, and approximately milepost NS-74.00 at Edenton, NC including related branch lines and trackage as defined in the Original Lease (the “Line”). *See Chesapeake and Albemarle Railroad Company, Inc.—Lease, Acquisition, and Operation Exemption Southern Railway Company*, ICC Finance Docket No. 31617 (ICC served April 20, 1990). NCVR is the successor by merger to Chesapeake & Albemarle Railroad Company, Inc.¹ and NSR is successor in interest to Southern Railway

¹ *RailTex, Inc., North Carolina & Virginia Railroad Company, Inc., Chesapeake and Albemarle Railroad Company, Inc., Dallas, Garland & Northeastern Railroad, Inc., Mid-Michigan Railroad, Inc., and Indiana Southern Railroad, Inc.—Corporate Family Transaction Exemption*, STB Finance Docket No. 33809 (STB served October 29, 1999).

Company.

Based on projected revenues, NCVR expects to remain a Class III rail carrier after consummation of this transaction.

NCVR and NSR have entered into Amendment No. 4 to Lease and Option to Purchase Agreement dated as of October 6, 2011 (the "Amendment"), whereby NCVR and NSR have agreed to extend the terms of the Original Lease and to strike and render null and void all provisions relating to the option to purchase the Line included in the Original Lease.

NCVR previously filed a notice of exemption under 49 C.F.R. §1180.2(d)(4) on November 8, 2011, but withdrew the notice on November 21, 2011. *North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division—Lease Amendment - Norfolk Southern Railway Company*, Finance Docket No. 35564. NCVR is filing this notice pursuant to 49 U.S.C. §10902 and is filing a concurrent petition for waiver of the notice requirements of 49 C.F.R. §1150.42(e) because no employees will be effected by the extension of the lease, which will maintain the operational status quo.

In support of this Notice of Exemption, NCVR submits the following information as required by 49 C.F.R. §1150.43:

a. Full name and address of applicant:

North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad
Division
214 North Railroad Street
Ahoskie, NC 27910

b. Applicant's Representative:

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(202) 466-6532

Lou_Gitomer@verizon.net

c. NSR, as lessor, and NCVR, as lessee, have entered the Amendment.

d. The operator of the property will continue to be NCVR.

e. Summary of proposed transaction:

1. The name and address of the railroad transferring the property is:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

2. The proposed schedule for consummation of the transaction is December 31, 2011, if the Board grants the waiver of 49 C.F.R. §1150.42(e), or 60 days from the date of compliance with 49 C.F.R. §1150.42(e).

3. Pursuant to the Amendment between NCVR and NSR, NCVR will continue to lease and operate the Line owned by NSR. The Line runs between approximately milepost NS-8.0 at Chesapeake, VA, and approximately milepost NS-74.00 at Edenton, NC, including related branch lines and trackage as defined in the Original Lease.

4. NCVR will continue to lease about 66 miles of track from NSR and will continue to operate the Line and all ancillary trackage and property.

f. A map of the Line is attached as Exhibit D. The map is in color and will be the last page of this pleading.

g. A Certificate of Compliance with the provisions of 49 C.F.R. §1150.43(g) is attached as Exhibit A. NCVR's annual revenues exceed \$5,000,000. However, as the proposed transaction is the extension of a lease and modification of a purchase option, operations are not expected to change and there is no impact on employees expected.

h. Interchange commitments. There is no provision or agreement that will limit future

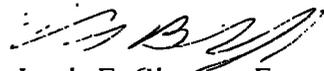
interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

- i. A caption summary, as required by 49 C.F.R. §1150.44, is attached as Exhibit B.
- j. No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 C.F.R. §1105.7(c)(4) or (5) and there will be no action that would normally require environmental documentation. The proposed transaction is lease of the Line. Hence, this Notice of Exemption does not require environmental documentation under 49 C.F.R. §1105.6(b)(4) and (c)(2)(i).
- k. An historic report is not required because NCVR will continue to operate the Line, will require further Board authorization to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

This action will not significantly affect either the quality of the human environment or energy conservation.

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Respectfully submitted.



Louis E. Gitomer, Esq.
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(202) 466-6532
Lou_Gitomer@verizon.net

Attorneys for: NORTH CAROLINA &
VIRGINIA RAILROAD COMPANY, LLC,
CHESAPEAKE & ALBEMARLE RAILROAD
DIVISION

Dated: December 1, 2011

EXHIBIT A—CERTIFICATE OF COMPLIANCE

CERTIFICATION

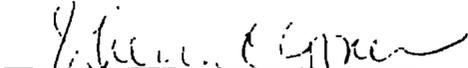
State of Florida)
)ss:
County of Duval)

I, Josh Putterman being duly sworn depose and state that I am the Vice President and Treasurer of the North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division, and that the projected annual revenues from the rail operations of the North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division, would not exceed those that would make it a Class II carrier under 49 C.F.R. Part 1201(1-1).



Josh Putterman

Subscribed and sworn to before me this 30th day of November 2011.



Notary Public

(SEAL)

 **SHERRY G. JONES**
NOTARY PUBLIC
STATE OF FLORIDA
Comm# DD0947305
Expires 1/22/2014

My Commission Expires 1/22/2014

EXHIBIT B – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35564 (Sub-No. 1)

**NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, L.I.C, CHESAPEAKE &
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT—
NORFOLK SOUTHERN RAILWAY COMPANY**

North Carolina & Virginia Railroad, L.I.C. Chesapeake & Albemarle Railroad Division (“NCVR”) has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to amend the original Lease and Option to Purchase Agreement dated February 28, 1990, as amended (the “Original Lease”) with Norfolk Southern Railway Company (“NSR”) covering 66 miles of railroad. The line runs between approximately milepost NS-8.0 at Chesapeake, VA, and approximately milepost NS-74.00 at Edenton, NC including related branch lines and trackage as defined in the Original Lease) (the “Line”). The Line runs through North Hampton County, VA and Chowan County, NC.

The transaction is scheduled to be consummated on December 31, 2011, if the Board grants the waiver of 49 C.F.R. 115 0.42(e), or 60 days from the date of compliance with 49 C.F.R. 115 0.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 35564 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Scott G. Williams Esq., Senior Vice President & General Counsel, RailAmerica, Inc., 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, (904) 538-6329, and Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (202) 466-6532, Lou_Gitomer@verizon.net.

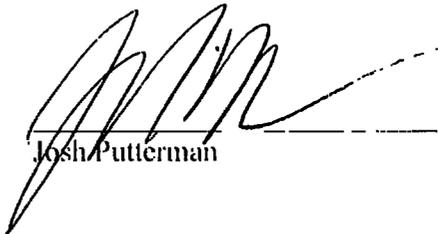
Board decisions and notices are available on our website at "www.stb.dot.gov." Decided: December __, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings

VERIFICATION

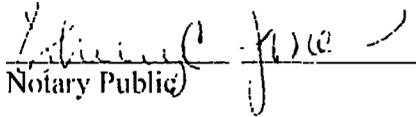
State of Florida)
)ss:
County of Duval)

I, Josh Putterman, being duly sworn depose and state that I am the Vice President and Treasurer of the North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division, and that I am authorized to make this verification, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.



Josh Putterman

Subscribed and sworn to before me this 20th day of November 2011



Notary Public

(SEAL)

 HERRY C JONES
NOTARY PUBLIC
STATE OF FLORIDA
Comm# DD0947305
Expires: 1/22/2014

My Commission Expires: _____

EXHIBIT C—CERTIFICATION OF LABOR NOTICE

I hereby certify that on November 29, 2011 NCVR posted the attached Notice at the workplace of employees on the rail line that is the subject of this transaction and on November 30, 2011 NCVR served a copy of the Notice on the national office of International Machinist Association of Aerospace Workers Union.



Melanie B. Yasbin
December 1, 2011

November 30, 2011

**NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &
ALBEMARLE RAILROAD DIVISION ("NCVR")**

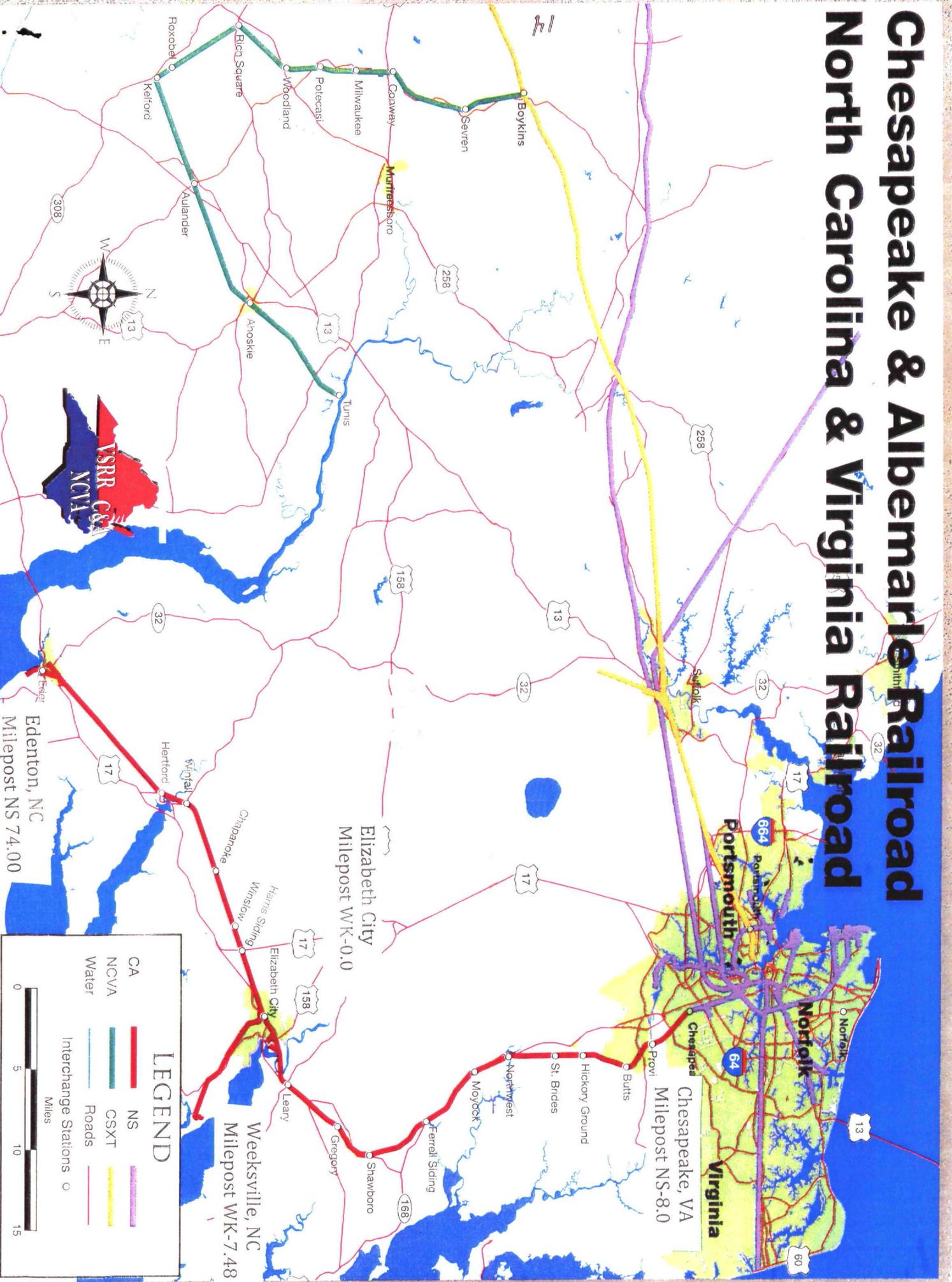
**NOTICE TO NCVR EMPLOYEES OF THE EXTENSION OF THE LEASE OF A NSR
LINE**

Pursuant to Surface Transportation Board (the "Board") regulations at 49 C.F.R. § 1150.42(e), the North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division ("NCVR"), hereby provides notice to its employees that NCVR intends to amend the Lease and Option to Purchase Agreement dated as of February 28, 1990, as amended (the "Original Lease") with Norfolk Southern Railway Company ("NSR") covering 66 miles of railroad between approximately milepost NS-8.0 at Chesapeake, VA, and approximately milepost NS-74.00 at Edenton, NC including related branch lines and trackage as defined in the Original Lease (the "Line"), effective December 31, 2011, if the Board grants the waiver of 49 C.F.R. §1150.42(e), or 60 days from the date of compliance with 49 C.F.R. §1150.42(e). NCVR and NSR have entered into Amendment No. 4 to Lease and Option to Purchase Agreement dated as of October 6, 2011 (the "Amendment"), whereby NCVR and NSR have agreed to extend the terms of the Original Lease and to strike and render null and void all provisions relating to the option to purchase the Line included in the Original Lease.

As a result of the lease, NCVR does not expect any change in operations or in the number of operating employees on the Line. NCVR does not expect to hire any additional employees.

EXHIBIT D—MAP

Chesapeake & Albemarle Railroad North Carolina & Virginia Railroad



LEGEND

CA	NS
NCVA	CSXT
Water	Roads
Interchange Stations	o

0 5 10 15
Miles

Edenton, NC
Milepost NS 74.00

Elizabeth City
Milepost WK-0.0

Weksville, NC
Milepost WK-7.48

Chesapeake, VA
Milepost NS-8.0

