



John K. Fiorilla  
856.914.2054  
jfiorilla@capehart.com  
Fax: 856.235.2786

July 12, 2016

**VIA UPS OVERNIGHT**

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



241105

Re: Morristown & Erie Railway, Inc.  
Abandonment Exemption- in Roseland, Essex County, New Jersey  
Docket No. AB 272 X  
Our File No. 6453-40607

ENTERED  
Office of Proceedings  
July 14, 2016  
Part of  
Public Record

Dear Ms. Brown:

Enclosed are the original and 10 copies of Verified Notice of Exemption to the above described Abandonment which are submitted pursuant to 49 C.F.R § 1152.50. We also enclose the filing fee of \$3900.00. Pursuant to 49 CFR § 1104.2 the original and all copies are paginated consecutively to assist with scanning. Because the textual submission is less than twenty pages in length, no electronic copies are included. See 49 CFR § 1104.3(b) (1).

Also enclosed is the requisite environmental and historic report in conformance with 49 C.F.R. §§ 1105.7 and 1105.8; copies of letters consulting government agencies and officials with regard to environmental and historical matters as specified in §§ 1105.7 and 1105.8; copies of the responses that we received from those agencies; and copies of letters that were mailed pursuant to §§ 1152.50(d) (1) giving advance notice of this filing as required by that section.

Please time stamp the enclosed extra copy of this letter and return it to me in the enclosed self-addressed stamped envelope

Sincerely,

CAPEHART & SCATCHARD, P.A.

John K. Fiorilla

FILED

July 14, 2016

SURFACE

TRANSPORTATION BOARD

FEE RECEIVED  
July 14, 2016  
SURFACE  
TRANSPORTATION BOARD

JKF/vw

Enclosures

Cc: Wesley Weis, M&E Railway w/enclosures

All Parties on Attached Service List w/copy of Verified Notice of Exemption

## SERVICE LIST

Daniel Saunders  
Administrator and Deputy  
State Historic Preservation Office  
NJ DEP  
PO Box 420  
Trenton, N.J. 08625-00420

Bob Martin, Commissioner  
NJ DEP  
PO Box 402  
Trenton, N.J. 08625-00402

New Jersey State Clearing House  
State Review Process  
Office of the Governor  
PO Box 001  
Trenton, N.J. 08625-00001

Jon Jarvis, Director  
National Park Service  
1849 C Street NW  
Washington, DC 20240

John Gray, Deputy Chief of Staff  
Office of Permit Coordination & Environmental Review  
NJ DEP  
401 East State Street  
401-07J PO Box 420  
Trenton, N.J. 08625-00420

Dr. Dan Roman, Chief  
Spatial Reference System Division  
National Geodetic Survey  
1315 East West Highway  
Silver Spring, MD 20910-3282

Mayor John Duthie  
Borough of Roseland, N.J.  
140 Eagle Rock Avenue  
Roseland, N.J. 07068-1397

Currie Mosley, State Conservationist  
Natura Resources Conservation Service  
220 Davidson Avenue 4<sup>th</sup> Floor  
Somerset, N.J. 08873

John N. DiVincenzo, Jr.  
Essex County Executive  
Hall of Records Room 405  
465 Dr. Martin Luther King Blvd.  
Newark, N.J. 07102

US Environmental Protection Agency  
Region 2  
290 Broadway  
New York, N.Y. 10007-1866

US Fish and Wildlife Service  
Ecological Services  
New Jersey Field Office  
Atlantic Professional Park  
4 East Jimmie Leeds Road  
Galloway, New Jersey 08205

The District Engineer  
US Army Corp of Engineers NY District  
Jacob K. Javits Federal Building  
26 Federal Plaza  
New York, NY 10278-0090

Elizabeth Semple, Acting Manager  
Office of Coastal and Land Use Planning  
NJ DEP  
401-07d PO Box 420  
Trenton, N.J. 08625-00420

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



---

**DOCKET NO: AB 272 X**

**MORRISTOWN & ERIE RAILWAY, INC.  
ABANDONMENT EXEMPTION  
IN ROSELAND, ESSEX COUNTY, N.J.**

**NOTICE OF EXEMPTION  
PURSUANT TO 49 CFR § 1152.50**

Submitted By:

John K. Fiorilla  
Capehart & Scatchard, P.A.  
8000 Midlantic Drive Suite 300S  
Mount Laurel, N.J. 08054  
(856) 914-2054  
Counsel for Petitioner

Dated: July 12, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



---

**DOCKET NO: AB 272 X**

**MORRISTOWN & ERIE RAILWAY, INC.  
ABANDONMENT EXEMPTION  
IN ROSELAND, ESSEX COUNTY, N.J.**

**NOTICE OF EXEMPTION  
PURSUANT TO 49 CFR § 1152.50**

1. Morristown & Erie Railway, Inc. ("M&E") hereby files its verified notice of exemption pursuant to 49 C.F.R. § 1152.50 to abandon the line of railroad described below and to sell it to the Borough of Roseland, New Jersey for public space. A map showing the location of the line and more specifically describing the portion to be abandoned is attached hereto as Exhibit A.

Name: Dormant end of Morristown & Erie Railway in Borough of Roseland, New Jersey.

Location: Essex County, New Jersey

Description of Track: a dormant portion of track located on the westerly side of Harrison Avenue, part of Block 12 beginning at milepost 9 and going to the end of track at Harrison Avenue in the Borough of Roseland, New Jersey, County of Essex. The proposed abandonment contains 490,140 square feet more or less with different widths as shown the attached Exhibit A. The portion to be abandoned is completely within the Borough of Roseland and the United States Postal Zip Code 07068.

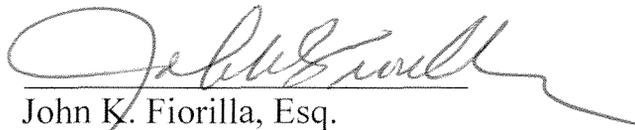
Length of Track: less than 1 mile consisting of 490,140 square feet.

2. M&E certifies that (a) no local or overhead service has moved over the line for at least two years, (b) any overhead traffic that could move over the line (this is very unlikely since the end of the abandonment is the end of track) could be rerouted and (c) no formal complaint filed by a user of rail service on the line (or state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending before the Board or any United States District Court or has been decided in favor of a complainant within the last two years.
3. The proposed consummation date of the abandonment is August 15, 2016.
4. The exact name of the applicant is the Morristown & Erie Railway, Inc.
5. M&E is a common carrier by railroad subject to Subtitle IV, Part A of the Title 49, United States Code and is not a part of any other railroad system.
6. The relief M&E seeks is the abandonment of the above line so that it can be sold to the Borough of Roseland, N.J. for public space.
7. Applicant's representative to whom correspondence relating to this matter should be addressed is John K. Fiorilla, Esq. Capehart & Scatchard, PA, 8000 Midlantic Drive Suite 300S, Mt. Laurel, N.J. 08054. Telephone is 856-914-2054. Email address is [jfiorilla@capehart.com](mailto:jfiorilla@capehart.com).
8. M&E has entered into an agreement subject to the abandonment of the track to sell the abandoned property to the Borough of Roseland, New Jersey for a public purpose. A copy of this agreement is attached hereto as Exhibit B.
9. M&E acknowledges that the Board must require provisions for protective interest of employees as a condition of any abandonment and that it may not in the exercise of its exemption authority relieve a rail carrier from any obligation to protect its employees pursuant to 49 USC § 10903(b)(2) and § 10502(g) as amended. No M&E employee will be effected by this abandonment exemption but if there were employees effected that the conditions contained as set forth in Oregon Short Line Railroad Company-Abandonment-Goshen, 360 I.C.C. 91 (1979) would apply.

10. Attached hereto as Exhibit C is an Environmental and Historic Report in conformance with 49 C.F.R. §1105.7 and §1105.8.

11. The undersigned counsel for M&E certifies that (a) the notice requirements of 49 C.F.R. 1152.50(d)(1) have been complied with by the sending on September 22, 2015 letters to the agencies and entities specified in 49 C.F.R. § 1152.50(d)(1) (copies of which are attached hereto); (b) the requirements of 49 C.F.R. 1105.7(b) and 49 C.F.R. 1105.11 have been fulfilled by the sending on September 22, 2015 letters to the specified government agencies (copies of what are attached hereto), and the sending on May 24, 2016 copies of the Environmental and Historic Report containing the information required in 49 C.F.R. § 1105.7(e)(1) to the specified governmental agencies (c) the requirements of 49 C.F.R. 1105.8(c) have been met by the sending on May 18, 2016 of a copy of the Environmental and Historic Report to the New Jersey State Historic Preservation Office and (d) the requirements of 49 C.F.R. 1105.12 have been fulfilled by the publishing of the notice on May 27, 2016 in the Star Ledger, a newspaper of general circulation in Essex County, New Jersey. An Affidavit of Publication and a copy of the text of this notice are attached hereto as Exhibit D.

Respectfully Submitted,



John K. Fiorilla, Esq.  
Capehart & Scatchard, PA  
8000 Midlantic Drive Suite 300S  
Mount Laurel, N.J. 08054  
(856) 914-2054  
[jfiorilla@capehart.com](mailto:jfiorilla@capehart.com)

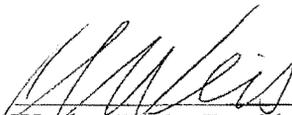
**Attorney for Petitioner,  
Morristown & Erie Railway, Inc.**

Dated: July 12, 2016

## VERIFICATION

I, Wesley Weis, President of the petitioner hereby certifies that I have read the foregoing Notice of Exemption and am knowledgeable of facts stated therein, and that the same are true as stated to the best of my knowledge. I am aware that if any of the foregoing statements are willfully false, that I am subject to punishment.

Dated: July 12, 2016

  
\_\_\_\_\_  
Wesley Weis, President  
Morristown & Erie Railway, Inc.





AGREEMENT OF SALE

THIS AGREEMENT, made as of this 23<sup>rd</sup> day of SEPTEMBER, 2014, between **MORRISTOWN & ERIE RAILWAY, INC.**, a New Jersey Corporation, with its principal offices at 49 Abbett Avenue, Morristown, N.J. 07960 ("M & E"), and **Borough of Roseland, N.J.**, a Municipal Corporation of the State of New Jersey, having a mailing address at 19 Harrison Avenue, Roseland, NJ 07068 ("Purchaser"), for all of M & E's right, title, and interest in and to all that certain piece or parcel of dormant railroad right of way located on the Westerly Side of Harrison Avenue, part of Block 12 beginning at Milepost 9 and going to the end of track at Harrison Avenue containing 490,140 square feet, more or less with different widths as shown the attached Exhibit A and situate in the Borough of Roseland and County of Essex, State of New Jersey, as shown on a Tax Map of the Borough attached as Exhibit "A" and shown in yellow and made a part hereof (the "Property").

Broker for M & E: None.

Broker for the Purchaser: None.

**1. PURCHASE PRICE**

The purchase price for the Property shall be: Four Hundred Fifty Thousand Dollars ( \$450,000.00 ) which shall be paid to M & E by Purchaser as follows:

- ~~\_\_\_\_\_ i. Cash or check at signing this Agreement: \$150,000.00~~
- ~~\_\_\_\_\_ (the "Deposit");~~
- ~~\_\_\_\_\_ ii. Cash or check one year from signing of this agreement~~
- ~~\_\_\_\_\_ \$ 150,000.00~~
- ~~\_\_\_\_\_ iii. Cash or check two years from signing of this agreement or at~~
- ~~\_\_\_\_\_ closing whichever comes first \$ 150,000.00~~

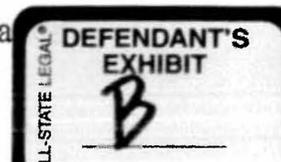
PLEASE SEE ADDENDUM PARAGRAPH A3

*[Signature]*  
INITIAL HERE  
SELLER

*[Signature]*  
INITIAL HERE  
PURCHASER

**2. CLOSING**

Conveyance of title is subject to the approval of the abandonment petition to be filed by the Morristown & Erie Railway Inc with the Surface Transportation Board. It may also be subject to approval by the NJ Department of Transporta



under State Law. If the STB's approval is not obtained or if the State of New Jersey or the County of Essex decides to purchase the property upon notice of the abandonment or the State DOT does not approve the sale itself upon notice of this abandonment, then the Boro of Roseland understands and accepts that the Morristown & Erie Railway will be unable to convey its interest in the property to the Boro of Roseland. If the Railroad is unable to convey the property then all moneys deposited with the Morristown & Erie Railway will be returned to the Boro of Roseland. The conveyance of title to the Property shall take place at Roseland Boro Hall at such later time as the final Surface Transportation Board approval of M&E's abandonment petition is received and, if required, the approval of the State Department of Transportation on a mutually agreed upon date and time. (the "Closing").

### 3. TITLE

M & E will deliver and Purchaser will accept a quitclaim deed without any covenants or warranties of title, express or implied, to the Property, in the form attached hereto as Exhibit B (the "Deed"). At Closing, M & E shall provide to Purchaser's title insurance company with a letter of indemnity which shall indemnify and save harmless said title company against recorded liens and judgments recorded against M & E (if any) to an amount not to exceed the Purchase Price. M & E's indemnity hereunder shall be effective the date of closing of this transaction and it shall be in the form of the attached Exhibit "C".

### 4. CLOSING APPORTIONMENT AND PAYMENTS

- a. **Real Estate Transfer Taxes.** Payment of all transfer taxes will be borne by the Purchaser, irrespective of any local custom to the contrary.
- b. **Taxes.** Real estate taxes, water & sewer rents, and other lienable charges (if any) shall be apportioned between M & E and Purchaser as of the date of closing.

## 5. CONDITION OF PROPERTY

Purchaser agrees to accept the Property and any improvements "AS IS" "WHERE IS", with any and all faults. Purchaser has thoroughly inspected, or chosen not to inspect, the Property and any improvements thereon, and, in either event, is satisfied with their condition. Purchaser shall take title to the same in their condition as of the date of Closing, including any violations of law or ordinances, whether or not such violations are officially recorded. Purchaser shall have the right prior to closing to conduct a Phase 1 Environmental Site Assessment of the parcel at its expense.

## 6. DEFAULT

- a. **Purchaser's Default.** Unless otherwise provided for in this Agreement, if Purchaser fails to comply with the terms and conditions herewith, M & E may: (i) terminate this Agreement, in which event the Initial Deposit and the Additional Deposit, plus accrued interest, if any, shall be due and payable to M & E as its sole liquidated damages.
- b. **M & E's Default.** If M & E fails to comply with the terms and conditions herewith, Purchaser shall have the right to receive from M & E the return of Purchaser's Initial Deposit and Additional Deposit plus accrued interest, if any, which shall be Purchaser's sole remedy. Purchaser acknowledges that under no circumstances, shall M & E be liable for Purchaser's damages, consequential, actual, punitive, speculative, or otherwise. Purchaser agrees that it will not and waives all right to file a lis pendens or other attachment at law or in equity for any reason so as to affect the title to the Property.

## 7. PUBLIC NOTICES

In the event any notice respecting the performance and the completion of work proposed and affecting the Property, or the installations of sewers, water, or lighting facilities is received by M & E or Purchaser, or notice of confirmed special assessment is issued to M & E or Purchaser in connection therewith after the date first set forth above, Purchaser agrees to be responsible for compliance with such notice or notices, and Purchaser shall pay for work required or the assessment levied therefor.

## 8. ASSIGNMENT

Each and every term, covenant, condition, agreement, provision, and stipulation of this Agreement shall be binding upon, and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of M & E and Purchaser; provided that Purchaser shall not assign this Agreement without the prior consent of M & E (in its sole discretion).

## 9. CASUALTY LOSS

Except as set forth below, no loss or casualty with respect to the Property shall, in any way, effect the terms of this Agreement. If the Property contains improvements to be conveyed under this Agreement, any material loss or damage to such improvements by fire or other casualty shall not void or impair any of the conditions of this Agreement, but Purchaser shall have the option to terminate this Agreement by notice to M & E, whereupon M & E shall return to Purchaser the Deposit and Additional Deposit and thereupon, this Agreement shall terminate and neither party shall have any further obligation thereunder.

## 10. CONDEMNATION OR SALE TO STATE OR COUNTY

If the Property, or any substantial portion thereof, or any interest therein, shall be affected by an exercise of the power of eminent domain, or by the State of New Jersey or County of Essex's exercising its right to purchase the property pursuant to state law, M & E shall have the option to either (a) terminate this Agreement whereupon M & E shall return to Purchaser the Deposit and Additional Deposit, or (b) enforce this Agreement and assign any award or agreed upon compensation to Purchaser.

## 11. NOTICES

Whenever in this Agreement notice or consent is requested, desired, or required to be given, same shall be given in writing and sent by prepaid overnight courier or registered or certified United States mail, return receipt requested, to the parties whose names and addresses are set forth in the heading of this Agreement. Notice shall be effective when deposited.

## 12. NO REPRESENTATION

All understandings and agreements heretofore between M & E and Purchaser are merged into this Agreement which alone fully and completely expresses their intent. Purchaser acknowledges that M & E its officers, employees, representatives and any of their agents under Agreement involved in the sale of the Property have made no representations or warranties to Purchaser concerning the Property, including any representation or warranty as to the condition of the Property or the quality of M & E's title to the Property. Any information provided to Purchaser, was provided strictly as an accommodation to Purchaser, and no express or implied warranty or representation as to the accuracy or correctness of such information shall be deemed to have been made by M & E its officers, employees or agents, or any third party. Purchaser acknowledges that this purchase is based upon Purchaser's own knowledge and information and that Purchaser shall accept the Deed at Closing and shall be deemed to have waived any and all objections to M & E's title to the Property.

## 13. VIOLATION OF LAW

In the event the conveyance of the Property on the terms set forth in this Agreement would be contrary to any law, regulation, or order of governmental authority, then the Deposit and Additional Deposit shall be refunded with any accrued interest to Purchaser, and Purchaser hereby agrees to accept same, whereupon this Agreement shall terminate and neither party hereto shall have any further liability hereunder.

## 14. ACKNOWLEDGMENT

M & E has not and will not be providing any title report, Phase I Site Assessment or survey for the Property

## 15. Pipe Wire and Fiber Optic Lines

All other provisions of this agreement notwithstanding, M&E reserves to itself all permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines telecommunication lines and all their appurtenances and all revenues derived from said facilities. In addition

M&E reserves an easement to access any such lines <sup>should</sup> ~~such~~ this be required pursuant to the agreements under which said facilities were laid. 

## 16. RAIL, TIE PLATES, JOINT BARS, OTM AND TIES IN PLACE

M&E will remove from the property to be sold all rail, tie plates, joint bars, other track material (OTM) which are in place on the property to be conveyed. Ties in place will remain on the property and will be the responsibility of the purchaser to remove if it chooses.

## 17. MISCELLANEOUS

- a. The headings and subheadings in this Agreement are for convenience only and shall not be construed as having any legal or factual intent.
- b. The terms of this Agreement shall survive Closing.
- c. Neither this Agreement nor any type of memorandum thereof shall be recorded with the office of the Register of Deeds or with any other governmental agency, and any purported recordation or filing hereof by Buyer shall constitute a default on the part of Purchaser.
- d. No omission or delay by any party in enforcing any right or remedy or in requiring performance of any of the terms of this Agreement shall constitute or be deemed to constitute a waiver of any such right or remedy, nor shall it in any way affect the right of either party to enforce such provisions thereafter unless such right or remedy is specifically waived in writing. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise of any right or remedy.
- e. The law of the United States and the State of New Jersey shall govern the terms of this Agreement.
- f. All appendices and exhibits referred in or attached to this Agreement are intended to be, and are hereby, specifically made a part of this Agreement.

- g. This Agreement shall not be strictly interpreted against either party hereto under any rule of construction.
- h. The Deposit and Additional Deposit will be held by M & E's attorney in his attorney's trust account, and will accrue interest. If the Deposit or Additional Deposit is held by M & E's attorney, M & E shall have no liability to Buyer with respect to the adequacy of the interest earned.
- i. M & E shall not be under any obligation to provide to Purchaser, to its title insurance company, or to any party whatsoever, an affidavit of title, or any similar type of document that may be customarily used at closing on a sale of real property.
- j. At Closing, Purchaser shall, upon M & E's delivery of original executed Deed to Purchaser hereunder, sign a copy of the face sheet of said Deed acknowledging receipt and acceptance thereof. The Purchaser shall, at its sole cost and expense and within ten (10) days of Closing, properly record the executed original Deed in the Recorders Office of the County in which the Property is located. M & E shall have the right, but not the obligation, to record an original executed Deed identical to the Deed delivered to Purchaser at Closing if Purchaser has not complied with the aforesaid obligation to record such Deed. Purchaser shall be obligated to pay for all recording fees, transfer taxes, and any reasonable legal expenses related thereto and in the recovery of such fees and taxes from Purchaser.
- k. To the best of M & E's knowledge the Property is not subject to the provisions of the Industrial Site Recovery Act "ISRA", N. J. Stat. ANN.;, 13:K-6 et. seq. To the best of M & E's knowledge, the Property is classified under Standard Industrial Classification Major Group 40, which is excluded from ISRA's coverage and formerly from the Environmental Cleanup Responsibility Act's (ECRA's) coverage. Purchaser agrees that it shall not require M & E to obtain or deliver to it or to any person or entity, including title insurance companies a letter of non-applicability, an exemption under ISRA, an affidavit with respect to present or future use of the Property, or any other writing pursuant to ISRA. Purchaser further agrees that it will not raise a lack of compliance with any provisions of ISRA or any rules or

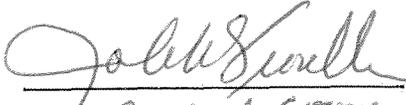
regulations pursuant thereto as an objection to title or as a precondition or requirement to closing title under this Agreement.

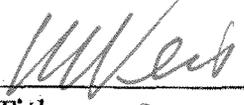
- l. This Agreement is subject to the prior release of regulatory interest of the State of New Jersey Department of Transportation if applicable.
- m. If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby. All other clauses or provisions of this Agreement, not found invalid or unenforceable shall be and remain valid and enforceable.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first set forth.

WITNESS

MORRISTOWN & ERIE RAILWAY, INC.

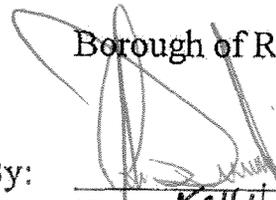
By:   
General Counsel MR  
JOHN H. FIORINA

By:   
Title: Pres. & CEO

WITNESS (ATTEST IF CORP.)

Borough of Roseland, N.J.

By:   
Maureen Chumaceo  
Borough Administrator

By:   
Title JOHN PUTHIE, MAYOR

**Addendum to Agreement of Sale**

**Seller:** Morristown & Erie Railway, Inc.  
**Purchaser:** Borough of Roseland<sup>1</sup>  
**Property:** Right of Way, Part of Block 12 Beginning At Mile Post 9  
[As described and set forth in Exhibit A]

---

**A1. Addendum.**

(a) Purpose of Addendum. This Addendum modifies the Agreement of Sale to which it is attached (referred to as the "Agreement of Sale").

(b) Effect of Addendum. The agreements and promises contained in this Addendum are as effective as if they were set forth in the Agreement of Sale. If there is any conflict between the Agreement of Sale and this Addendum, the provisions of this Addendum will prevail. Any reference in this Addendum to "the Agreement" to "this Agreement" means the Agreement of Sale as modified by this Addendum.

**A2. Recitals - Definitions.**

(a) Closing of Title. The words "closing of title" or "close title" mean the event whereby the Seller transfers title to the Property to the Purchaser by the delivery of the deed and other closing documents to the Purchaser in exchange for the payment of the purchase price by the Purchaser to the Seller, as provided for and in accordance with the terms of this Contract.

(b) Agreement Date. The "Agreement Date" means the date on which the Seller and the Purchaser execute this Agreement and the executed counterparts of this Agreement are delivered to the Seller and the Purchaser.

(c) Property. The "Property" means the property that is commonly known and designated as the former railroad right of way that is out of service and is situated in the Borough of Roseland, the County of Essex and the State of New Jersey between Harrison Avenue and the south side of Fernwood Avenue and is also generally described as the land and area from Milepost 9 to the end of the track on Harrison Avenue consisting of approximately 490,140 square feet and which property is more particularly described in the documents that are attached to this Agreement as Schedule A, which Schedule A is entitled "Description of the Property" and which Schedule A is incorporated into this Agreement by reference as if fully delineated herein and which Property includes the following: (1) the lands and any and all of the buildings and other improvements on or in the land, except for rail, tie plates, joint bars and other track materials ("OTM") but including ties, which will remain; and (2) any and all of the Seller's rights relating to the lands and the improvements; and (3) any and all fixtures and personal property specifically included in this Agreement.

(d) Purchaser's Attorneys. The "Purchaser's Attorneys" means Ethan Jesse Sheffet, Esq. Borough Attorney, with offices at c/o The Borough of Roseland, The Borough Hall, 19 Harrison Avenue, Roseland, Essex County, New Jersey 07068.

---

<sup>1</sup> The Borough of Roseland is a public body corporate and politic of the State of New Jersey and a political subdivision of the State of New Jersey municipal corporation of the State of New Jersey with offices at the Borough Hall, 19 Harrison Avenue, Roseland, Essex County, New Jersey 07068.

(e) Seller's Attorneys. The "Seller's Attorneys" means John K. Fiorilla, Esq., Capehart Scatchard, Esqs., with offices at 8000 Midlantic Drive, Suite 3005, P.O. Box 5016, Mt. Laurel, New Jersey 08054-5016.

**A3. Purchase Price, Deposit Funds, Payment of Purchase Price.** Paragraph 1 of the Agreement of Sale is modified as follows. The Purchase Price for the Property is Four Hundred Fifty Thousand (\$450,000.00) and 00/100 Dollars (referred to as the "Purchase Price"). The Purchaser will pay the Purchase Price to the Seller as follows.

(a) Deposit. Upon the execution and exchange of this Agreement by and between the Seller and the Purchaser, the Purchaser will deliver a sum of money equal to Fifty Thousand (\$50,000.00) and 00/100 Dollars to the Seller's Attorneys, which funds are referred to as the "Deposit" or the "Deposit Funds".

(b) Balance of the Purchase Price. The balance of the Purchase Price in the amount of Four Hundred Thousand (\$400,000.00) and 00/100 Dollars, subject to any adjustments, credits and debits provided for in this Agreement, is to be paid by the Purchaser to the Seller at closing of title by an attorney's trust account check, certified check, teller's check, cashier's check payable to the Seller. At the request of the Seller, the balance of the purchase price may be delivered by a wire transfer of funds to an account designated in writing by the Seller, provided that Seller notifies the Purchaser in writing of such account a reasonable period of time prior to Closing of Title.

(c) Escrow – Escrow Agent. Any and all of the Deposit Funds are to be held by the Seller's Attorneys, as the "Escrow Agent" in non-interest bearing attorney trust account pending: (i) closing of title and the disbursement of the Deposit Funds in accordance with the HUD-1 Settlement Statement; or (ii) the termination of this Agreement pursuant to its terms; or (iii) the written agreement of the parties; or (iv) an order of a court of competent jurisdiction. If this Agreement is terminated and the Deposit Funds are due and payable to the Purchaser, the Deposit Funds will be promptly returned to the Purchaser by the Escrow Agent.

**A4. Closing of Title – Closing Date.** Paragraph 2 of the Agreement of Sale is modified to provide that the Seller and the Purchaser agree to close title at the offices of Purchaser's Attorneys or at the Purchaser's Borough Hall on a date selected and designated by the Purchaser in cooperation with the Seller on a date not earlier than the thirtieth (30<sup>th</sup>) calendar day next following the "Approval Date" set forth at Paragraph 5 of this Addendum (entitled "Railroad Approvals Contingency") and not later than the ninetieth (90<sup>th</sup>) calendar day next following the Approval Date (referred to as the "Closing Date").

**A5. Approvals Contingency.** Paragraph 2 of the Agreement of Sale is modified and amended to provide as follows.

(a) Approvals. The Seller represents and to the Purchaser that, in conjunction with the transfer of title to the Property from the Seller to the Purchaser, the Seller is obligated, in accordance with applicable laws, to apply for and to obtain certain approvals of this transaction by certain governmental entities, agencies or authorities and to apply for and to obtain certain approvals and waivers from certain governmental entities, agencies or authorities relating to the abandonment of the railroad right of way including, but not limited to the recital set forth in Paragraph 2 of the Agreement of Sale (collectively referred to as the "Approvals").

(b) Contingency. The Seller agrees and promises the Purchaser that the Seller will make a good faith and diligent effort to apply for, prosecute and obtain the Approvals on or before the three hundred sixty-fifth (365<sup>th</sup>) calendar day next following the date on which the contingencies in this Agreement are satisfied or waived by the Purchaser (referred to as the "Approvals Deadline"). This Agreement is contingent upon the Seller obtaining the Approvals. If the Seller does not obtain the Approvals on or before the Approvals Deadline:

(1) the Purchaser may terminate this Agreement upon written notice to the Seller at which time, the Deposit Funds will be immediately be returned to the Purchaser; or

(2) the Purchaser may extend the Approvals Deadline for a period of time not to exceed an additional three hundred sixty (360) calendar days; and

(3) if the Seller has not obtained the Approvals by the deadline, as extended, through no fault of the Seller, then the Seller may terminate this Agreement upon written notice to the Purchaser, at which time the Deposit Funds will be promptly returned to the Purchaser; and

(4) if the Seller has not obtained the Approvals by the deadline, as extended, then the Purchaser may terminate this Agreement upon written notice to the Seller, at which time the Deposit Funds will be promptly returned to the Purchaser.

(c) Cooperation. The Seller will reasonably cooperate with the Purchaser with regard to the Approvals contingency and timely inform the Purchaser of the Seller's efforts with regard to same, which cooperation includes, but is not limited to:

(1) the delivery to the Purchaser, in a timely manner, true and complete copies of any applications, approvals, denials, correspondence and other written communications by, between and among the aforementioned governmental and other entities, agencies and authorities relating to the Approvals; and

(2) the delivery to the Purchaser, in a timely manner upon the request of the Purchaser from time to time, summaries of the status of the application for and prosecution of the Approvals.

#### **A6. Title and Possession.**

(a) Representations. The Seller represents and warrants to the Purchaser that, subject to the determinations made by the Purchaser in accordance with the due diligence contingency, the Seller owns title to the Property in fee simple absolute and such title is marketable and insurable at regular rates by a reputable title insurance company licensed to do business in the State of New Jersey. The Seller represents to the Purchaser that the Seller obtained title through a bankruptcy purchase. The Seller will convey to the Purchaser all right title and interests to the Property. The Seller know of no title defects regarding the Property; however, the Seller cannot warrant the quality of title to this portion of the Property. Notwithstanding anything to the contrary in this provision, the terms and conditions of the Quality of Title and the Due Diligence Contingency – Title provisions of this Contract remain unmodified.

(b) Quality of Title. The Seller agrees with that the Purchaser will not be obligated to accept title to the Property and the Purchaser will be entitled to terminate the Agreement and recover the Deposit Funds unless the Seller holds and transfer titles and ownership of the Property to Purchaser by that is marketable and that is insurable at regular rates by a reputable title insurance company licensed and authorized to do business in New Jersey (referred to as "good title"). It is further understood and agreed by

the Seller and the Purchaser that good title also means that no easements, rights of way, grants, other restrictions or other limitations and no facts disclosed by an accurate survey:

(1) will render or renders title unmarketable or uninsurable at regular rates by a reputable title insurance company licensed and authorized to do business in the State of New Jersey; and

(2) prohibits or interferes with the use of the Property in accordance with such uses permitted by the municipality's applicable zoning and land use laws as of the Agreement Date; and

(3) prohibits or interferes or will prohibit or interfere with or restrict access to the Property from existing public streets or roadways along existing driveways or accessways or prohibit or interferes with or restricts access from the Property to existing public streets or roadways along existing driveways or accessways; and

(4) in regard to easements or rights of way that inure to the benefit of the Property and which serve the Property, have been violated, have expired, have been modified or will expire or will revert to another property owner or holder of such easement or right of way; and

(5) prohibits or interferes with or restricts access to the Property or the use of the Property.

The Seller discloses to the Purchaser that the Seller is aware of utility easements which are situated on the Property and which the Seller understands will be found by the Purchaser in conjunction with the Seller's due diligence title searches. The Seller understands and acknowledges that the Purchaser will not be obligated to accept title to the Property if the title is found not to be marketable and not to be insurable at regular rates as set forth in this Contract. The Seller further represents that the title includes a right of way which is being purchased by the Purchaser. The Purchaser confirms that the Purchaser has been informed of the utility easements on the Property and the Purchaser understands that the Purchaser will accept such utility easements with the conveyance of title with the further understanding that such utility easements will not adversely affect the marketability or insurability of title and will not unreasonably interfere with the use of the Property by the Purchaser.

(c) Due Diligence Contingency – Title. This Agreement is contingent upon the Purchaser determining that the Seller holds good title to the Property as provided for in this Agreement (referred to as the "Title Contingency"). The Seller and the Purchaser further agree as follows. If the Purchaser maintains, in the sole discretion of the Purchaser, that the Seller does not hold good title to the Property as a result of the information set forth in the title insurance commitment, the Purchaser will notify the Seller of the Purchaser's objections to title on or before the thirty-fifth (35<sup>th</sup>) calendar day next following the Agreement Date. The Purchaser will be entitled to terminate this Agreement upon written notice delivered to the Seller if the Purchaser notifies the Seller that the quality of title is not acceptable to the Purchaser and the Seller and the Purchaser do not otherwise agree, in writing, a resolution of the title issues. Upon the termination of this Agreement, the Seller will promptly return the Deposit Funds to the Purchaser.

(d) Possession.

(1) Representation. The Seller represents and warrants to the Purchaser that: (i) the Property is vacant and free and clear of any tenants, occupants and licensees except for the pipe wire and fiber optic lines that are delineated in Paragraph 15 of the Agreement of Sale, entitled "Pipe Wire and Fiber Optic Lines"; and (ii) no person or business entity or governmental entity possesses or has a right to possess or use any portion or all of the Property except for the Pipe Wire and Fiber Optic Lines as set forth in Paragraph 15 of the Agreement of Sale and as otherwise provided for at Paragraph A6.(d) and the Schedule attached to this Addendum, entitled "Utilities, Underground Rights and Fiber Optic Cable".

(2) Vacant, Unoccupied, Free of Debris. Except as set forth at Paragraph 15 of the Agreement of Sale, the Seller will deliver possession of the Property to the Purchaser at closing of title vacant, free and clear of any debris and free and clear of any and all tenants, occupants and licensees. The Seller and the Purchaser understand and agree that the railroad ties will remain with the Property and will not be removed by the Seller. The Seller will remove the OTM prior to closing of title.

(3) Pending Closing of Title. The Seller and the Purchaser further agree that pending closing of title, the Seller will not enter into an agreement for the use, possession or occupancy of any portion or all of the Property and the Seller will not allow any person, business entity or governmental entity to use, possess or occupancy any portion or all of the Property without the prior written consent of the Purchaser, which consent may be withheld in the Purchaser's sole discretion.

(e) Utilities – Underground Rights – Fiber Optic Cable. The Seller represents and warrants to the Purchaser that the Seller is entitled to certain fees and revenues for utilities relating to a fiber optic cable that is situated beneath the Property (referred to as the "Fiber Optic Cable"), which Fiber Optic Cable, utilities and related underground rights and fees and the agreements and documents with regard to same are more particularly delineated in this Agreement. It is further understood and agreed that at closing of title, the Seller and the Purchaser will execute and exchange the agreement between the Seller and the Purchaser regarding, among other things, the entitlements of the Seller and the Purchaser to certain fees and payments and the Purchaser's right to relocate such Fiber Optic Cable if such relocation does not adversely affect or adversely impair the function of the Fiber Optic Cable. The Purchaser understands and agrees that the right to relocate the Fiber Optic Cable is subject to an agreement in place between the holder of the Fiber Optic Cable easement and the Seller and the Purchaser, upon acquiring title to the Property, will become subject to the notice and other provisions of the Fiber Optic Cable agreement.

**A7. Condition of Property – Due Diligence Contingency – Funding Arrangements.**

(a) "As-Is Condition". Except as otherwise specifically set forth in this Agreement, the Purchaser agrees to accept the Property in its "as is" condition as of the Agreement Date. The Seller agrees to reasonably maintain the Property in the same or similar condition as of the Property as of the Agreement Date, normal wear and tear excepted, as set forth in this Agreement. It is further understood the Seller makes no representation or warranty to the Purchaser regarding the condition of the Property and its improvements and the Seller will not be obligated to make any repairs, replacements, alterations or improvements to the Property.

(b) Due Diligence Contingency.

(1) Due Diligence Period. The Purchaser is entitled, at the Purchaser's cost and expense, to conduct or arrange to conduct various inspections, tests, studies, inquiries and investigations of the Property (referred to as the "inspections") on or before the one hundred twentieth (120<sup>th</sup>) calendar day next following the Agreement Date (referred to as the "due diligence period").

(2) Inspections. The inspections may include, but are not limited to, the following: soil tests; percolation tests; hazardous substances tests; environmental contamination tests or investigations; flood zone, flood hazard and floodway searches; tidelands searches; wetlands studies; drainage studies; environmental studies or inspections; radon tests; wood-destroying insect infestation studies; the testing or investigation for underground or above ground fuel tanks or other tank structures or systems; and/or any other engineering studies or tests or other tests or studies which the Purchaser, in its sole discretion, determines are necessary or appropriate; and/or inquiries and investigations relating to adjoining lands for the aforementioned purposes with the understanding that the Seller may not be entitled to provide access to such adjoining lands; and inquiries, studies and investigations relating to any and all easements, rights of way, grants, property rights, access rights other restrictions or other limitations that affect or that may affect the Property or the use of the Property; and/or a review and analysis of the facts disclosed by an accurate survey of the Property. The Purchaser agrees that in conjunction with the inspections, the Purchaser will provide evidence of insurance coverage to the Seller for any claims made by the employees or agents of the Purchaser or its contractors against the Seller resulting from any incident that occurs in conjunction with the Purchaser conducting the due diligence inspections set forth in this paragraph.

(3) Nature of the Inspections. The Purchaser will arrange for any inspections to be performed in a manner as to minimize any invasion or incursion into or adverse effect to the Property. In the event that any the inspections involve any incursion into or adverse effect to the Property, the Purchaser will notify the Seller in advance of any such inspection and obtain the consent of the Seller to such inspection, which consent will not be unreasonably withheld or delayed and with the further understanding that the Seller will restore the Property to its condition prior to the performance of any such inspection.

(4) Cooperation. The Seller will reasonably cooperate with the Purchaser with regard to the inspections to enable the Purchaser a reasonable opportunity to complete the inspections within the due diligence period, which cooperation includes, but is not limited to; (i) arranging for the Property and its improvements to be reasonably and promptly available and accessible to the Purchaser for the inspections; and (ii) upon request by the Purchaser, the delivery of any and all documentation and information reasonably available to the Seller regarding the Property and its improvements.

(5) Termination. The Purchaser is entitled to terminate this Agreement upon written notice to the Seller on or before the one hundred twentieth (120<sup>th</sup>) calendar day next following the Agreement Date (the "due diligence period deadline date") if the Purchaser determines that the condition of the Property is unacceptable to the Purchaser and upon the delivery of such notice of termination, the Agreement will be terminated and the Seller will immediately return the Deposit Funds to the Purchaser.

(c) Funding Arrangements.

(1) Governmental Entity. The Seller and the Purchaser acknowledge and understand that the Purchaser, as governmental entity, must pursue and comply with certain applicable laws, rules and regulation of the State of New Jersey its agencies that govern, regulate and monitor the acquisition of title and the funding of such undertakings by governmental entities, including municipal entities such as the Purchaser.

(2) Funding Arrangements. The Seller and the Purchaser agree that this Agreement is *not* contingent upon the Purchaser obtaining loan funding from a lending institution; however, upon the execution and exchange of this Agreement by the parties, the Purchaser will, in accordance with applicable laws, proceed in a good faith and diligent manner make arrangements to, as applicable, to confirm, apply for, arrange for, obtain approval of and arrange for the availability of certain funds and funding arrangements including, but not limited to, open space funds, green acres funding, grants from or other funding arrangements with the County of Essex and/or State of New Jersey or its affiliated authorities and certain bond applications, approvals or arrangements and municipal budget arrangements and approvals (collectively referred to as the “funding arrangements”).

(3) Confirmation of Funding Arrangements. This Agreement is contingent upon the Purchaser confirming the funding arrangements on or before the one hundred twentieth (120<sup>th</sup>) calendar day next following the Agreement Date (the “funding arrangement deadline date”). If the Purchaser has not confirmed the funding arrangements on or before the funding arrangement deadline date, then either the Seller or the Purchaser may terminate this Agreement upon written notice to the other party unless the Purchaser waives this contingency by written notice delivered to the Seller. If this Agreement is terminated, the Seller will immediately return the Deposit Funds to the Purchaser.

**A8. No Realtor – No Broker.** The Seller and the Purchaser represent and warrant to each other that no real estate broker or other person is entitled to a commission or other fee for services rendered with regard to this transaction. If a party breaches this representation and warranty, then the breaching party will hold the aggrieved party harmless and indemnify the aggrieved party for and against any and all claims and damages resulting from such breach including, but not limited to, reasonable attorney's fees and costs incurred by the aggrieved party.

**A9. ISRA.** Except as otherwise set forth in this Agreement, the Seller represents to the Purchaser that, to the best of the Seller's knowledge, information and belief, no existing or prior use of the Property has or had an industrial classification code which requires or required compliance with Industrial Site Recovery Act (N.J.S.A. 13:1-7 et seq.) which is referred to in this provision as the “Act” and the regulations promulgated thereunder or any applicable predecessor or successor law (referred to as “ISRA”) and that ISRA does not apply to this transaction.

**A10. Bulk Sales Law.**

(a) Bulk Sales Laws. For the purposes of this Agreement, the words the “Bulk Sales Laws” or the “Bulk Sales Law” means *N.J.S.A. 54:32B-22 et seq.* and *N.J.S.A. 54:50-38 et seq.* and the rules and regulations promulgated and applicable in regard to same.

(b) Transferee Liability - Hold Harmless and Indemnification. The Seller and the Purchaser understand that, among other things, the Bulk Sales Law provides that the State of New Jersey (referred to as the "State") may pursue the transferee of title to collect taxes unpaid by the transferor if the transferor is determined to owe taxes to the State and if such taxes are not paid in accordance with applicable law.

(c) Notification of Sale. The Seller understands and acknowledges that the Purchaser will file a Notification of Sale, Transfer or Assignment in Bulk (C9600) and such other documentation as may be required with the State of New Jersey Division of Taxation in accordance with applicable laws, rules and regulations. The Seller agrees to deliver the necessary information and documentation to the Purchaser's Attorneys as required for the Purchaser to file the C9600 form or other documentation in a timely manner.

(d) Compliance. *If and as applicable* and as may be required by the State, the Seller will comply with any and all requirements and requests of the State for the escrow of monies, which funds will be deducted from the Purchase Price and placed in a non-interest bearing attorney trust account of Seller's Attorneys (referred to as the "Escrow Funds"), pursuant to a written escrow agreement between and among the Seller, the Purchaser and the Seller's Attorneys. The Seller's Attorneys will hold the Escrow Funds and disburse any such Escrow Funds as directed by the State as to any tax liability to enable and cause the State to issue the appropriate clearance letter confirming compliance with the Bulk Sales Law and the release by the State of the Purchaser from any and all claims and liability under the Act with regard to the transactions. Upon the issuance of a notice or other written directive of the State requiring the payment any taxes, escrows, charges or fees that are required to be paid to the State, the Seller's Attorneys will pay such amount of money by disbursing such portion or all of the Escrow Funds sufficient to make such required payment to the State of New Jersey.

(e) Clearance Letter. Upon confirmation of the receipt of the funds by the State of New Jersey in full satisfaction of and the releasing of the tax obligations of Seller and in full compliance with the Bulk Sales Laws and the receipt of a clearance letter or notice from the State of New Jersey, the balance of the Escrow Funds, if any, will be disbursed to the Seller by the Escrow Agent in the form of an attorney trust account check made payable to the Seller.

**A11. IRS.** The Seller will provide the Purchaser's attorneys with the Seller's taxpayer identification number at or prior to closing of title for the purpose of enabling the Purchaser's attorney to file the required 1099 form with the Internal Revenue Service.

**A12. Post Closing Cooperation.** The Seller and the Purchaser agree to reasonably cooperate with each other after Closing of Title to correct and adjust and errors, miscalculations or omissions with regard to the settlement calculations including, but not limited to, the execution and delivery of corrected documents and the adjustment of any money as a result of any error, miscalculation or omission, which agreement will survive the Closing of Title.

**A13. No Assignment – No Delegation.** Neither the Seller nor the Purchaser may assign its rights and neither the Seller nor the Purchaser may delegate his or her duties under this Agreement without the prior written consent of the other party, which consent may be withheld in such party's sole discretion.

**A14. Miscellaneous.**

(a) Notices, Telecopier, Counterparts, Binding Effect. This Addendum and any further modifications or amendments of the Agreement must be in writing and may be executed and/or delivered, as applicable, in counterparts each of which, when properly executed and delivered by telecopier or otherwise, constitutes an original and fully enforceable counterpart for all purposes and is binding upon any party executing same upon the transmission of such executed counterpart to any other party. The Seller and the Purchaser will arrange for executed counterparts of this Addendum and the Agreement of Sale to be exchanged. The Agreement of Sale, as modified by this Addendum, is binding upon the Seller and the Purchaser upon the execution and exchange of this Addendum. Any notice under this Agreement: (i) must be in writing and must be delivered to a party *and* to a party's attorney; and (ii) will be deemed delivered upon delivery to the notice to the party or the party's attorney personally, or by express mail receipted delivery, or by certified mail return receipt requested; or by telecopier, transmitted on a business day other than a holiday between the hours of 8:00 a.m. and 5:30 p.m. (Eastern Standard Time) with electronic and written confirmation of the delivery of the notice.

(b) No Modifications. This Agreement may not be amended, modified or revised except in a writing that is signed and exchanged by both the Seller and the Purchaser.

**A15. Easement Agreement.**

(a) Dockrell Property. The Purchaser has informed the Seller that the Purchaser has entered into a Contract or will enter into a Contract with Dockrell Corp. to purchase a certain property that is commonly known and designated 30 Fernwood Avenue, in the Borough of Roseland, the County of Essex and the State of New Jersey 07068 and which property is designated as on the official tax maps of the municipality as Block 12, Lots 22, 22.1, 22.2 and 22.3 (the "Dockrell Property", which Dockrell Property is adjacent to the Property.

(b) Easement.

(1) The Seller and the Purchaser agree that on or before the fourteenth (14<sup>th</sup>) calendar day next following the date of the execution and exchange of this Agreement, the Seller and the Purchaser will execute and exchange an easement agreement, in recordable form, whereby the Seller grants to the Purchaser the right to travel across, over and through the Property to the Dockrell Property including, but not limited to, ingress and egress to and from the Property and the Dockrell Property.

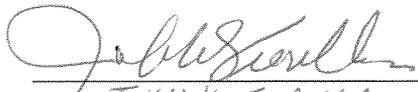
(2) It is further understood and agreed that if the Purchaser does not acquire title to the Dockrell Property, such easement agreement will be terminated and discharged of record.

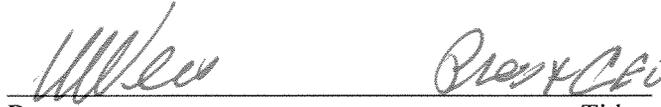
(3) It is further agreed that the Purchaser's attorney will prepare and submit the easement agreement to the Seller's attorney for review and approval and that the Seller and the Purchaser will reasonably cooperate and make a good faith and diligent effort to agree to the terms of the easement agreement and to execute and exchange the easement agreement in a timely manner.

**IN WITNESS WHEREOF**, the Seller and the Purchaser, by the undersigned authorized representatives of the Seller and the Purchaser, have executed this Addendum and agree to the terms and conditions of the Agreement of Sale as modified and amended by this Addendum as of the date or dates set forth below.

Witness or Attest:

**Morristown & Erie Railway, Inc., The Seller**

  
\_\_\_\_\_  
JOHN H. FIORILLA  
GENERAL COUNSEL

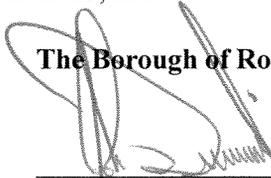
  
\_\_\_\_\_  
By: Title:

September 23, 2014

Witness or Attest:

**The Borough of Roseland, The Purchaser**

  
\_\_\_\_\_  
Maureen Chumcar  
Borough Administrator

  
\_\_\_\_\_  
By: John Duthie  
Title: Mayor  
September 23, 2014

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



---

**DOCKET NO: AB 272 X**

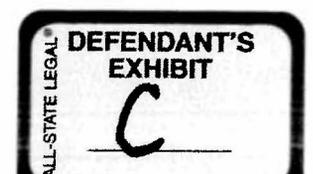
**MORRISTOWN & ERIE RAILWAY, INC.  
ABANDONMENT EXEMPTION  
IN ROSELAND, ESSEX COUNTY, N.J.**

**NOTICE OF EXEMPTION  
PURSUANT TO 49 CFR § 1152.50**

---

**ENVIRONMENTAL AND HISTORIC REPORT**

Morristown & Erie Railway, Inc. (“M&E”) submits this Environmental and Historic Report in accordance with 49 C.F.R. §§ 1105.7 & 1105.8. M&E has fulfilled the requirements of Section 1105.7 and 1105.8 that it consult specified public agencies by sending letter to such agencies and requesting comments on the effect of this action on the environment and on matters of historic preservation concern. Copies of the letters and all responses M&E has received to date are attached to this Report. Any responses received in the future will be promptly furnished to the Board.



## ENVIRONMENTAL

1. Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also, describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

1. The proposed action is abandonment of track in the Borough of Roseland, County of Essex, New Jersey. This track is located on the westerly side of Harrison Avenue, part of Block 12 beginning at milepost 9 and going to the end of track at Harrison Avenue containing 490,190 square feet more or less with different widths as shown on Exhibit A. M&E expects to file a Notice of Exemption on or about June 20, 2016. As the subject line has been out of service for more than two years, no commodities are transported on the line and no changes in current operations or maintenance practices will result from the proposed action. M&E has entered into a contract to dispose of this property with the Borough of Roseland, N.J. which will use the property for public purposes. M&E will remove the rail, tie plates, joint bars and other track material (OTM). The removal and disposal of ties will be the responsibility of the Borough Roseland. The only reasonable alternative to the abandonment of this track is that of no action. A map of the property involved is attached as Exhibit A.

2. Transportation System. Describe the effects of the proposed action on regional and local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

2. The subject line is out of service and is used for no passenger or freight service. Consequently, the proposed abandonment will have no effect upon regional or local transportation systems and patterns and will cause no diversion of passengers or freight to other transportation system or modes.

3. Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepare by such agencies, state whether the proposed action is consistent with the existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service state the effect of the proposed action on any prime agricultural land. (iii) If the action effects land or water uses within a designated coastal zone include the coastal zone information required by § 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.

3. (i) M&E is aware of no inconsistencies of the proposed action with the existing land use plans. The County of Essex, N.J. where the line to be abandoned is located stated in its letter to M&E of October 5, 2015 that “ the proposed abandonment of the dormant portion of the Morristown & Erie Railway of Morristown located in Roseland, New Jersey is consistent with land use plans.” Since a sale of the line is to be sold to the Borough of Roseland for public purposes, M&E will remove the track as soon as

feasible upon approval of the abandonment by the Board. Regarding geodetic survey marks, Simon Monroe of the National Geodetic Survey (“NGS”) indicates in an email dated October 21, 2015 that “approximately 00 geodetic survey marks may be located in the area described. No marks will be disturbed by the abandonment.” In the event that a mark is discovered and has to be disturbed, M&E will provide the requested 90 day notice to NGS.

(ii) M&E consulted with the Natural Resources Conservation Service (“NRCS”) and their reply dated September 28, 2015 stated “NRCS conducted a review of the soils that occur in the perimeter of the area of interest. The area of interest consisted on a railroad line as pointed in your request. After reviewing the documentation provided for a proposed abandonment of the rail line from Milepost 9 and ending at Harrison Avenue in the vicinity of Roseland, Essex County, New Jersey, we concluded that there is no impact to farmland classified under prime, statewide, unique or local importance.”

(iii) The New Jersey Department of Environmental Protection (“NJ DEP”) has been consulted in this regard. The reply was received from the New Jersey Division of Land Use Regulation which is part of NJ DEP in an email from Christopher Jones, Manager of the Bureau of Urban Growth and

Redevelopment dated January 16, 2016 concluded that “ The rail right-of-way is not located in New Jersey’s Coast Zone. The abandonment and salvage activities do not require Permits from the Division of Land Use Regulation, including Permits issued pursuant to the Coastal Zone Management Rules, the Flood Hazard Area Control Act or the Freshwater Wetlands Protection Act”.

(iv) Upon approval of this abandonment by the Board, M&E has arranged for the sale of the abandoned line to the Borough of Roseland for use as public space. The line is adjacent to a public school and the Borough has indicated it intends to use the property as a public park.

4. Energy. (i) Describe the effect of the proposed action on transportation energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than (A) 1,000 rail carloads a year, or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

4. Because the subject line is out of service and has handled no local or overhead traffic for more than the last two years, the proposed abandonment will not affect transportation of energy resources or recyclable commodities, will not result in an increase or decrease in overall energy efficiency, and will cause no traffic diversion from rail to motor carriage.

5. Air. (i) If the proposed action will result in either (A) an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100% (measured by car load activity) or (C) an average increase in truck traffic or more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision will apply. (ii) If the proposed action affects a Class I or non-attainment area under the Clean Air Act and will result in either (A) an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line (B) an increase in rail yard activity of at least 20% (measured by carload activity), or (C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any given road segment, then state whether any expected increases emissions are within the parameters established by the State Implementation Plan. (iii) If transportation of ozone depleting material is contemplated, identify the materials and quantify, the frequency of service, safety practices, the applicant's safety record on derailments, accidents and spills, contingency plans to deal with accidental spills, and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

5. Because the subject line is out of service and has handled no traffic within the last two years, the proposed abandonment will cause no increase or decrease in rail or motor carrier traffic and will have no impact upon air quality. The proposed action will not affect transportation of ozone depleting material.

6. Noise. If any of the thresholds identified in Item (5) are surpassed, will the proposed action cause (i) An incremental increase in noise levels of three decibels Ldn or more; or (ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors in the affected areas and quantify the noise increase for these receptors if the thresholds are surpassed.

6 Inapplicable because none of the thresholds denied in Item 5 are surpassed.

7. Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at grade crossings). (ii) Are hazardous materials are expected to be transported if so identify and describe contingency plans to deal with accidental spills. (iii) If there are any known hazardous waste sites where there have been known spills on the right-of-way, identify the location and types of hazardous materials involved.

7. (i) Because the subject line is out of service and has handled no traffic for more than two years, public health and safety will not be affected by the proposed action.

(ii) No hazardous materials will be transported as a result of the proposed abandonment.

(iii) M&E is aware of no hazardous waste sites or spills on the right-of way to be abandoned.

8. Biological Resources. (i) Based on consultation with the US Fish and Wildlife Service, state whether the proposed action is like to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National of State parks or forests will be effected, and describe the effects.

8. (i) The US Fish and Wildlife Service in its letter to M&E of October 8, 2015 states “A known occurrence or potential habitat for the following federally listed or candidate species is located on or near the project’s impact areas. However, the Service concludes that the proposed

project is not likely to adversely affect federally listed or candidate species for the reasons listed below.” The letter goes on to say that there is no suitable habitat in the action area, no proposed tree clearing and that effects to the species are discountable. The species noted are the bog turtle, Indiana bat and Northern long-eared bat.

(ii) There are no wildlife refuges or sanctuaries on the property to be abandoned.

9. Water Based. (i) Upon consultation with State water quality offices, state whether the proposed action is consistent with federal, state and local water quality standards (usually applicable only in the context of rail line construction application and abandonments that will required in-stream salvage operations). (ii) Based on consultation with US Army Corp of Engineers state whether permits under the Clean Water Act are required and whether any designated wetlands or 100 year flood plains will be affected, and describe any effects. (iii) State whether permits under section 402 of the Clean Water Act are required for the proposed action.

9. (i) No in-stream salvage operation will be required and M&E is aware of no inconsistency of the proposed action with applicable federal, state and local water quality standards. M&E consulted The New Jersey Department of Environmental Protection (“NJDEP”) on September 22, 2015 and requested comments on the proposed abandonment. No comments on this issue were submitted to date.

(ii) The proposed abandonment contemplates only the removal of rail, plates, spikes and other track material and no clearing,

grading or alteration of the topography will result from this abandonment. No dredging or discharge of dredge or fill material into navigable waters will be involved, and, therefore, no permits will be required under §404 of the Clean Water Act. The proposed abandonment will have no effect on designated wet lands or the 100-year flood plains. The U.S. Army Corps of Engineers has been consulted in this regard. M&E wrote to them on September 22, 2015 for their comments. Upon receipt of any response, we will forward same to the Board.

iii. The abandonment will not result in the discharge of any pollutant which would require a permit under § 402 of the Clean Water Act. M&E wrote to NJDEP and asked this specific question on September 22, 2015. They made no reply about the Clean Water Act but did reply about all the New Jersey Coastal Zone laws, the Flood Hazard Area Control Act and the Freshwater Wetlands Protection Act commenting that the proposed abandonment required no permits under any of the noted laws. Since the abandonment is not located neither near wetlands nor a body of water this is not surprising.

10. Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

10. Inapplicable, in that there are no adverse environmental impacts which would be caused by this abandonment.

### **HISTORIC**

Pursuant to 49 C.F.R. § 1105.8, M&E provides the following report on specified historic matters.

1. Map. Attach a USGS topographic map (or an alternate map drawn to scale) and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action.

1. A map of the subject line is attached as Exhibit A. The line has no buildings or structures and composed of right-of-way and vacant land.

2. Description of Right-of-way. A written description of the right-of-way (including approximate widths), to the extent known, and the topography and urban/rural characteristics of the surrounding area.

2. Description of Right-of Way: a dormant portion of track located on the westerly side of Harrison Avenue, part of Block 12 beginning at milepost 9 and going to the end of track at Harrison Avenue in the Borough of Roseland, N.J., County of Essex. The proposed abandonment contains 490,140 square feet more or less with different widths as shown the attached Exhibit A. The portion to be abandoned is completely within the Borough of Roseland and the United States Postal Zip Code 07068. A further description of the Subject Property is attached as Exhibit B. The track is located in a suburban residential/industrial area.

3. Photographs. Good quality photographs of structures on the property that are 50 years old or older and of the immediately surrounding areas.

3 Inapplicable, there are no railroad structures or bridges located along this line segment.

4. Construction Dates. The date(s) of construction of structures and date(s) of any major alteration, to the extent such information is known.

4 Inapplicable there are no railroad structures or bridges located on this line segment.

5. Carrier Operations. A brief narrative history of carrier operations in the area and an explanation of what, if any, changes are contemplated as a result of the proposed action.

5. The subject line was only used for freight operations. However, the line is out of service and has handled no traffic for more than two years. Accordingly, no change in operations is contemplated as a result of the proposed action.

6. Summary of Documents. A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic.

6 Inapplicable, there are no structures or bridges located on this line segment.

7. Opinion Regarding Historical Matters. An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of

Historic Places and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions including any consultation with the State Historic Preservation Office, local historical societies or universities.

7. After M&E served notice of the proposed abandonment to the Historic Preservation Office of the New Jersey Department of Environmental Protection, it received the following notice from the Deputy State Historic Preservation Office of the State of New Jersey on October 28, 2015.

“As proposed, the project will not adversely affect historic properties. Pursuant to § 800.5©, if no consulting parties object to this finding within the thirty day review period, the project may proceed, as proposed unless resources are discovered during project implementation, pursuant to §800.13.”

There are no structures and no known historic properties on the line proposed for abandonment. M&E has no documents which might indicate this nor has the Borough of Roseland who will purchase the property if the abandonment is approved given any indication that there is any archeological or historic quality to line to be abandoned.

8. Description of Certain Matters. A description (based on readily available information in the railroad’s possession) of any known prior subsurface ground disturbance or fill, environmental condition that might affect the archeological recovery of resources (such as swampy condition or the presence of toxic wastes) and the surrounding terrain.

8. M&E is unaware of any prior subsurface disturbance or fill or environmental conditions (naturally occurring or man-made) that might effect archeological recovery of resources. In addition, as noted above, there is no reason to believe that there are archeological resources to be recovered and this was confirmed by the State Historic Preservation Office.

NOTICE OF INTENT TO ABANDON RAIL SERVICE

Morristown & Erie Railway, Inc. ("applicant") gives notice that on or about June 29, 2016, it intends to file with the Surface Transportation Board, Washington, D.C. 20423, a Notice of Exemption under 49 CFR 1152 Subpart F- Exempt Abandonments permitting the abandonment of right-of-way in the Borough of Roseland, County of Essex, and State of New Jersey. This dormant portion of its railroad line is located on the Westerly side of Harrison Avenue, Part of Block 12, Beginning at Milepost 9 and going to the end of the track at Harrison Avenue in the Borough of Roseland, County of Essex, New Jersey. The track to be abandoned is located in zip code 07068 and consists of 490,140 square feet more or less. There has been no service on this portion of the rail line for more than two years. If the abandonment is approved by the STB, the railroad has an agreement to sell the land to the Borough of Roseland for public use. The proceeding will be docketed as No. AB 272 X.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA) which will normally be available 25 days after filing of the Notice of Exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA) Surface Transportation Board, Washington, D.C. 20423 or by calling that office at 202-345-0238.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street SW, Washington, D.C. 20423-0001 (See 49 CFR 1104.1(a) and 1104.3(a)), and one copy must be served on applicant's representative (See 49 CFR 1104.12(a)). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs and Compliance at 202-345-0238. Copies of any comments or requests for conditions should be served upon the applicant's representative: John

K. Fiorilla, Esq. Capehart & Scatchard, P.A., 8000 Midlantic Drive, Suite 3005, Mt. Laurel, NJ 08054. Telephone 856-914-2054 - Email address jfiorilla@capehart.com 5/27/2016 5133.30

AFFIDAVIT

State of New Jersey  
County of Middlesex

Keisha Blackmon, being duly sworn, says that (s)he is connected with The Star Ledger, a newspaper circulating in Atlantic, Burlington, Cape May, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties, New Jersey, and that a notice of which the annexed is a true copy was published on the following dates in said newspaper:

5/27/16

(KB)

Keisha Blackmon

Sworn to before me this 2nd  
day of June, 2016.

Maryanne Walker

NOTARY PUBLIC

