

237329

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
December 24, 2014
Part of
Public Record

WILLIAM A. MULLINS

(202) 663-7823 (Direct Dial)
E-Mail: wmullins@bakerandmiller.com

December 24, 2014

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Erie
County, New York, STB Docket No. AB-290 (Sub-No. 367X)

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights, enclosed are an original and 11 copies of a verified abandonment notice of exemption for the abandonment of a rail line owned by Norfolk Southern Railway Company. A check in the amount of \$3,800.00 is enclosed to cover the applicable filing fee.

Please acknowledge receipt and filing of this notice of exemption by date stamping the enclosed eleventh copy and returning it to the courier for return to me.

Sincerely,



William A. Mullins
Attorney for Norfolk Southern Railway
Company

Enclosures

cc: Marc Kirchner
Maquiling Parkerson
Lawada Poarch

FILED
December 24, 2014
Surface Transportation Board

FEE RECEIVED
December 24, 2014
Surface Transportation Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**Maquiling B. Parkerson
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Telephone: (757) 533-4939
Facsimile: (757) 533-4872**

**William A. Mullins
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

**Attorneys for Norfolk Southern
Railway Company**

December 24, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

Norfolk Southern Railway Company (“NSR”) hereby submits a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights) for NSR to abandon approximately 1.60 miles of rail line (referred to herein as the “Line”) located in Erie County, New York. The Line extends from milepost VK 3.90 (near Scrivner Drive) to milepost VK 5.50 (near Indian Church Road). The Line traverses United States Postal Zip Code territories 14224 and 14227. There are no customers served on the subject line segment, and the line has been out of service for over two years.

In accordance with the requirements of 49 C.F.R. §§ 1152.50(b) and (d), NSR provides the following information in support of this notice of abandonment:

Certification: 49 C.F.R. § 1152.50(b)

NSR certifies that the Line satisfies the criteria for abandonment under the exemption provisions at 49 C.F.R. part 1152, subpart F. See Certification of R.A. Bartle, General Manager Northern Region for Norfolk Southern Railway Company (Exhibit A). During the past two

years, NSR has provided no local or overhead common carrier service over the Line, nor has it received any requests for common carrier service over it.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

The proposed abandonment will be consummated on or after February 12, 2015 (50 days after filing the notice of exemption).

Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)

Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):

Norfolk Southern Railway Company

Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):

NSR is a common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV, chapter 105.

Relief sought (49 C.F.R. § 1152.22(a)(3)):

NSR hereby invokes the Board's two-year-out-of-service class exemption procedures to abandon approximately 1.60 miles of rail line. The Line extends from milepost VK 3.90 (near Scrivner Drive) to milepost VK 5.50 (near Indian Church Road). All of the track is located in Erie County, New York. The Line traverses United States Postal Zip Code territories 14224 and 14227. There are no customers served on the subject line segment, and the line has been out of service for over two years.

Map (49 C.F.R. § 1152.22(a)(4)):

A detailed map showing the location of the Line is attached hereto as Exhibit B.

Applicant's representative (49 C.F.R. § 1152.22(a)(7)):

NSR's representatives to whom correspondence regarding this proceeding should be sent is as follows:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):

The Line is located in the following United States Postal Zip Code territories 14224 and 14227.

Suitability of the Line for Other Public Purposes (49 C.F.R. § 1152.22(e)(4)):

In NSR's opinion, the right-of-way may be suitable for alternative public use. NSR is unaware of any restriction on title to the property that would affect the transfer of title or the use of property for other than rail purposes. The Line does not contain federally-granted right-of-way. As appropriate, NSR is willing to make promptly available any information in its possession to anyone so requesting it.

Labor Protection

Because the Line has been out of service for over two years, no railroad employees will be adversely affected by exercise of abandonment authority. Nevertheless, the interests of NSR employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions set forth in Oregon Short Line R. Co – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Certifications

Attached hereto as Exhibit C are Certificates of Service and Publication certifying compliance with the advance notice and newspaper publication requirements set forth at 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1105.12, respectively. Attached as part of Exhibit D is a certificate of compliance with the advance notice requirements for Environmental and Historic Reports as set forth at 49 C.F.R. § 1105.11.

Environmental and Historic Report

As is reflected in the certificate of compliance with the provisions of 49 C.F.R. § 1105.11 (see Exhibit D), NSR has prepared a combined Environmental and Historic Report (“E&HR”) in anticipation of the proposed abandonment of the Line that conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. A copy of the E&HR is attached hereto as Attachment 1 to Exhibit D (§ 1105.11 certification).

Respectfully submitted,

Maquiling B. Parkerson
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Telephone: (757) 533-4939
Facsimile: (757) 533-4872


William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Norfolk Southern Railway Company

December 24, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

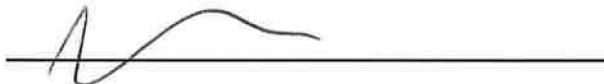
VERIFIED NOTICE OF EXEMPT ABANDONMENT

VERIFICATION

Verification

I, John Friedmann, Vice President for Norfolk Southern Railway Company ("NSR"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing abandonment notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this eighth day of October 2014



John H. Friedmann
Vice President

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT A

NSR CERTIFICATION

CERTIFICATION

STATE OF GEORGIA:

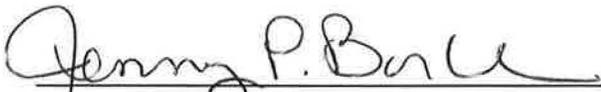
ss:

CITY OF ATLANTA:

R. A. Bartle makes oath and says that he is General Manager Northern Region for Norfolk Southern Railway Company; that the rail line between Milepost VK 3.90 and Milepost VK 5.50, over which service is to be abandoned, is subject to his supervision and direction; that no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.


R. A. Bartle

Subscribed and sworn to before me
this 22nd day of Sept, 2014.


Notary Public

My commission expires:

2/17/2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

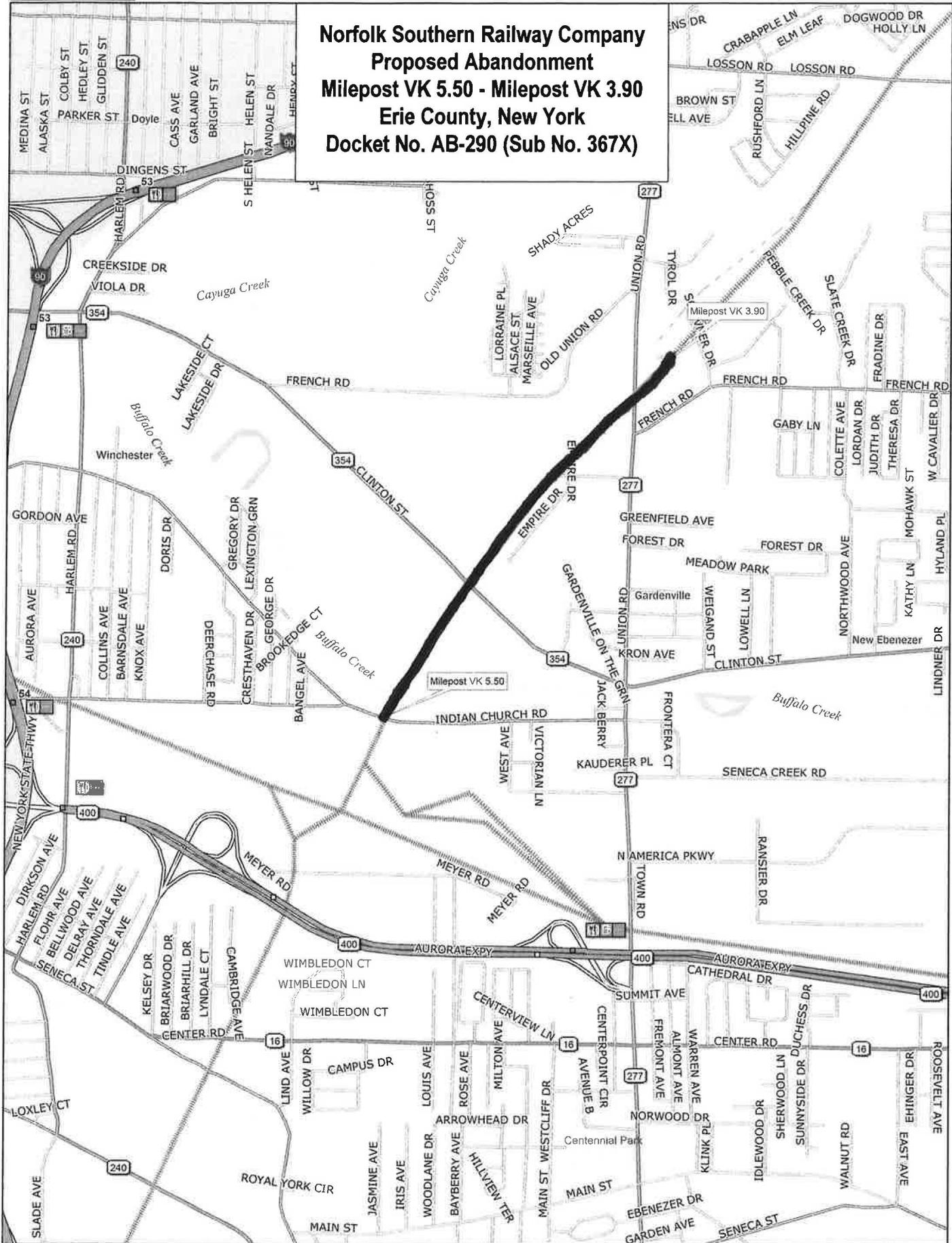
**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT B

MAP

**Norfolk Southern Railway Company
Proposed Abandonment
Milepost VK 5.50 - Milepost VK 3.90
Erie County, New York
Docket No. AB-290 (Sub No. 367X)**



Data use subject to license.

© DeLorme. DeLorme Street Atlas USA® 2011.

www.delorme.com



Scale 1 : 25,000



1" = 2,083.3 ft Data Zoom 13-0

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT C

CERTIFICATES OF SERVICE/PUBLICATION

Certificate of Service of Advance Notice

49 C.F.R. § 1152.50(d)(1) – Notice

I certify that, on December 3, 2014, in keeping with 49 C.F.R. § 1152.50(d)(1), I caused the following parties to be served with written notice of the intent of Norfolk Southern Railway Company to invoke the Board’s notice of exemption procedures to abandon approximately 1.60 miles of rail line located in Erie County, New York:

Public Service Commission, et al.

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

New York State Department of Transportation
Main Office
50 Wolf Road
Albany, NY 12232

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)

David Dorfman
SDDCTEA
Railroads for National Defense
709 Ward Dr., Bldg. 1990
Scott AFB, IL 62225
(618) 220-5741

The National Park Service, Recreation Resources Assistance Division

Charlie Stockman
National Park Service
Rivers & Trails Conservation Program
1201 Eye Street, NW, 9th Floor (Org. Code 2220)
Washington, D.C. 20005
(202) 354-6900

U.S. Department of Agriculture, Chief of the Forest Service

Thomas L. Tidwell, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024
(202) 205-8439
S/W Sandy Berg, Office Manager

December 24, 2014


William A. Mullins
Attorney for Norfolk Southern Railway Company

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I certify that a “Notice of Intent to Abandon Rail Service” was published in the form prescribed by the Board for abandonment notices of exemption (49 C.F.R. § 1105.12). The notice was published one time on December 23, 2014, in The Amherst Bee, a newspaper of general circulation in Erie County, New York.

December 24, 2014



William A. Mullins
Attorney for Norfolk Southern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT D

**CERTIFICATE OF COMPLIANCE WITH
ENVIRONMENTAL AND HISTORIC REPORT
REQUIREMENTS**

Environmental and Historic Report
Certificate of Service

Pursuant to the requirements of 49 C.F.R. § 1105.7(b) and 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-290 (Sub-No. 367X) was mailed via first class mail on September 12, 2014 to the following parties:

STATE ENVIRONMENTAL PROTECTION AGENCY

New York State Dept. of Environmental Conservation
625 Broadway
Albany, NY 12233

REGIONAL ENVIRONMENTAL PROTECTION AGENCY

USEPA – Region 2
Main Regional Office
290 Broadway
New York, NY 10007

STATE COASTAL ZONE MANAGEMENT

New York State Department of State Division
of Coastal Resources
99 Washington Avenue – Suite 1010
Albany, NY 12231

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Donald Pettit, State Conservationist
USDA NRCS
441 S. Salina Street, 5th Floor
Syracuse, NY 13202

FISH AND WILDLIFE SERVICES

U.S. Fish and Wildlife Service
Region 5
300 Westgate Center Drive
Hadley, MA 01035

US ARMY CORPS OF ENGINEERS

U.S. Army Corps of Engineers
New York District
26 Federal Plaza, Room 2113
New York, NY 10278

TOWNSHIP

Ms. Mary F. Holtz, Town Supervisor
Town of Cheektowaga
Town Hall
3301 Broadway, Room 201
Cheektowaga, NY 14227

COUNTY

Mr. Mark Poloncarz, County Executive
Erie County Executive's Office
Edward A. Rath County Office Building
95 Franklin Street, 16th Floor
Buffalo, NY 14202

STATE CLEARINGHOUSE (DOT)

Ms. Joan McDonald, Commissioner
Department of Transportation
55 Water Street, 9th Floor
New York, NY 10041

STATE HISTORIC PRESERVATION OFFICE

New York State Division of Historic Preservation
New York State Office of Parks, Recreation & Historic
Preservation
Peebles Island State Park
P.O. Box 189
Waterford, NY 12188

NATIONAL PARK SERVICE

Charlie Stockman
National Park Service
Rivers and Trails Conservation Program
1201 Eye Street, NW 9th floor
Washington D.C. 20005

NATIONAL GEODETIC SURVEY

National Geodetic Survey
Geodetic Service Division
Room 9202 NGS/12
1315 East-West Hwy
Silver Spring, MD 20910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

USEPA
Ariel Rios Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, D.C. 20460

TOWNSHIP

Ms. Sheila M. Meegan, Town Supervisor
Town of West Seneca
1250 Union Road
West Seneca, NY 14224



Marcellus C. Kirchner
September 12, 2014

ATTACHMENT 1
ENVIRONMENTAL AND HISTORIC REPORT
INCLUDING SAMPLE TRANSMITTAL LETTER



Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510-9207

Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510-9207
(757) 629-2679

September 12, 2014

RE: STB Docket No. AB-290 (Sub-No. 367X), Norfolk Southern Railway Company -
Abandonment- in Erie County, New York

Dear Sir/Madam:

Norfolk Southern Railway Company (NSR) plan to request authority from the Surface Transportation Board (STB) to abandon a segment of rail line between Milepost VK 3.90 and Milepost VK 5.50 in Erie County, New York.

Enclosed is a Combined Environmental and Historic Report (Report) which describes the proposed abandonment and other pertinent information. A map of the proposed track abandonment can be found in **Appendix A** of this report. **Appendix B** of this report lists the various agencies receiving it.

The railroad does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects please describe the actions that would assist in alleviating them. Please provide us with a written response indicating any concerns or lack thereof, which will be included in the Report and sent to the Surface Transportation Board (STB).

This Report is being provided so that you may submit information that will form the basis for the STB's independent environmental analysis of the proceeding. If you believe any of the information is incorrect, if you think pertinent information is missing, or if you have any questions about the Board's Environmental Review process, please contact the Section of Environmental Analysis (SEA) by telephone at (202) 245-0295 or by mail to:

Surface Transportation Board
395 E Street, S.W., Room 1106
Washington DC 20423-0001

Please refer to the above Docket when contacting the STB. Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Your comments will be considered by the Board in evaluating the environmental impacts of the contemplated action. In order for us to consider your input prior to filing with the STB, we must receive your comments within three weeks. Please provide information to LaWada Poarch by email at LaWada.Poarch@nscorp.com, or by mail to:

LaWada Poarch
Abandonments Coordinator
Norfolk Southern Corporation
Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510

Sincerely,

A handwritten signature in black ink, appearing to read 'MK', written in a cursive style.

Marcellus C. Kirchner
Director Strategic Planning
Norfolk Southern Railway Company

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. AB-290 (Sub-No. 367X)
NORFOLK SOUTHERN RAILWAY COMPANY
PROPOSED RAIL LINE ABANDONMENT
BETWEEN MILEPOST VK 3.90 AND MILEPOST VK 5.50
IN ERIE COUNTY, NEW YORK**

Combined Environmental and Historic Report

Norfolk Southern Railway Company (NSR) submits this Combined Environmental and Historic Report (“EHR”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with the proposed abandonment of 1.60 miles of rail line between milepost VK 3.90 and milepost VK 5.50 in Erie County, New York.

September 12, 2014

ENVIRONMENTAL REPORT

49 CFR 1105.7(e)(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.

RESPONSE: NSR proposes to abandon 1.60 miles of rail line between milepost VK 3.90 and milepost VK 5.50¹ in Erie County, New York. The segment proposed for abandonment, which was acquired from Consolidated Rail Corporation (Conrail) in 1999, has been out of service for over two years. Sections of the line segment proposed for abandonment were removed by Conrail prior to NSR's acquisition of the line. A map of the line proposed for abandonment is attached to this EHR.

Following abandonment, the line's remaining rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is and existing drainage systems will remain intact. When the rail and track material are removed, the contractor will smooth the roadbed to a level surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, NSR believes that no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be disposed of in accordance with

¹ Consultation letters previously sent to several agencies in connection with this abandonment listed the limits as VK 3.90 – 5.40.

applicable federal and state laws and regulations. There is one bridge on the line segment at milepost VK 5.40².

The alternative to abandonment is to not abandon the line and retain the track in place. This alternative is not satisfactory. The railroad would incur opportunity and other holding costs that would need to be covered by non-existent on-line shippers were the line segment to be retained.

A map depicting the line proposed for abandonment is attached as **Appendix A**. An example of the railroad's letter to federal, state and local government agencies along with a list of the consulting agencies NSR has contacted is attached as **Appendix B**. Comments received as a result of NSR's written requests for feedback can be found in **Appendix C**.

49 CFR 1105.7(e)(2) Transportation system.

Describe the effects of the proposed action on regional or 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.

RESPONSE: Effects of the proposed action on regional or local transportation systems and patterns would be negligible. There is no rail freight or passenger traffic originating or terminating on the line segment proposed for abandonment.

49 CFR 1105.7(e)(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

² Consultation letters previously sent to several agencies in connection with this abandonment erroneously stated that there were no bridges on the line segment.

RESPONSE: An outline of future land use plans has been requested from the Towns of Cheektowaga and West Seneca, which were asked to comment on the consistency of the proposed abandonment with existing land use plans.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

RESPONSE: Consultation was requested from The United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS).

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

RESPONSE: Consultation was requested from the State Coastal Zone Management Program Manager, but NSR has not received a response to date. NSR has no reason to believe that, the proposed abandonment would be inconsistent with the coastal zone management plan as the subject line is not within a coastal zone.

(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. 10906 and explain why.

RESPONSE: The railroad has fee ownership to the right-of-way underlying the line segment proposed for abandonment

49 CFR 1105.7(e)(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

RESPONSE: Development and transportation of energy resources will not be affected by the abandonment.

(ii) Describe the effect of the proposed action on recyclable commodities.

RESPONSE: Movement or recovery of recyclable commodities will not be affected by the abandonment.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

RESPONSE: The proposed action will not result in any material impact in overall energy efficiency.

*(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.*

RESPONSE: The diversion of traffic to motor carriers will not exceed the thresholds set forth at 49 CFR §1105.7(e)(4) as no diversions will occur. Accordingly, there is no need to produce data on diverted traffic or to quantify the net change in energy consumption.

49 CFR 1105.7(e)(5) Air.

*(i) If the proposed action will result in either:
(A) An increase in rail traffic of at least 100 percent (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 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.*

RESPONSE: The above thresholds will not be exceeded.

*(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:
(A) An increase in rail traffic of at least 50 percent (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 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.*

RESPONSE: The above thresholds will not be exceeded. For the record, however, Erie County, New York is an attainment area for all National Ambient Air Quality Standard (NAAQS) pollutants according to the U.S. Environmental Protection Agency.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon®) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) 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.

RESPONSE: Not applicable.

49 CFR 1105.7(e)(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will 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 (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

RESPONSE: The above thresholds will not be exceeded.

49 CFR 1105.7(e)(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

RESPONSE: Abandonment of the subject rail line segment will have no adverse impact on public health and safety.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

RESPONSE: Not applicable.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

RESPONSE: The railroad has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way or in adjacent areas.

49 CFR 1105.7(e)(8) Biological Resources.

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

RESPONSE: The railroad has requested input from the U.S. Fish and Wildlife Service (USFWS) to ascertain any impacts to surrounding habitats and species. USFWS' website lists the Northern Long-eared Bat as a proposed endangered species that may occur in the area of the proposed project and indicates there are no critical habitats within the project area. The railroad has no reason to believe, however, that any of these species is located within or adjacent to the subject rail line, or that any of these would be adversely affected by the proposed abandonment. The USFWS responded to NSR's consultation request on June 3, 2014; USFWS indicated that NSR's project will have "no effect"; thus, no further Endangered Species Act of 1973 (ESA) consultation is required. A copy of the USFWS response is attached as part of

Appendix C.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

RESPONSE: The line segment proposed for abandonment does not appear to pass through state parks or forests, national parks or forests, or wildlife sanctuaries. No adverse effects on wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated.

49 CFR 1105.7(e)(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

RESPONSE: The railroad does not intend to remove or alter the contour of the roadbed underlying the rail line to be abandoned by way of excavation or other ground-disturbance activity. Accordingly, no soils will be disturbed as a result of the proposed abandonment, and no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. There is one bridge on the line segment and one nonoperational grade crossing. There are no plans to undertake in-stream work, or dredge and/or use any fill materials in connection with the proposed abandonment, so, for this reason also, the proposed abandonment will not result in water quality impacts. Consultation has been requested from the New York Environmental Protection Agency and from the Regional Environmental Protection Agency office.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

RESPONSE: The geometry of the roadbed will not be altered and no in-stream work is contemplated. No discernible effects on either 100-year flood plains or adjacent

wetlands are expected in connection with the proposed abandonment. Consultation was requested from the U.S. Army Corps of Engineers.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RESPONSE: The railroad does not plan to remove or alter the roadbed underlying the line to be abandoned, to undertake in-stream work or to dredge or use any fill materials. There will be no excavation or other ground-disturbance activity, and, because no soils will be disturbed, no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. The railroad anticipates that the abandonment will not affect water quality and that additional permitting under Section 402 will not be required. Nevertheless, NSR has requested input from the Regional Environmental Protection Agency and the New York State Department of Environmental Conservation.

49 CFR 1105.7(e)(10) Proposed Mitigation.

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

RESPONSE: Abandonment of the involved rail line is not expected to produce adverse environmental impacts for the reasons set forth above. Only minimal physical activity may occur as a result of the proposed abandonment, such as removal of rail, ties, and other railroad appurtenances. The railroad will undertake all reasonable mitigation associated with these activities as directed by the Board to assure the abandonment does not produce adverse environmental impacts.

HISTORIC REPORT

49 CFR 1105.8(d)

PROPOSED ACTION AND ALTERNATIVES

NSR proposes the abandonment of 1.60 miles of rail line between milepost VK 3.90 and milepost VK 5.50 in Erie County, New York. The segment proposed for abandonment, which was acquired from Consolidated Rail Corporation (Conrail) in 1999, has been out of service for over two years. Sections of the line segment proposed for abandonment were removed by Conrail prior to NSR's acquisition of the line. A map of the line proposed for abandonment is attached to this EHR.

Following abandonment, the line's remaining rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is and existing drainage systems will remain intact. When the rail and track material are removed, the contractor will smooth the roadbed to a level surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, NSR believes that no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be disposed of in accordance with applicable federal and state laws and regulations. There is one bridge on the line segment located over Buffalo Creek south of Indian Church Road at approximate milepost VK 5.40, along with one nonoperational grade crossing.

The alternative to abandonment is to not abandon the line and retain the track in

place. This alternative is not satisfactory. The railroad would incur opportunity and other holding costs that would need to be covered by non-existent on-line shippers were the line segment to be retained. A map depicting the line proposed for abandonment is attached in **Appendix A**.

ADDITIONAL INFORMATION

- (1) **U.S.G.S. Topographic Map** - Maps were furnished to the New York State Division of Historic Preservation.
- (2) **Written Description of Right of Way** - The right-of-way width ranges from 50 feet to 100 feet along the main track centerline. Pursuant to Surface Transportation Board (STB) policy, the railroad's right-of-way will constitute the Area of Potential Effect (APE) for this undertaking.
- (3) **Photographs** – Photographs are attached of the sole bridge structure.
- (4) **Date of Construction of Structures** – The railroad bridge at milepost VK 5.40 was constructed in 1897.
- (5) **History of Operations and Changes Contemplated** – The railroad property that is the subject of the proposed abandonment consists of 1.60 miles of rail line between milepost VK 3.90 and milepost VK 5.50 in Erie County, New York.

In 1895, the Terminal Railway of Buffalo, a subsidiary of the New York Central and Hudson River Railroad was chartered to build a bypass around Buffalo. In 1898, the line opened and was called the Gardenville Cutoff or the Gardenville Branch. In 1914, the Terminal Railway of Buffalo, the New York Central & Hudson River Railroad, and a number of other railroads were consolidated into the New York Central Railroad. In 1968, the New York Central Railroad merged with the Pennsylvania

Railroad to form the Penn Central Transportation Company (Penn Central).

In 1976, portions of the Penn Central properties, including the subject line, were included in the formation of Consolidated Rail Corporation (Conrail). In 1999, Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern Railway Company ("NSR"), assumed control of approximately 58% of the Conrail properties, including the subject line.

(6) Summary of Documents In Carrier's Possession That Might Be Useful for Documenting a Structure That Is Found To Be Historic – While general plans may

be available for the structure on the line, it is most likely that any such plans are standard plans used for construction of similar structures.

(7) Opinion Regarding Criteria For Listing In The National Register Of Historic Places – There is one structure on the subject line or within the APE for this

undertaking. The railroad has no reason to believe that there is any likelihood of finding archaeological resources or historic properties on the line proposed for abandonment in the course of track salvage.

(8) Subsurface Ground Conditions That Might Affect Archaeological Recovery

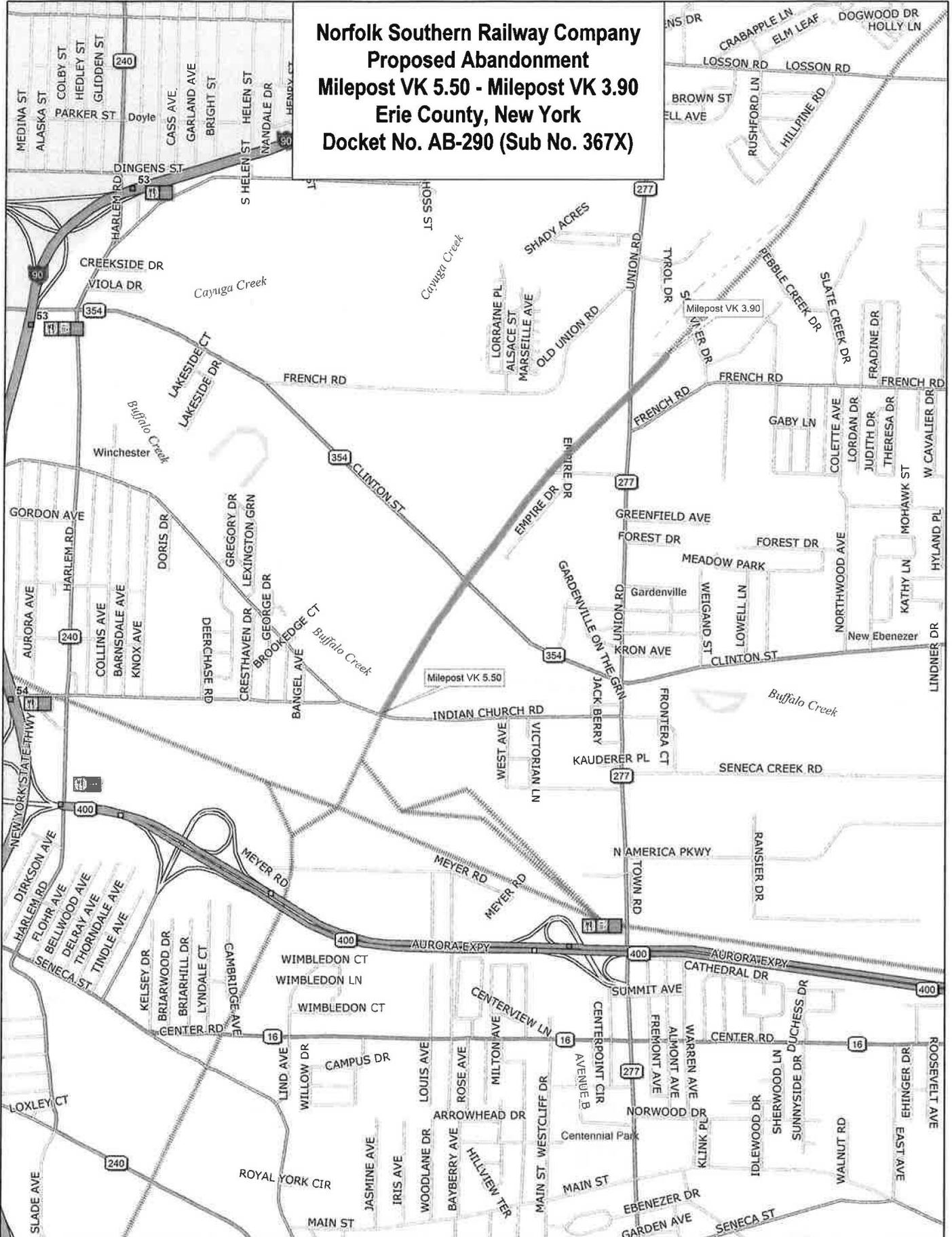
The railroad is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the line and salvage of material from its surface will not affect any potential archaeological resources. The subsurface of the right-of-way was initially disturbed in the construction of the railroad line by grading and filling. Abandonment and salvage of the line will not result in activities below the surface, or below the level of initial disturbance.

(9) Follow-Up Information - Additional information will be provided as appropriate.

APPENDIX A

Site Map

**Norfolk Southern Railway Company
Proposed Abandonment
Milepost VK 5.50 - Milepost VK 3.90
Erie County, New York
Docket No. AB-290 (Sub No. 367X)**



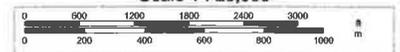
Data use subject to license.

© DeLorme. DeLorme Street Atlas USA® 2011.

www.delorme.com



Scale 1 : 25,000



1" = 2,083.3 ft

Data Zoom 13-0

APPENDIX B

Agency Letters



Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510-9207

Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510-9207
(757) 629-2679

September 12, 2014

RE: STB Docket No. AB-290 (Sub-No. 367X), Norfolk Southern Railway Company -
Abandonment- in Erie County, New York

Dear Sir/Madam:

Norfolk Southern Railway Company (NSR) plan to request authority from the Surface Transportation Board (STB) to abandon a segment of rail line between Milepost VK 3.90 and Milepost VK 5.50 in Erie County, New York.

Enclosed is a Combined Environmental and Historic Report (Report) which describes the proposed abandonment and other pertinent information. A map of the proposed track abandonment can be found in **Appendix A** of this report. **Appendix B** of this report lists the various agencies receiving it.

The railroad does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects please describe the actions that would assist in alleviating them. Please provide us with a written response indicating any concerns or lack thereof, which will be included in the Report and sent to the Surface Transportation Board (STB).

This Report is being provided so that you may submit information that will form the basis for the STB's independent environmental analysis of the proceeding. If you believe any of the information is incorrect, if you think pertinent information is missing, or if you have any questions about the Board's Environmental Review process, please contact the Section of Environmental Analysis (SEA) by telephone at (202) 245-0295 or by mail to:

Surface Transportation Board
395 E Street, S.W., Room 1106
Washington DC 20423-0001

Please refer to the above Docket when contacting the STB. Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Your comments will be considered by the Board in evaluating the environmental impacts of the contemplated action. In order for us to consider your input prior to filing with the STB, we must receive your comments within three weeks. Please provide information to LaWada Poarch by email at LaWada.Poarch@nscorp.com, or by mail to:

LaWada Poarch
Abandonments Coordinator
Norfolk Southern Corporation
Strategic Planning Department
Three Commercial Place
Norfolk, VA 23510

Sincerely,

A handwritten signature in black ink, appearing to read 'MK', written in a cursive style.

Marcellus C. Kirchner
Director Strategic Planning
Norfolk Southern Railway Company

Attachment

RECIPIENT LIST

Proposed Rail Line Abandonment on the segment of rail line between Milepost VK 5.50 and Milepost VK 3.90 in Erie County, New York.

STATE ENVIRONMENTAL PROTECTION AGENCY

New York State Dept. of Environmental Conservation
625 Broadway
Albany, NY 12233

REGIONAL ENVIRONMENTAL PROTECTION AGENCY

USEPA – Region 2
Main Regional Office
290 Broadway
New York, NY 10007

STATE COASTAL ZONE MANAGEMENT

New York State Department of State Division
of Coastal Resources
99 Washington Avenue – Suite 1010
Albany, NY 12231

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Donald Pettit, State Conservationist
USDA NRCS
441 S. Salina Street, 5th Floor
Syracuse, NY 13202

FISH AND WILDLIFE SERVICES

U.S. Fish and Wildlife Service
Region 5
300 Westgate Center Drive
Hadley, MA 01035

US ARMY CORPS OF ENGINEERS

U.S. Army Corps of Engineers
New York District
26 Federal Plaza, Room 2113
New York, NY 10278

TOWNSHIP

Ms. Mary F. Holtz, Town Supervisor
Town of Cheektowaga
Town Hall
3301 Broadway, Room 201
Cheektowaga, NY 14227

COUNTY

Mr. Mark Poloncarz, County Executive
Erie County Executive's Office
Edward A. Rath County Office Building
95 Franklin Street, 16th Floor
Buffalo, NY 14202

STATE CLEARINGHOUSE (DOT)

Ms. Joan McDonald, Commissioner
Department of Transportation
55 Water Street, 9th Floor
New York, NY 10041

STATE HISTORIC PRESERVATION OFFICE

New York State Division of Historic Preservation
New York State Office of Parks, Recreation & Historic
Preservation
Peebles Island State Park
P.O. Box 189
Waterford, NY 12188

NATIONAL PARK SERVICE

Charlie Stockman
National Park Service
Rivers and Trails Conservation Program
1201 Eye Street, NW 9th floor
Washington D.C. 20005

NATIONAL GEODETIC SURVEY

National Geodetic Survey
Geodetic Service Division
Room 9202 NGS/12
1315 East-West Hwy
Silver Spring, MD 20910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

USEPA
Ariel Rios Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, D.C. 20460

TOWNSHIP

Ms. Sheila M. Meegan, Town Supervisor
Town of West Seneca
1250 Union Road
West Seneca, NY 14224

APPENDIX C

Agency Responses

Poarch, Lawada G.

From: Poleto,Don <dpoletto@ch.ci.buffalo.ny.us>
Sent: Wednesday, July 02, 2014 8:24 AM
To: Nonnenberg, Martin E.; 'lawada.poarch@nscorp.com'
Cc: Stepniak,Steve; Finn,Michael J.
Subject: FW: Norfolk Southern Corp.
Attachments: ns-05192014152334.pdf

Good Morning Marty, LaWada,

The attached letter was addressed to Buffalo Mayor Brown this past May. The track removal noted in the letter is not within the City of Buffalo. It appears to be the Town of West Seneca and the Town of Cheektowaga.

I would ask that you reach out to these municipalities.

Thanks,
Don Poleto
City of Buffalo
Engineering Div.

From: Poleto,Don
Sent: Monday, June 30, 2014 9:05 AM
To: Stepniak,Steve
Cc: Finn,Michael J.
Subject: FW: Norfolk Southern Corp.

Steve...if I'm reading the map correctly this doesn't appear to be in the City. This looks like West Seneca / Cheektowaga.

From: Stepniak,Steve
Sent: Friday, June 27, 2014 4:43 PM
To: Poleto,Don
Subject: FW: Norfolk Southern Corp.

Who keeps records for this

From: Krieger,Gretchen
Sent: Wednesday, May 21, 2014 10:37 AM
To: Taylor,Bernadette S.; Mehaffy,Brendan; Stepniak,Steve; Ball,Timothy
Subject: Norfolk Southern Corp.

Gretchen Krieger
Office of Mayor Byron W. Brown
65 Niagara Square, Room 201 City Hall
Buffalo, NY 14202
Phone: (716) 851-4871
Fax: (716) 851-4360



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office

3817 Luker Road

Cortland, NY 13045

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo>



To: Marcellus Kirchner Date: Jun 3, 2014

USFWS File No: 140760

Regarding your: Letter Fax Email Dated: May 14, 2014

For project: Norfolk Southern abandonment

Located: between MP VK 5.40 and 3.90

In Town/County: City of Buffalo / Erie County

Pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service:

- Acknowledges receipt of your "no effect" and/or no impact determination. No further ESA coordination or consultation is required.
- Acknowledges receipt of your determination. Please provide a copy of your determination and supporting materials to any involved Federal agency for their final ESA determination.
- Is taking no action pursuant to ESA or any legislation at this time, but would like to be kept informed of project developments.

As a reminder, until the proposed project is complete, we recommend that you check our website (<http://www.fws.gov/northeast/nyfo/es/section7.htm>) every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current. Should project plans change or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

USFWS Contact(s): Sandra L. Garcia 06-03-2014

Supervisor: Patricia Cole Date: 6/3/14

ATTACHMENT 2
CONSULTING AGENCY RESPONSES TO
ENVIRONMENTAL AND HISTORIC REPORT
(POST-CIRCULATION)

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 9

270 Michigan Avenue, Buffalo, New York 14203-2915

Phone: (716) 851-7165 Fax: (716) 851-7168

Website: www.dec.ny.gov



Joe Martens
Commissioner

October 3, 2014

Ms. LaWada Poarch
Abandonments Coordinator
Norfolk Southern Corporation
Strategic Planning Department
Three Commercial Place
Norfolk, Virginia 23510

Dear Ms. Poarch:

**RESPONSE TO SEPTEMBER 12, 2014 LETTER
NORFOLK SOUTHERN RAILWAY CO.
RAILWAY ABANDONMENT
MILEPOSTS VK 3.90 – 5.50
TOWNS OF WEST SENECA/CHEEKTOWAGA**

In response to your September 12, 2014 letter regarding the above-noted, please be advised of the following:

Please note that Buffalo Creek has a water classification and standard of B, pursuant to 6 NYCRR Part 837, Item 137. Therefore, if the proposed project causes any physical alteration (i.e., land clearing, filling, drainage pipe/ditch installation, etc.) to the bed or banks (within 50 feet of the stream) a Protection of Waters Permit (Article 15, Title 5 of the Environmental Conservation Law) will be required from this department.

You are advised to contact all appropriate Federal, State and/or local agencies for any approvals that may be required including the U.S. Department of the Army Corps of Engineers, Buffalo District Office (1776 Niagara Street, Buffalo, NY 14207, telephone (716) 879-4330).

If you have any questions or comments in regard to this letter, or your responsibilities under the New York State Environmental Conservation Law, please do not hesitate to contact this office.

Respectfully,

David S. Denk
Regional Permit Administrator

BAD:ldg



Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

New York State Office of Parks, Recreation and Historic Preservation

Division for Historic Preservation
Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

October 01, 2014

Ms. LaWada Poarch
Abandonments Coordinator
Norfolk Southern Corp
Three Commercial Place
Norfolk, VA 23510

Re: STB
Rail Line Abandonment
VK 3.90 to VK 5.50, Erie County, NY
14PR03946

Dear Ms. Poarch:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon this review, the New York SHPO has determined that no historic properties will be affected by this undertaking.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Deputy Commissioner for Historic Preservation

TOWN OF WEST SENECA



ENGINEERING DEPARTMENT

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY JR.

October 3, 2014

Surface Transportation Board
395 East Street, S.W., Room 1106
Washington, DC 20423-0001

**RE: STB Docket No. AB-290 (Sub-No. 367X)
Norfolk Southern Railway Company
Abandonment in Erie County, New York**

To whom it may concern:

On behalf of Ms. Shelia M. Meegan, Supervisor for the Town of West Seneca, we are responding to a letter from Norfolk Southern Corporation dated September 12, 2014 regarding the abandonment of a rail line within the Towns of West Seneca and Cheektowaga.

Clark Patterson Lee (CPL) provides engineering services for the Town of West Seneca. In addition, CPL is under contract with Erie County Department of Public Works, Division of Highways (ECDPW) on a Federal Aid pathway project which included said rail line. The pathway project was sponsored by Erie County and administered by New York State Department of Transportation. It was given a project identification number of 5756.89 and identified as Seneca Creek Pathway.

History and Current Status of the Seneca Creek Pathway

The Seneca Creek Pathway project began in the early 2000's and included both on and off road segments. The off road segment followed the railroad line as described in the Combined Environmental and Historic Report provided by Norfolk Southern Corporation, including the bridge over Buffalo Creek. The Initial Project Proposal (IPP) for the Seneca Creek Pathway project is included in Attachment A. The map at the end of the IPP shows the proposed pathway alignment.

During the course of the design, right-of-way investigations took place. Tax map and survey information indicated that the railroad did not own the lands on which it was located, and that the lands were formerly owned by New York Central Railroad. Erie County GIS information corroborates these findings. This information is provided in Attachment B. A cursory review of information available from Erie County Real Property Division regarding properties abutting the railroad indicated the railroad was allowed to use the lands through Easement and not Fee. Furthermore, once the railroad abandoned their line, it was our understanding that the easement dissolved and the property reverted back to the adjacent land owner. It was not until we received the Combined Environmental and Historic Report that we had any evidence to the contrary.

Because of the apparent lack of right-of-way, and the anticipated costs that would be necessary to acquire the property, the off road segment of the Seneca Creek Pathway was removed from the project. This was officially done through a Transportation Improvement Program (TIP) Amendment by the Greater Buffalo-Niagara Regional Transportation Council, the local Metropolitan Planning Organization. This was the beginning of the downfall of the Seneca Creek Pathway project. Removing the off road segment, removed the link that would connect two pathways and the link between two towns. The 2011-2015 TIP identified PIN 5756.89 as “active.” The 2014-2018 TIP does not even include 5756.89 indicating Federal funds are no longer available for the Seneca Creek Pathway project. This, in combination with other factors, forced ECDPW to pursue the “No Build” Alternative. Refer to Attachment C for additional information.

Comments on Combined Environmental and Historic Report

We have reviewed the Combined Environmental and Historic Report and offer the following comments and observations.

Environmental Report

1. Section 49 CFR 1105.7(e)(3) Land Use – Subsection (i)

The Seneca Creek Pathway is cited in the Town of West Seneca Comprehensive Plan (the Plan) which was adopted October 2006. The Plan notes that “there are presently no trails linking parks or linking parks to major residential sections.” A major goal outlined in the Plan is to “establish a transportation system that is more supportive of non-automotive traveling, including pedestrians, bicyclists, and transit.” One of the means listed to meet that goal is to “provide bikeways between major destinations and connecting major residential areas.” Within the conclusion section of the Plan, a “first year action” is to “complete the Seneca Creek Pathway Trail.”

The proposed abandonment cited in the Environmental Report would be a step towards meeting the goals within the Town of West Seneca Comprehensive Plan.

2. Section 49 CFR 1105.7(e)(3) Land Use – Subsection (iv)

The Environmental Report states that the “railroad has fee ownership to the right-of-way underlying the line segmented proposed for abandonment.” As noted herein, it was our understanding that this was not the case.

Please provide us with support documentation of such ownership, as well as the Liber and Page for the right-of-way parcel(s) as recorded with the Erie County Clerk as neither we, nor ECDPW, could find any record of such ownership.

Assuming that Norfolk Southern does indeed own the property, we respectfully request that once Norfolk Southern has salvaged the rail and track material, and smoothed the road bed, the Town of West Seneca be granted the right to use this land at their discretion, either through permanent easement or fee acquisition. We suggest that the Town of Cheektowaga be consulted to determine if they would request the same for the portion within their boundaries.

3. Section 49 CFR 1105.7(e)(7) Safety – Subsection (iii)

During the course of the design of the Seneca Creek Pathway, numerous studies were prepared. An Asbestos and Lead Survey of the railroad bridge over Buffalo Creek was prepared in September 2005. It is included in its entirety in Attachment D. It should be noted that the probable cost to remediate the bridge in 2005 was estimated at \$192,000. A Hazardous Waste/Contaminated Materials Assessment Report was prepared in October 2005. It is included without its appendices in Attachment E.

4. Section 49 CFR 1105.7(e)(9) Water – All Subsections

The Environmental Report acknowledges that “there is one bridge on the line segment” but does not go into any more detail about what the plans are for said bridge. As noted above, there are asbestos and lead containing materials on this bridge. In addition, this bridge lies within Buffalo Creek which has a history of flooding during spring thaws as a result of ice dams. The railroad bridge has a center pier and a low vertical clearance which are likely contributing factor to these ice dams. Within this section, the Environmental Report states that “no in-stream work is contemplated.” We strongly suggest that this be reconsidered. Leaving a bridge in place that contains lead and asbestos and also contributes to flooding issues creates an unfair burden to the Town of West Seneca; simply abandoning the bridge is unacceptable. This bridge should be removed which will require in-stream work. In addition, the Town of West Seneca has requested a Section 205 Study from the US Army Corps of Engineers to study the hydraulics and hydrology in this vicinity. The Town consistently needs to permit and perform shoal removal in this area through New York State Department of Environmental Conservation. The removal of the bridge would have benefits on both fronts.

Historic Report

1. Within the body of the Historic Report, it states that the bridge over Buffalo Creek is “south” of Indian Church Road. The bridge is on the north side of Indian Church Road.
2. Under Additional Information, Section (2), the Historic Report states that the right-of-way width ranges from 50 feet to 100 feet along the main track centerline. Again, please

provide us with documentation showing that the railroad owns this property, and upon completion of abandonment activities provide this right-of-way to the Town of West Seneca, and the Town of Cheektowaga if they so desire.

3. Under Additional Information, Sections (7) and (8)

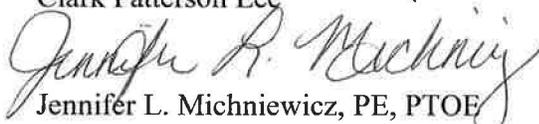
As noted, during the course of the design of the Seneca Creek Pathway, numerous studies were prepared. A Phase IA Cultural Resource Investigation was prepared in 2005 and a draft provided to CPL in January 2005. The management summary and table of contents for this report are included in Attachment F; the remainder of the report is available upon request. In August of 2005 it was determined that the section of the Seneca Creek Pathway along the railroad bed was sufficiently disturbed and no work was recommended beyond the Phase IA screening. Documentation of this determination is also included in Attachment F.

The stated purpose of the Combined Environmental and Historic Report is to afford Stakeholders an opportunity to “submit information that will form the basis for the STB’s independent environmental analysis of the proceeding.” As noted, CPL represents the Town of West Seneca who is a Stakeholder in this matter. We would like to reiterate that the Town requests:

- Complete removal of the railroad bridge over Buffalo Creek including any site or environmental remediation and restoration; and
- Complete transfer of the railroad right-of-way to the Town of West Seneca within its limits once the rail bed has been removed and the site restored as described in the Combined Environmental and Historic Report, as well as an offer to the Town of Cheektowaga for the same.

Very truly yours,

Clark Patterson Lee


Jennifer L. Michniewicz, PE, PTOE
Principal Associate

cc: LaWada Poarch – Abandonments Coordinator, Norfolk Southern Corporation
Sheila Meegan – Supervisor, Town of West Seneca
Mary Holtz – Supervisor, Town of Cheektowaga
William Geary – ECDPW
Brian Rose – ECDPW
Richard Henry III – CPL
File

Attachment A
Initial Project Proposal



RECEIVED

2003 AUG 26 A 10:49

ECDPW.

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
125 MAIN STREET
BUFFALO, N.Y. 14203-3088

ALAN E. TAYLOR, P.E.
ACTING REGIONAL DIRECTOR

JOSEPH H. BOARDMAN
COMMISSIONER

July 2, 2003

Mr. Charles Sickler
Erie County Highway Div.
95 Franklin St., Room 1430
Erie Co. Rath Office Bldg.
Buffalo, New York 14202

Re: **PIN 5756.89 - SENECA CREEK PATHWAY
TOWNS OF WEST SENECA AND CHEEKTOWAGA
ERIE COUNTY**

Dear Mr. Sickler:

The referenced project has been included on the GBNRTC's TIP for implementation using federal transportation funds. I have attached an Initial Project Proposal (IPP) form which includes a brief description of the problem, suggests project objectives, proposes a preliminary solution, and provides estimated costs and anticipated schedule.

As the project progresses, there may be conditions that warrant revisions to this preliminary information. We request that you review the preliminary information in the IPP and document your concurrence by signing the IPP, and returning a copy to our office.

Our Project Liaison, Cris Renn, will be contacting you in the near future to schedule a site visit to review this project.

Very truly yours,

ORIGINAL SIGNED BY:
J. D. BUFFAMONTE

JOSEPH D. BUFFAMONTE.
Program & Project Management Supervisor

JDB/lk
Encl.

cc: Chris Renn, Project Manager, HPPG



GREATER BUFFALO-NIAGARA

REGIONAL TRANSPORTATION COUNCIL

City of Buffalo
 City of Niagara Falls
 County of Erie
 County of Niagara
 New York State Thruway Authority
 Niagara Frontier Transportation Authority
 New York State Department of Transportation

INITIAL PROJECT PROPOSAL

PIN: 5756.89

DATE SUBMITTED: _____

PROJECT TITLE: SENECA CREEK PATHWAY
SENECA CREEK ROAD AND GARDENVILLE RAILROAD CORRIDOR
TOWNS OF WEST SENECA & CHEEKTOWAGA, ERIE COUNTY

FUNCTIONAL CLASS.: N/A FED. AID SYSTEM: Interstate NHS Non-NHS

PROBLEM DESCRIPTION: Lack of continuous access for pedestrians and bicyclists.

PROPOSED OBJECTIVES: Improve trail access, safety, and increase ridership.

PRELIMINARY SOLUTION: Construct a 6 mile bicycle/pedestrian route in West Seneca and Cheektowaga. The project will include two 5 foot bike lanes on Seneca Creek Road from Transit Road to Race Street. The route will follow Race Street from Seneca Creek Road to Union Road. The path will then cross Union Road at the Race Street traffic signal and proceed along Indian Church Road to Indian Church Park. The pathway will then become a single 10 foot wide multi use trail at Indian Church Park and proceed north easterly along an abandoned rail line. The trail will cross Clinton Street at-grade with a protected crosswalk and cross beneath the Union Road Bridge and terminate near Innsbrook Drive. The trail will connect with the Hitchcock Trail (Cheektowaga Rails to Trails, Phase 1, PIN 575508) at this terminus.

RELATIONSHIP TO LONG RANGE PLAN:

GOAL	_____	_____	_____	_____
PERF.	_____	_____	_____	_____
MEAS.	_____	_____	_____	_____
%	_____	_____	_____	_____

ENVIRONMENTAL CLASSIFICATION:

- NEPA Class I or SEQR Non-Type II (EIS)
- NEPA Class II or SEQR Type II (CE)
- NEPA Class III or SEQR Non-Type II
- SEQR Non-Type II (DR)
- SEQR Exempt (Unlisted)

LANE KM (MILES): N/A CENTERLINE KM (MILES): 9.6 (6.0) AADT: N/A TRUCK %: N/A

NUMBER OF BRIDGES: N/A BIN(S): N/A

<u>PROJECT PURPOSE</u> <u>Safety</u>	<u>WORK TYPE DESCRIPTION</u> <u>New/Improved Shared Use Path</u>	<u>SUB-WORK TYPE DESCRIPTION</u> <u>Safety</u>
_____	_____	_____
_____	_____	_____

CONGRESSIONAL DISTRICT: 27 SENATORIAL DISTRICT: 58 ASSEMBLY DISTRICT: 143/145

REFERENCE MARKER LIMITS: FROM N/A TO N/A

MILEPOINT: FROM N/A TO N/A

TIP STATUS: Required Not Required STIP STATUS: Required Not Required

AIR QUALITY CONFORMITY EXEMPT NON-EXEMPT N/A

CONSULTANT NEEDS: Scoping Survey Phase 1-4 Phase 5-6 Constr. Insp. None Req'd

PROJECT MANAGEMENT GROUP: A BS BA BC C SCHEDULE MODEL # _____

PROJECT PHASES	ACTIVITY DURATION (Months)	ESTIMATED COST	FUND SOURCE	OBLIGATION/ LET DATE
Scoping				
Design (1 - 6)	34	\$200K	CMAQ	12/2003
R.O.W. (Incidentals)	34	\$10K	CMAQ	12/2003
R.O.W. (Acquisitions)	10	\$10K	CMAQ	12/2005
Construction	12	\$980K	CMAQ	10/2006 (let date 12/2006)
Construction Inspection	12	\$150	CMAQ	10/2006
RRFA				
Utility				
TOTAL PROJECT COST		\$1350K		

BASIS OF COST ESTIMATE: Generic Costs 2003

FUND MATCH: STATE LOCAL Erie County - 20%

SPECIAL PROJECT CIRCUMSTANCES AND/OR PROGRAMMING REQUIREMENTS: Erie County Public Works will be responsible to administer this Federal Aid project. Permits will be required from the NYSDOT for any work proposed in the State highway right-of-way along Route 254, Clinton Road, and Route 277, Union Road.

ATTACHMENTS: Specific Location Map

IPP PREPARER: J. Buffamonte

DATE: 6/2003

PROJECT MANAGER: C. Renn

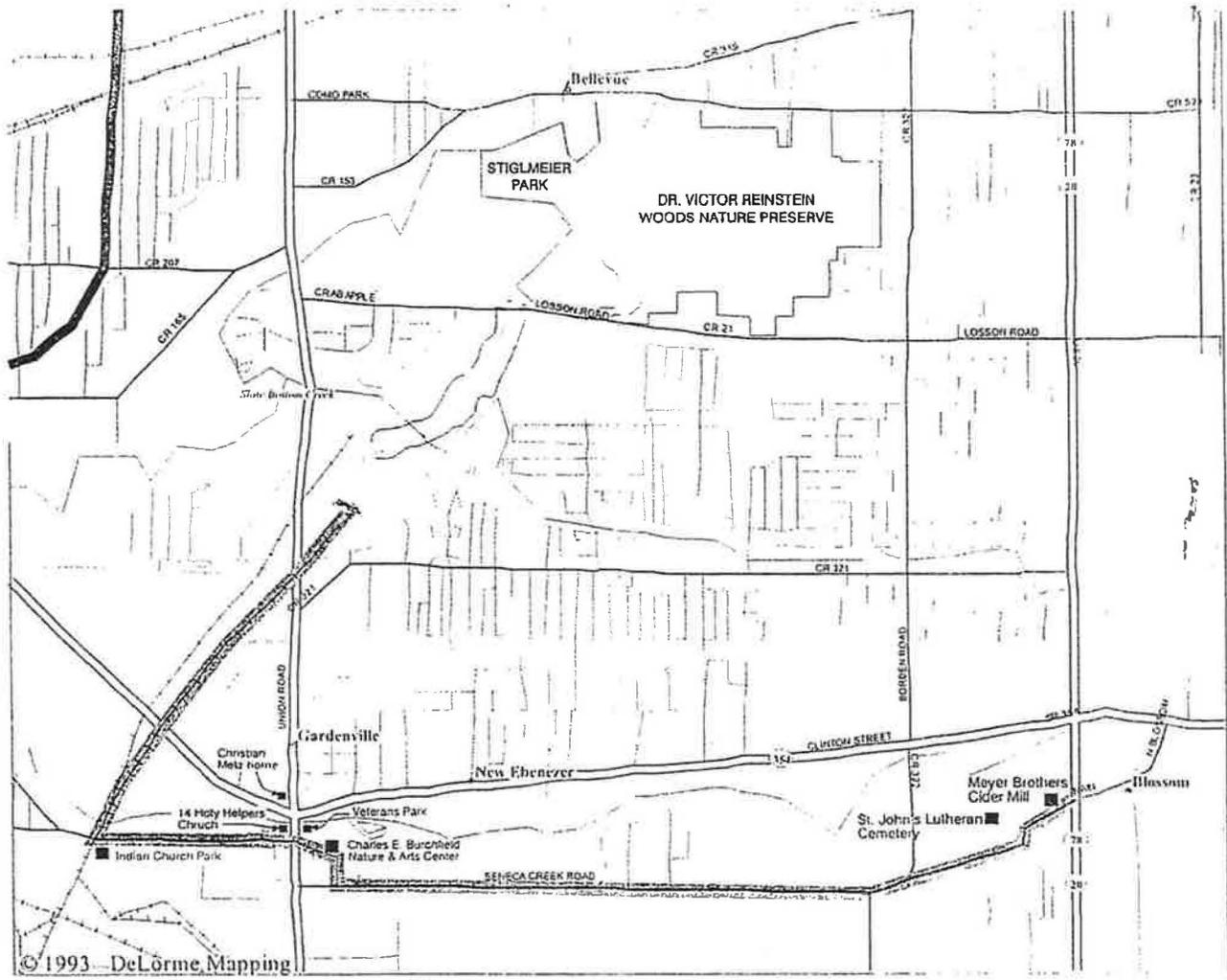
DATE: 6/2003

RPPM RECOMMENDATION: *Paul V. Gattuso*

DATE: *6/20/03*

LOCAL SPONSOR CONCURRENCE: *Charles P. Suckler*

DATE: *9/2/03*



- Proposed Seneca Creek Pathway
- Cheektowaga's Hitchcock Trail

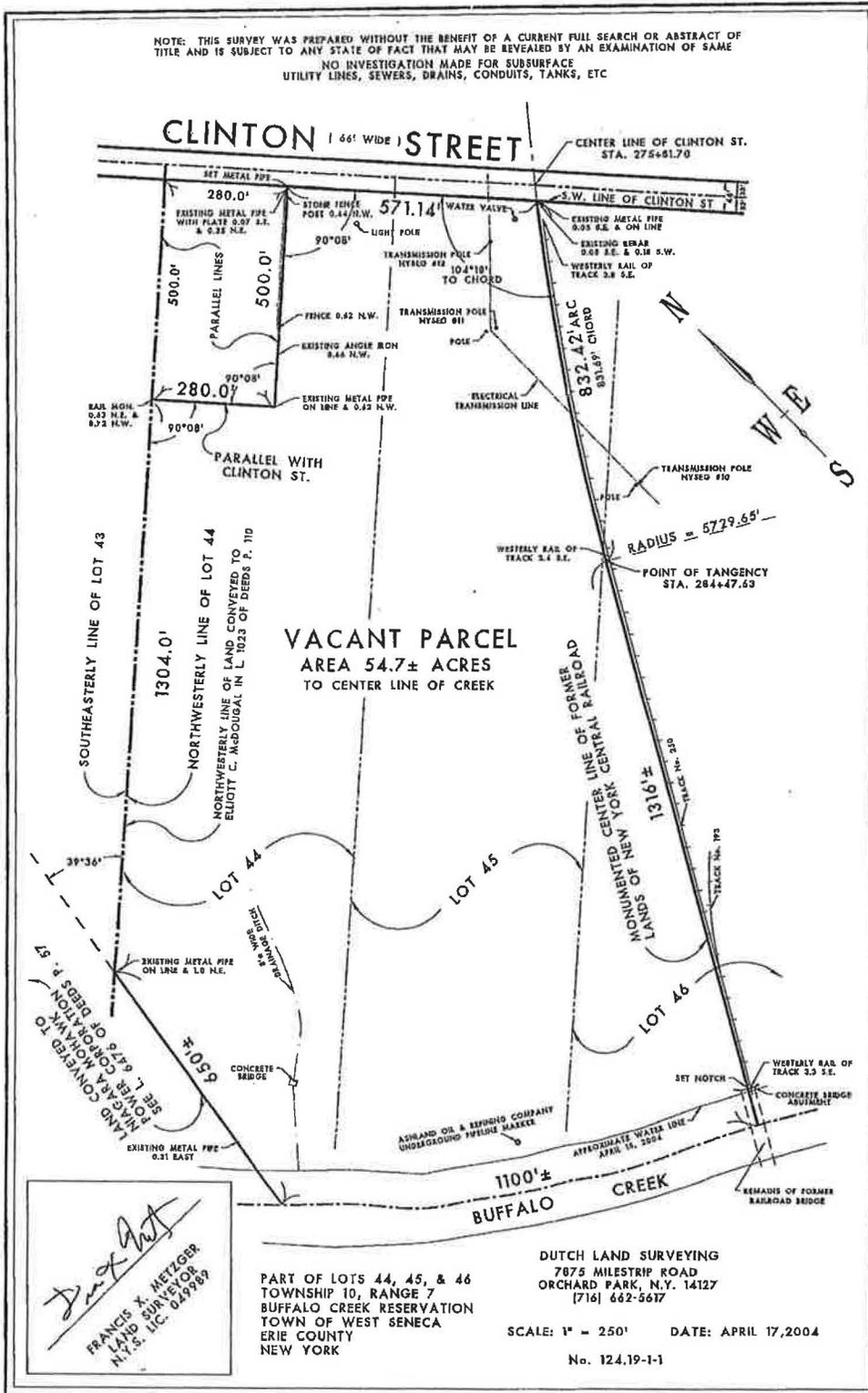
PROPOSED SENECA CREEK PATHWAY WEST SENECA, NEW YORK

S4

Attachment B

**Tax Map and Survey Information for
Railroad Property**

NOTE: THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT FULL SEARCH OR ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACT THAT MAY BE REVEALED BY AN EXAMINATION OF SAME
NO INVESTIGATION MADE FOR SUBSURFACE UTILITY LINES, SEWERS, DRAINS, CONDUITS, TANKS, ETC



Francis X. Metzger
 FRANCIS X. METZGER
 LAND SURVEYOR
 N.Y.S. LIC. 049989

PART OF LOTS 44, 45, & 46
 TOWNSHIP 10, RANGE 7
 BUFFALO CREEK RESERVATION
 TOWN OF WEST SENECA
 ERIE COUNTY
 NEW YORK

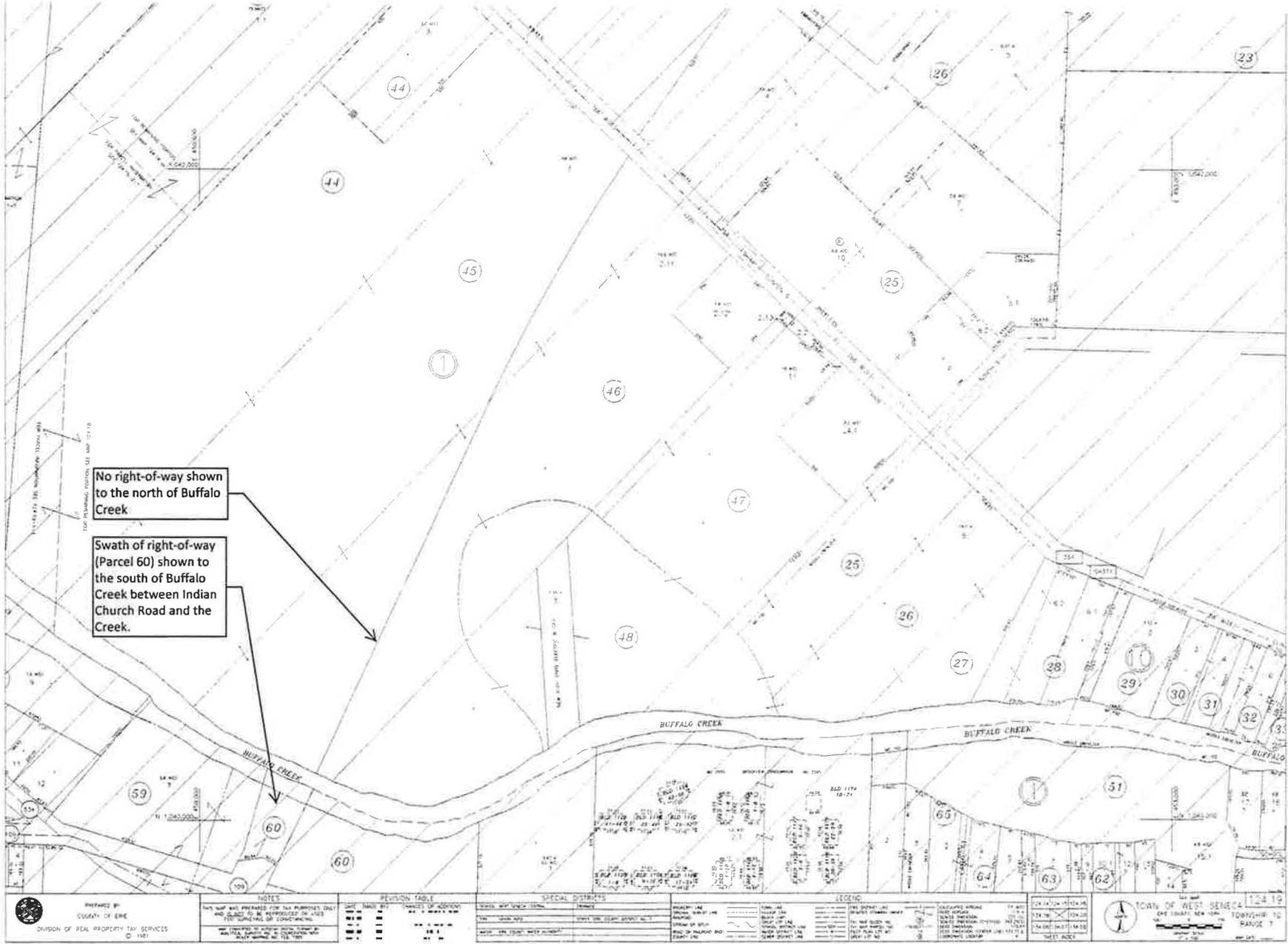
DUTCH LAND SURVEYING
 7875 MILESTRIP ROAD
 ORCHARD PARK, N.Y. 14127
 (716) 662-5617

SCALE: 1" = 250' DATE: APRIL 17, 2004
 No. 124.19-1-1

This map void unless EMBOSSED with
 New York State Licensed Land
 Surveyor's Seal No. 049989

COPYRIGHT 2004 DUTCH LAND SURVEYING

Altering any item on this map is in violation of
 the law, excepting as provided in Section 7209,
 Part 2 of the New York State Education Law.



No right-of-way shown to the north of Buffalo Creek

Swath of right-of-way (Parcel 60) shown to the south of Buffalo Creek between Indian Church Road and the Creek.

PREPARED BY:
COUNTY OF ERIE
DIVISION OF REAL PROPERTY TAX SERVICES
© 1981

NOTES:
THIS MAP WAS PREPARED FOR THE PURPOSES ONLY AND IS NOT TO BE REPRODUCED OR COPIED FOR ANY PURPOSES OTHER THAN THAT FOR WHICH IT WAS PREPARED.
THE COUNTY OF ERIE, NEW YORK, IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THAT MAY OCCUR IN THIS MAP.

REVISION TABLE		CHANGES TO CORRECTION	
DATE	REVISION	REVISION	REVISION

SPECIAL DISTRICTS	

LEGEND	

SPECIAL DISTRICTS	

TOWN OF WEST SENECA 124 19
ONE THOUSAND NEW YORK TOWNSHIP 10
RANGE 7



No right-of-way shown to the north of Buffalo Creek

Swath of right-of-way (Parcel 60) shown to the south of Buffalo Creek between Indian Church Road and the Creek.

- Legend**
- Railroads
 - ▭ Parcels
 - ▭ Municipal Boundaries

58



WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



1: 18,056

Attachment C

No Build Alternative Documentation



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS
95 FRANKLIN ST. – ROOM 1400

JOHN C. LOFFREDO, P.E.
COMMISSIONER

TELEPHONE: (716) 858-8300
FAX: (716) 858-8303

September 5, 2014

Christopher J. Renn, P.E.
Regional Local Project Liaison
NYSDOT - Region 5
100 Seneca Street
Buffalo, NY 14203

Re: Seneca Creek Road Pathway
PIN 5756.89
Request for "No Build" Alternative
Town of West Seneca
County of Erie

Dear Mr. Renn:

Erie County respectfully requests approval of a "No Build" alternative for the above noted project. It has become obvious that due to the constraints and conditions noted below that further pursuit of the project is impractical.

The Seneca Creek Pathway, as identified in the 2003 Initial Project Proposal, includes on and off road segments within the Towns of Cheektowaga and West Seneca. The IPP identified the western terminus as a point along an abandoned railroad bed in the Town of Cheektowaga near Innsbrook Drive connecting to the Hitchcock trail (P.I.N. 5755.08), and the eastern terminus as Transit Road in the Town of West Seneca connecting to on-road bike lanes. These terminal points provided connectivity to a larger, regional network of pedestrian and bicycle facilities.

The 2-mile off-road section along the abandoned railroad bed on the western end of the pathway was planned as a rails-to-trails type project beginning at a fishing access on Indian Church Road and ending at the Hitchcock Trail. It was assumed that this property remained in the hands of the railroad and due to the preferential rights law the property would be available for this project. During the design process it was discovered that at least some of the railroad was within easements on the adjacent properties and that the railroad did not have full title to the property. An easement does not hold the same guarantees as real property and upon abandonment the easement reverts to the property owner. As a result of the lack of availability of the originally assumed ROW for the off-road portion of the pathway TIP Amendment #29 (9/5/2012) modified the western terminus to be in close proximity to the fishing access on Indian Church Road. This removed the section of the pathway that would provide a connection to the Hitchcock Trail and meant that the trail would only lie within the Town of West Seneca.

Another consideration on the western leg of the pathway along the old railroad ROW is that just north of the fishing access on Indian Church Road the ROW crosses Buffalo Creek via a two span RR bridge. The center pier of this bridge is in the middle of the Creek which causes ice jams in the winter and contributes to local flooding problems. The Town of West Seneca is interested in having the bridge and center pier removed.

The eastern on-road leg of the pathway, travelling down Seneca Creek Road from Transit Road included closely spaced "S" curves along Seneca Creek Road near its intersection with Transit Road. During the design process, a high accident rate was discovered near these curves. There is limited sight distance and non-standard curves as well as two intersecting streets. The scope of the project was to widen the existing shoulders to provide a designated bike/pedestrian pathway. Reconstructing the entire roadway in a manner that would address the geometric and safety issues at this location was deemed out of scope.

During the process to revise the western terminus, the Town of West Seneca suggested revising the eastern terminus as well, in part due to the safety issues relative to the "S" curves. They suggested shifting the eastern terminus to a proposed Town fishing access on Borden Road near Clinton Street. This revision was also included in TIP Amendment #29. The fishing access on Borden Road is on private property but was thought by the Town to be available. However, when approached, the property owner was not agreeable to a PE or FEE taking for the pathway. Neither the County nor the Town felt it was appropriate to use eminent domain to obtain the property.

As an alternative to the fishing access extending the Pathway north on Borden Road to Clinton Street was investigated. This was determined to be impractical because the Borden Road Bridge over Buffalo creek (B.I.N. 3327020) was recently reconstructed (NYSDOT Contract D 258780) and did not include pedestrian or bicycle accommodations. Retrofitting the bridge to accommodate the pathway was deemed out of scope. In addition Clinton Street does not have pedestrian or bicycle accommodations to link to.

With the change in the western terminus the pathway lies wholly within the Town of West Seneca and does not provide any connectivity to the regional trail system. The lack of a safe, suitable eastern terminus deprives the trail of any destination point at that end.

For all of the foregoing we respectfully request approval of a "No Build" option for this project. As requested a copy of the Project Scoping Report/Final Design Report as it currently stands accompanies this letter. As we discussed work on the report was halted when it became obvious that further pursuit of this project was impractical thus it is a work in progress and does not reflect recommendation of the "No Build" alternative. Please let me know if you have any questions or require additional information.

Sincerely,

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS



Brian A. Rose, P.E.
Project Manager

cc: William Geary
Charles A. Sickler, P.E.
Wayne S. Scibor, P.E.
Annette Junczewicz
Jennifer Michniewicz, P.E., PTOE

Attachment D
Asbestos and Lead Survey



CLARK PATTERSON ASSOCIATES

ASBESTOS and LEAD SURVEY

SENECA CREEK PATHWAY

BRIDGE OVER SENECA CREEK

TOWNS OF WEST SENECA AND CHEEKTOWAGA

ERIE COUNTY, NEW YORK

PIN 5756.89

SEPTEMBER 28, 2005

TABLE OF CONTENTS

- ***SURVEY***
- ***PHOTOGRAPHS***
- ***LABORATORY SAMPLE RESULTS***
- ***ASBESTOS CONTRACTOR LICENSE***
- ***ASBESTOS INSPECTOR CERTIFICATE***
- ***CHAIN OF CUSTODY TRANSMITTAL***
- ***ESTIMATE OF PROBABLE COST***

**SENECA CREEK PATHWAY
BRIDGE OVER SENECA CREEK
TOWNS OF WEST SENECA AND CHEEKTOWAGA
ERIE COUNTY, NEW YORK
PIN 5756.89**

INTRODUCTION

SURVEY REPORT

Clark Patterson Associates conducted an Asbestos and Lead Survey at Seneca Creek Pathway Bridge (PIN 5756.89) located over Seneca Creek in the Towns of West Seneca and Cheektowaga, Erie County, New York.

The Age of the original bridge structure was unknown but was estimated at more than 60 years. The actual origin of the materials used in the original construction could not be determined.

The asbestos survey was performed in accordance with the provisions of NYSCRR 56.1.9 regulations. New York State Certified Inspector James Parlavecchio #AH 89-08287, conducted the inspection in accordance with New York State Guidelines.

The purpose of the survey was to evaluate the bridge and surrounding components for asbestos containing materials and lead based paint materials. All suspect materials at the bridge and surrounding area were evaluated. These materials, if suspect, were bulk sampled.

The inspector selected material for inclusion in this report through expertise and a thorough understanding of the historical uses of asbestos and lead. Bulk samples were collected and recorded on a chain of custody form and delivered to an independent accredited laboratory for analytical testing for the presence asbestos and lead.

Bulk samples were generated for the following materials: (see attached inventory)

- Soft asphaltic material scraped from the base of the bridge support
- Soft asphaltic residue found on the railroad ties
- Hard asphaltic fill material found on top of bridge support steel
- Paint samples from the bridge structure

No other Suspect Materials were found.

The sample results included in this report indicate there is asbestos in the hard asphaltic fill material placed on top of the bridge support structure and used on the head wall and under side of the bridge deck. All other asphaltic materials did not contain asbestos.

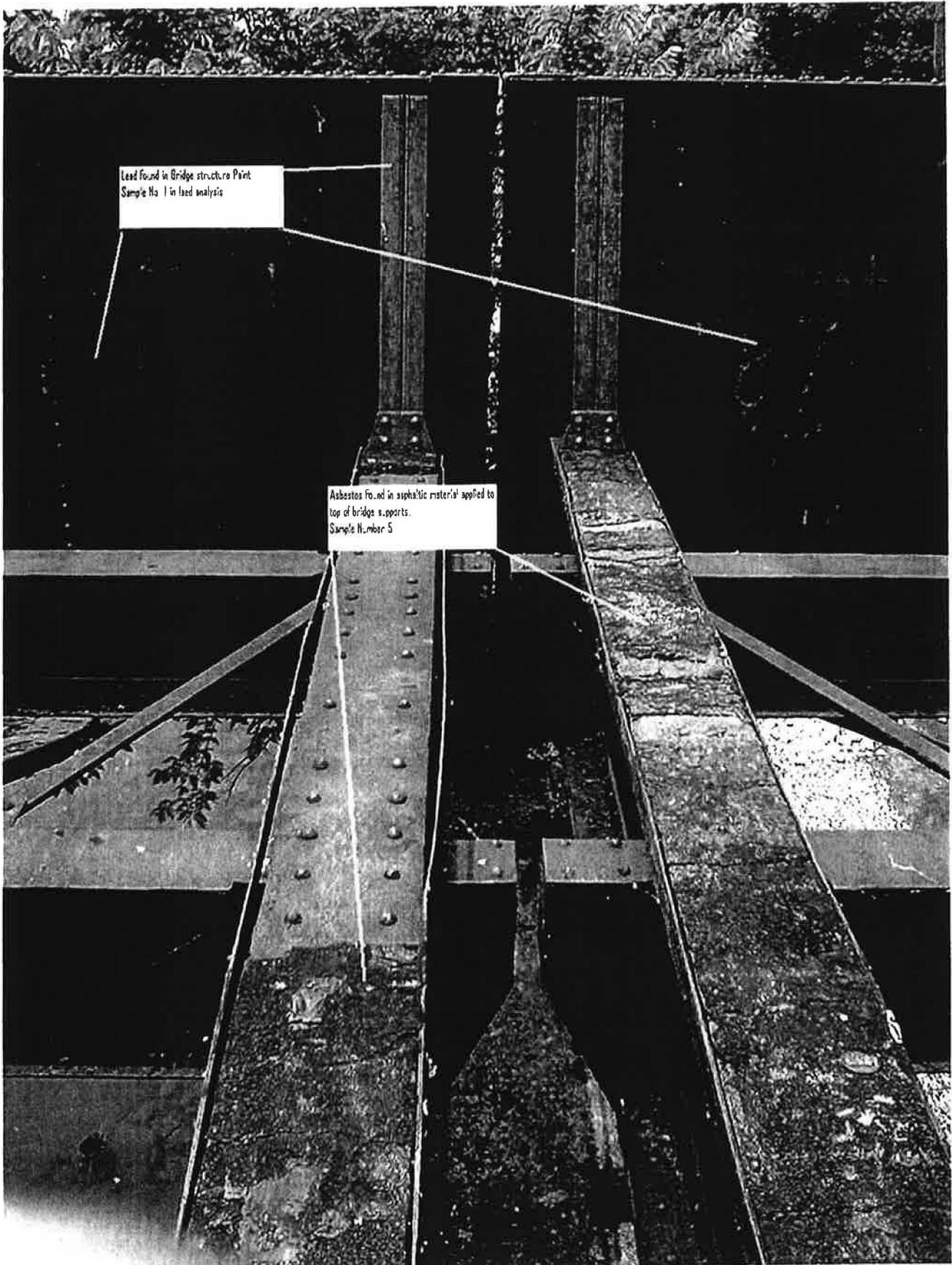
Lead based paint was applied to the bridge and structural components.



Lead Paint Found on Bridge Structures.
Sample No. 1 In Lead Analysis

Asbestos Found in Asphaltic Material
on Top of Bridge Supports.
Sample No. 6

Misc. Asphalt Coating on Railroad Ties
Results Negative
Sample No. SACARR 8



the initial sample weight, are reported as non-detected according to New York State ELAP Method 198.1 in section 4.2.3.

NAD (NO ASBESTOS DETECTED)

ANALYTICAL REFERENCE: Sample evaluations have been accomplished in accordance with the following methods --EPA publication 600/R-93-116 "Method for the Determination of Asbestos in Bulk Building Sample" July 1993.

Environmental Laboratory Approval Program Certification Manual Item No. 198.1 "Polarized-Light Microscope Methods for identifying and quantitating asbestos in bulk samples". June 1995.

CERTIFICATE OF ANALYSIS

Client: T. E. S. Environmental Corp. 1221 E. Henrietta Road Rochester NY 14623	Report Date: 9/16/2005 Project: Seneca Creek Pathway Project No.:
---	--

TEM BULK SAMPLE ANALYSIS SUMMARY

IATL No.: 2361764	Description / Location: Black Asphalt Coating	Residue:
Client No.: 6		

Gravimetrically Reduced Subsample:	65.0%	
Percent Asbestos Detected:	Trace	Actinolite Tremolite Detected At <1%
Percent Non-Asbestos Fibrous Material:	ND	None Detected
Percent Non-Fibrous Material:	100%	Particulate: SiAlKFe

Comments: The above result represents only the analysis of NOB-residue submitted from the client. Results are verifiable only for those operations performed at IATL. (ELAP 198.4, Section 6.50)

NIST-NVLAP No. 101165-0	AIHA Lab No. 100188	NYS-DOH No. 11021
--------------------------------	----------------------------	--------------------------

Methodology: Transmission Electron Microscopy (TEM) In Accordance With ELAP "TEM Method For Identifying And Quantitating Asbestos In Non-Friable Organically Bound Bulk Samples", Revision 198.4, 8/3/92

IATL assumes that all sampling methods and data upon which these results are based have been accurately supplied by the client. This confidential report relates only to those item(s) tested and does not represent an endorsement by NIST-NVLAP, AIHA or any agency of the U.S. government. Results are verifiable for only those operations and analyses performed in the laboratory.

Analysis Performed By: C. Winkler	Approved By: _____
--	---------------------------

Date: 9/16/2005

CERTIFICATE OF ANALYSIS

Client:	T. E. S. Environmental Corp. 1221 E. Henrietta Road Rochester NY 14623	Report Date:	9/16/2005
		Project:	Seneca Creek Pathway
		Project No.:	

TEM BULK SAMPLE ANALYSIS SUMMARY

IATL No.: 2361765	Description / Location: Black Asphalt Coating	Residue
Client No.: 7		

Gravimetrically Reduced Subsample:	29.4%	
Percent Asbestos Detected:	ND	None Detected
Percent Non-Asbestos Fibrous Material:	ND	None Detected
Percent Non-Fibrous Material:	100%	Particulate: SiAlKTiFe

Comments: The above result represents only the analysis of NOB-residue submitted from the client.
Results are verifiable only for those operations performed at IATL. (ELAP 198.4, Section 6.50)

NIST-NVLAP No. 101165-0	AIHA Lab No. 100188	NYS-DOH No. 11021
-------------------------	---------------------	-------------------

Methodology: Transmission Electron Microscopy (TEM) In Accordance With ELAP "TEM Method For Identifying And Quantitating Asbestos In Non-Friable Organically Bound Bulk Samples", Revision 198.4, 8/3/92

*IATL assumes that all sampling methods and data upon which these results are based have been accurately supplied by the client.
This confidential report relates only to those item(s) tested and does not represent an endorsement by NIST-NVLAP, AIHA or any agency of the U.S. government.
Results are verifiable for only those operations and analyses performed in the laboratory.*

Analysis Performed By: C. Winkler

Date: 9/16/2005

CERTIFICATE OF ANALYSIS

Client: T. E. S. Environmental Corp. 1221 E. Henrietta Road Rochester NY 14623	Report Date: 9/16/2005 Project: Seneca Creek Pathway Project No.:
---	--

TEM BULK SAMPLE ANALYSIS SUMMARY

IATL No.: 2361766	Description / Location: Bridge Paint	Residue
Client No.: 8		

Gravimetrically Reduced Subsample:	47.6%	
Percent Asbestos Detected:	ND	None Detected
Percent Non-Asbestos Fibrous Material:	ND	None Detected
Percent Non-Fibrous Material:	100%	Particulate: SiFe

Comments: The above result represents only the analysis of NOB-residue submitted from the client.
 Results are verifiable only for those operations performed at IATL. (ELAP 198.4, Section 6.50)

NIST-NVLAP No. 101165-0	AIHA Lab No. 100188	NYS-DOH No. 11021
--------------------------------	----------------------------	--------------------------

Methodology: Transmission Electron Microscopy (TEM) In Accordance With ELAP "TEM Method For Identifying And Quantitating Asbestos In Non-Friable Organically Bound Bulk Samples", Revision 198.4, 8/3/92

IATL assumes that all sampling methods and data upon which these results are based have been accurately supplied by the client.
 This confidential report relates only to those item(s) tested and does not represent an endorsement by NIST-NVLAP, AIHA or any agency of the U.S. government.
 Results are verifiable for only those operations and analyses performed in the laboratory.

Analysis Performed By: C. Winkler

Date: 9/16/2005

CERTIFICATE OF ANALYSIS

Client: T. E. S. Environmental Corp.
1221 E. Henrietta Road
Rochester NY 14623

Report Date: 9/16/2005
Report Number: 09053138
Project: Seneca Creek
Project No.:

LEAD PAINT SAMPLE ANALYSIS SUMMARY

<u>Lab No.</u>	<u>Client No.</u>	<u>Description / Location</u>	<u>Concentration Lead By Weight (%)</u>
2362169	1	Lead Paint	30***

NATIONAL LEAD LABORATORY ACCREDITATION PROGRAM (NLLAP)

AIHA-ELPAT-NIOSH No. 100188 / NYSDOH-ELAP No. 11021

Analysis Methods: ASTM D3335-85A "Standard Method To Test For Low Concentrations Of Lead In Paint By Atomic Absorption Spectrophotometry"
EPA SW846-(7420/7421) "Standard Method To Test For Low Concentrations Of Lead In Soils, Sludges and Sediments By AAS"

Comments: Regulatory limit is 0.5% lead by weight (EPA/HUD guidelines). Recommend multiple sampling for all samples less than regulatory limit for confirmation. IATL assumes that all of the sampling methods and data upon which these results are based, have been accurately supplied by the client. Method Detection Limit (MDL) per EPA Method 40CFR Part 136 Appendix B. Reporting Limit (RL) based upon Lowest Standard Determined (LSD) in accordance with AIHA-ELLAP policies. LSD=0.2 ppm MDL=0.0024% by weight. RL= 0.010% by weight (based upon 100 mg sampled).
* Insufficient sample provided to perform QC reanalysis (<200 mg) ** Not enough sample provided to analyze (<50 mg) *** Matrix / substrate interference possible.

Date Received: 9/15/2005

Date Analyzed: 9/16/2005

Analyst: C. Shaffer

Approved By: _____

Frank E. Ehrenfeld, III
Laboratory Director

STATE OF NEW YORK - DEPARTMENT OF LABOR
DIVISION OF SAFETY AND HEALTH
License and Certificate Unit
BUILDING 12, STATE CAMPUS
ALBANY, NY 12240

ASBESTOS HANDLING LICENSE

**RESTRICTED LICENSE-ASBESTOS
REMOVAL NOT PERMITTED**

LICENSE NUMBER: **01-0612**
DATE OF ISSUE: **Feb. 04, 2005**
EXPIRATION DATE: **Feb. 28, 2006**

Contractor: **CLARK PATTERSON ASSOCIATES**
Address: **186 North Wafer Street
Rochester NY 14604**

Duly Authorized Representative: **JOHN L. PATTERSON**

This license has been issued in accordance with applicable provisions of Article 30 of the Labor Law of New York State and of the New York State Codes, Rules and Regulations (12NYCRR Part 56). It is subject to suspension or revocation for a (1) serious violation of state, federal or local laws with regard to the conduct of an asbestos project, or (2) demonstrated lack of responsibility in the conduct of any job involving asbestos or asbestos material.

This license is valid only for the contractor named above and this license or a photocopy must be prominently displayed at the asbestos project worksite. This license verifies that all persons employed by the licensee on an asbestos project in New York State have been issued an Asbestos Certificate, appropriate for the type of work they perform, by the New York State Department of Labor.


Anthony Germano, Acting Director
FOR THE COMMISSIONER OF LABOR

SH 432 (6-03)

STATE OF NEW YORK - DEPARTMENT OF LABOR
ASBESTOS CERTIFICATE



JAMES J. PARLAVECCHIO
CLASS(EXPIRES)
D INSP(09/05) E MGPL(09/05)



CERT# 89-08287

MUST BE CARRIED ON ASBESTOS PROJECTS



DMV# 388304367
EYES BRO
HAIR BRO
HGT 5' 09"

IF FOUND RETURN TO:
NYSDEL - L&C UNIT
ROOM 161 BUILDING 12
STATE OFFICE CAMPUS
ALBANY NY 12240

Estimate of Probable Cost

We have estimated the probable cost to remove both Lead and Asbestos. We would assume that both of these materials can be removed under one abatement contract. The estimates we are presenting are reflection of costs based on the year 2005. The estimate is based on a project square footage estimate plus allowances for contingencies, insurances, overhead and profit. The labor rates were calculated from the prevailing rate schedule. Prevailing wage rates must be paid on all Public Works projects. The project cost would include Contractors costs such as insurances, general conditions and project contingencies.

Total estimated quantity of material	16,000 Square Feet
Total Project Cost to Remove Lead and Asbestos	\$ 192,000

Attachment E

**Hazardous Waste/Contaminated Materials
Assessment Report
(without Appendices)**

Prepared For:
New York State Department of Transportation
Buffalo, New York

HAZARDOUS WASTE / CONTAMINATED MATERIALS ASSESSMENT REPORT

SENECA CREEK PATHWAY
PIN 5756.89
Town of West Seneca, Erie County, New York

Prepared By:
Clark Patterson Associates
Cheektowaga, New York

OCTOBER 2005

TABLE OF CONTENTS

1.0 INTRODUCTION	1
2.0 METHODOLOGY	2
3.0 FINDINGS	3
4.0 CONCLUSIONS.....	7

LIST OF FIGURES

Figure 1 Site Location Map

APPENDICES

Appendix A Environmental Database Records

Appendix B Site Aerial Photography

Appendix C Site Photographic Records

1.0 INTRODUCTION

Clark Patterson Associates (CPA) has prepared this Hazardous Waste / Contaminated Materials Assessment for the Seneca Creek Pathway project (PIN 5756.89), located in the Towns of West Seneca and Cheektowaga, Erie County, New York. The proposed project involves construction of a new bicycle/pedestrian pathway approximately 5.5 miles long following the existing roadways and railroad grades. The proposed routing is shown on Figure 1 and consists of the following area.

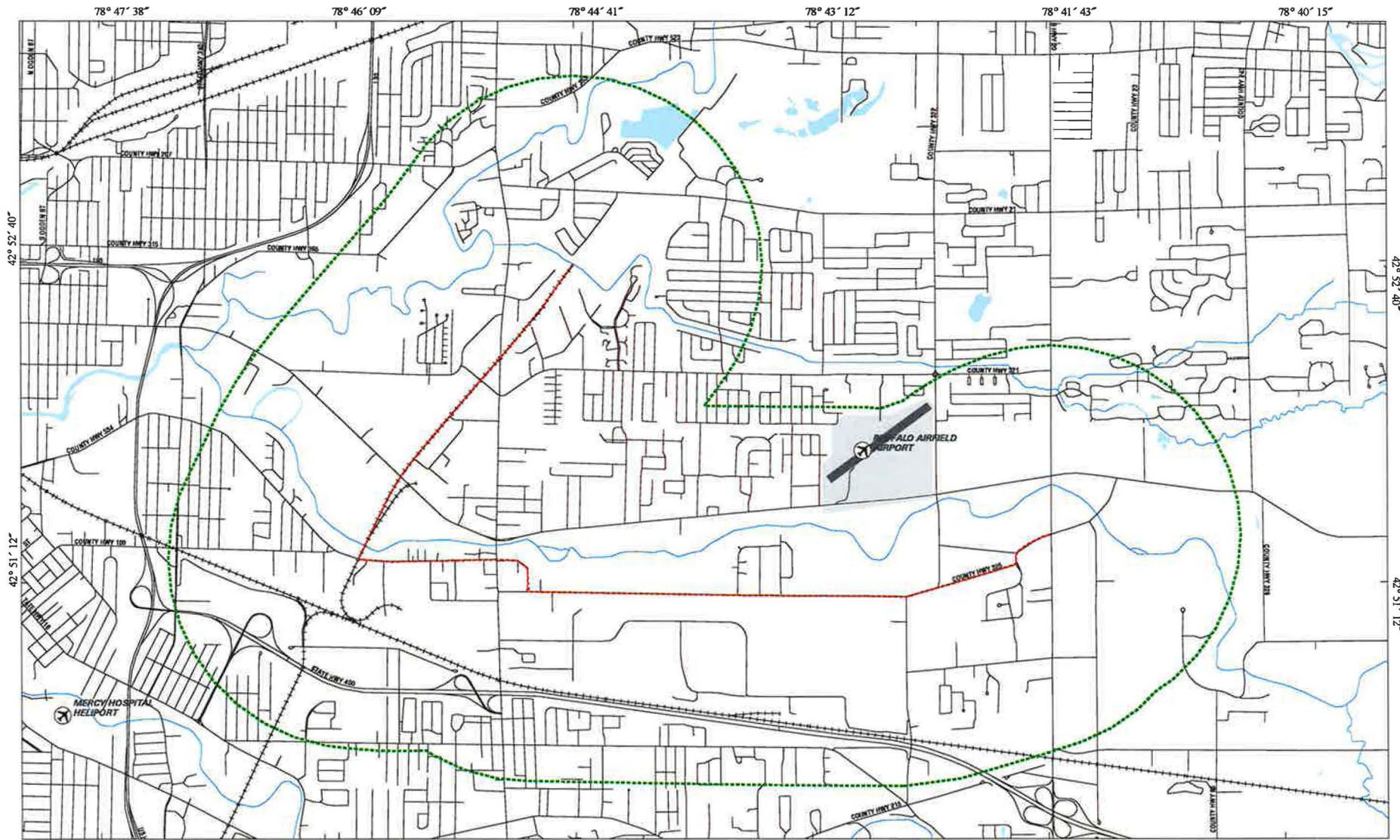
The project begins at the intersection of Transit and Seneca Creek Road in the Town of West Seneca. The route heads west on Seneca Creek Road approximately 3 miles, heads north on Henrietta Avenue approximately 1,000 feet and west on Race Street to the intersection of Union Road, approximately 1,000 feet. The Pathway crosses Union onto Indian Church Road to the abandoned railroad crossing near Buffalo Creek, approximately ½ mile. The trail route then is proposed to head north along the abandoned railroad grade approximately 1.6 miles, crossing Buffalo Creek into the Town of Cheektowaga.

The Project will include on-road shoulder improvements, intersection crossing improvements, off-road pathway construction, and rehabilitation on the existing Buffalo Creek bridge. Some right-of-way procurement will be required.

The purpose of this Assessment was to evaluate the recognized environmental condition of the project area and to assess the potential for contamination to be encountered during project construction. This Assessment followed the general format of the NYSDOT Environmental Procedures Manual, and ASTM Standard Practice for Phase I Environmental Site Assessments (ASTM E 1527, latest revision), and included the following:

- Site Reconnaissance – A site inspection to review existing conditions and uses with respect to obvious environmental concerns.
- Records Review – A review of Federal, State and County environmental databases for records pertaining to the current or historical environmental condition of the project area.
- Evaluation and Conclusions – an assessment of the environmental condition of the project area, based upon the results of the above tasks and CPA's professional opinion.

This Assessment does not include any sampling or analysis of environmental media. Opinions and judgments presented are based upon professional experience, obvious surficial evidence, observations and public records.



Copyright © 2005 EDPI, Inc. © 2004 GDT, Inc. Rel. 07/2004. All Rights Reserved.
Workspace is /nyal/work/01493378.1r

FIGURE 1

2.0 METHODOLOGY

The Assessment consisted of the following elements.

2.1 Site Inspection

A walkover of the entire project route was completed by Clark Patterson Associates on August 23, 2005. The purpose of the walkover was to identify potentially adverse environmental elements of concern including, but not limited to:

- Stained or discolored soils or ground / surface water
- Pits, ponds or lagoons
- Stressed or dead vegetation
- Evidence of spills, leaks, leachate, seeps
- Evidence of fill or dump sites
- Hazardous or petroleum storage
- Electrical equipment

2.2 Environmental Database Review

CPA conducted a review of the Federal and State databases through EDR, Inc, as of August 24, 2005. Copies of the EDR report are included in Appendix A, with a corridor map showing the location of environmental database record points. The databases searched are also listed in the EDR report.

3.0 FINDINGS

3.1 General Site Description

The Seneca Creek pathway route is relatively flat, following paved roadways and railroad grades for its entire length. The route goes through a mix of residential, commercial, industrial and park lands.

The majority follows Buffalo Creek, just outside of the 100-year floodplain. Groundwater flow direction and any contaminant spills would likely follow grade discharging into Buffalo Creek. There are ditches likely containing wetlands along the majority of the abandoned railroad grade portion of the pathway.

It is likely that the majority of the railroad grade is constructed on fill. Steel mill slag and cinders were observed along a majority of the railroad bed surface.

3.2 Locations of Environmental Concern

Aerial photography of the entire route is presented in Appendix B, with an inspection photographic record included in Appendix C. Each of the sites exhibiting environmental concern are identified on the aerial photographs, and described further below. The sites are described starting at the eastern end of the project, and locations referenced to preliminary plan alignment information.

Site #1 – Mayer Brothers Apple Products, 1540 Seneca Creek Road (S 158+00)

The facility actively processes apple cider and other liquid beverage products. The facility is a RCRA Conditionally Exempt Small Quantity Generator (EPA ID# NYR000038919). The access to Seneca Creek Road is entirely paved and there were no environmentally significant concerns observed. The facility is also a licensed bottled water plant. One NYSDEC spill record was identified (NYS Spill # 9975561). The spill occurred in November, 1999 and was the result of a NOCO Energy delivery truck hose break. Soil was remediated by removal off-site. The spill file was closed in January 2000.

Site #2 – Vacant Land, 1340 Seneca Creek Road (S 140+50)

The property is a vacant residential lot. The Owner is listed as Arthur Krakowiak. The front portion of the lot appears to have been filled with several feet of soil. The fill appeared to be soil with no deleterious materials. The site is well-vegetated, with no stressed or dead vegetation evident.

Site #3 – Landscaping Company, 795 Seneca Creek Road (S 79+50)

The property is a landscaping business with numerous pieces of heavy equipment on site. Equipment service is also likely performed on site. None of the on-site activities are located in the front of the parcel. No environmental records were identified for the address.

Site #4 – Pine Rest Pet Cemetery, 757 Seneca Creek Road (S 76+00)

The site is an operating pet cemetery. The site is listed in the NYS Spills database (NYS spill #0401893) for a small diesel spill in May 2004 from equipment failure. Soil was the impacted media. There was no evidence of environmental concern (dead or stressed vegetation, staining, etc.) in the front portion of the property.

Site #5 – Welding Company, 157 Seneca Creek Road (S 15+50)

The site is an active welding company. The site is listed in the NYS Spills database (NYS spill #0375150) for an auto waste fluids spill on land in June 2003. The spill file is not closed. The location of the spill was not reported, however all operations are in the rear of the parcel.

Site #6 – Vacant Commercial Property, 1953 Union Road, (R 1+00)

The parcel is a vacant commercial property. The site is mostly paved, with evidence of a building foundation. There are no records of environmental concerns for this parcel.

Site #7 – Vacant Commercial Property, 1954 Union Road, (I 49+00)

The parcel is a vacant commercial property. The site is mostly paved, with evidence of a building foundation. Records indicate the building was recently torn down. There are no records of environmental concerns for this parcel.

Site #8 – Apartment Complex, 1377 Indian Church Street, (I 48+00)

The NYS Spills database lists a gasoline spill (NYS spill #9714472) at this address. The tenant spilled approximately 20 gallons of gasoline in March 1998. Soils were removed and the area remediated. The spill file was closed in May 1998.

Site #9 – Residential Property, 1258 Indian Church Road, (I 1+00)

The NYS Spills database lists contaminated soil (NYS spill #9108013) found during utility excavation at this address. Soil was stockpiled on site during remediation. The spill file was opened in October 1991 and closed in November of 1992.

Site #10 – Biels Microfilm Corporation, 1201 Indian Church Road, (I 32+75)

The site is an active microfilm manufacture. The site is listed in the NYS Spills database (NYS spill #8900649) for a building fire involving anhydrous ammonia in April 1989. The spill file was closed in April 1989.

Site #11A – Ebenezer Rail Car Service, 1005 Indian Church Road, (I 18+75)

The site is an active rail car remanufacture. The facility is a RCRA Conditionally Exempt Small Quantity Generator (EPA ID# NYD018503789). The access to Indian Church Road is entirely graveled and there were no environmentally significant concerns observed. One NYSDEC spill record was identified (NYS Spill # 9007732). The spill was reported in October, 1990 and was the result of a historical spill (NYS Spill # 8911639). Soil was remediated by removal off-site. The spill file was closed in June 1991.

Site #11B – Boston Valley Trucking, 1005 Indian Church Road, (I 18+75)

The NYS Spills database lists a diesel fuel spill (NYS Spill #0202803) at this address. A commercial truck had an equipment failure and spilled approximately 15 gallons of diesel fuel in June 2002. The spill file was close in September 2002.

Site #12– Buffalo Creek Yard, Indian Church Road, (P 9+00)

The NYS Spills database lists the removal of a 5000 gallon underground fuel tank prior to April of 1991.

Site #13 – Diesel Fuel Spill, 130 Empire Drive, (P 32+50)

The NYS Spills database lists a diesel fuel spill (NYS Spill #0207718) at this address. A tank truck was involved in an automobile accident and spilled approximately 70 gallons of diesel fuel in October 2002. The spill file was close in December 2002.

Site #14 – National Starch & Chemical Corporation, 105 Empire Drive, (P 38+25)

The NYS Spills database lists a diesel fuel spill (NYS Spill #0202803) at this address. A commercial truck had an equipment failure and spilled approximately 15 gallons of diesel fuel in June 2002. The spill file was close in September 2002.

Site #15 – Two Brothers Realty Corp., 75 Empire Drive, (P 43+50)

There were several 55-gallon drums observed on the northwest corner of the parcel. There was significant soil and pavement oil-staining around the drum storage area. Runoff from the area was to the west, toward the trail area. Based upon the actual property line determination, stained soils may be present on the trail right-of-way property.

Site #16 – U.S. Food Service, 125 Gardenville Parkway, (P 53+00)

The NYS Spills database lists a diesel fuel spill (NYS Spill #0000547) at this address. A tank truck had an equipment failure and spilled approximately 20 gallons of diesel fuel in April 2000. The spill file was close in November 2000.

There was also a significant quantity of construction and demolition (C&D) debris on the trail route behind this site. The C&D contained concrete rubble, asphalt, rebar, soil, intermixed with other miscellaneous trash. Uncontrolled dumping is evident.

Site #17 – Sprint PCS, 50 Dewberry Lane, (P 73+00)

This site is an active petroleum bulk storage facility, containing approximately 2000 gallons of diesel fuel storage. No environmental records were identified for this address.

Site #18 – Cello-Pack Corporation, 55 Innsbruck Drive, (P 84+50)

The site is an active plastics and packaging supply manufacture. The facility is a RCRA Large Quantity Generator (EPA ID# NYD982534190). No environmentally significant concerns were observed.

Site #19– Volland Electric Equipment Corporation, 75 Innsbruck Drive, (P 92+00)

The site is an active electrical motor repair facility. The facility is a RCRA Conditionally Exempt Small Quantity Generator (EPA ID# NYD986959419). There were no environmentally significant concerns observed.

Site #20 – Residential Property, 160 Hillpine Street,

The NYS Spills database lists an unknown gasoline spill (NYS spill #9975086) resulting in gasoline odors in the storm sewer in April 1999 at this address. Storm sewers were flushed by Fire Department, spill file closed in April of 1999.

4.0 CONCLUSIONS

Based upon the results of this Assessment, the following areas of concern were identified and presented on the attached Table. Recommendations for further analyses are also presented.

Site	Potential Concerns	Recommendations
Entire Railroad Bed	Residual petroleum and preservatives (semi-volatiles) contaminations from the railroad ties	Representative soil sampling for volatile and semi-volatile organics from various stained soils areas
Site #15, 75 Empire Drive	Potential for residual soil contamination from 55-gallon drum spillage from neighboring property	Soil sampling for volatile and semi-volatile organics
Site #16, 105 Empire Drive	Residual contamination from the uncontrolled dumping	Soil sampling for volatile organics, semi-volatile organics and RCRA metals

This Assessment was performed in general accordance with ASTM practices and generally accepted practices of the profession and based conclusions are made with respect to the environmental condition of the site, as audited August 23, 2005. Opinions presented herein are for the current site condition, and based upon review of information readily available to the public, surface observations of accessible areas, and interviews with involved parties assumed to be accurate. There was no sampling or analysis completed as part of this assessment. As such, the project area is not guaranteed to be free of subgrade or building environmental impairment. This Assessment is not intended to be a guarantee or indemnification pertaining to environmental liabilities with the project area.

Attachment F

Phase IA Cultural Resources Information



**Panamerican
Consultants, Inc.**

**Buffalo Branch
2390 Clinton Street
Buffalo, NY 14227
Tel: (716) 821-1650
Fax: (716) 821-1607**

**Tuscaloosa Branch
924 26th Avenue East
Tuscaloosa, AL 35404
Tel: (205) 556-3096
Fax: (205) 556-1144**

**Memphis Branch
91 Tillman Street
Memphis, TN 38111
Tel: (901) 454-4733
Fax: (901) 454-4736**

**Tampa Branch
5910 Benjamin Center
Drive, Suite 120
Tampa, FL 33634
Tel: (813) 884-6351
Fax: (813) 884-5968**

**Corporate Headquarters
2205 4th Street
Suites 21 & 22
Tuscaloosa, AL 35401
Tel: (205) 248-9867
Fax: (205) 248-8739**

**PHASE IA CULTURAL RESOURCES INVESTIGATION
FOR THE PROPOSED SENECA CREEK PATHWAY,
TOWNS OF WEST SENECA AND CHEEKTOWAGA,
ERIE COUNTY, NEW YORK**

PIN 5756.89

DRAFT

RECEIVED
JAN 3 1 7006
CLARK PATTERSON ASSOCIATES

Prepared for:

**CLARK PATTERSON ASSOCIATES
4345 Union Road, Suite 208
Buffalo, New York 14225**

Prepared by:

**PANAMERICAN CONSULTANTS, INC.
Buffalo Branch Office
2390 Clinton Street
Buffalo, New York 14227**

January 2006

**PHASE IA CULTURAL RESOURCES INVESTIGATION
FOR THE PROPOSED SENECA CREEK PATHWAY,
TOWNS OF WEST SENECA AND CHEEKTOWAGA,
ERIE COUNTY, NEW YORK**

PIN 5756.89

Prepared for:

**CLARK PATTERSON ASSOCIATES
4345 Union Road, Suite 208
Buffalo, New York 14225**

Prepared by:

**Frank J. Schieppati, Ph.D., RPA, Principal Investigator/Senior Archaeologist
Christine Longiaru, M.A., Architectural Historian
Mark A. Steinback, M.A., Senior Historian
Rebecca J. Emans, M.A., RPA, Staff Archaeologist**

**PANAMERICAN CONSULTANTS, INC.
2390 Clinton Street
Buffalo, New York 14227-1735
(716) 821-1650**

January 2006

Management Summary

PIN/BIN: 5756.89

DOT PROJECT TYPE AND FUNDING:

CULTURAL RESOURCE SURVEY TYPE: Phase IA Cultural Resources Reconnaissance Survey

LOCATION:

Route(from – to): Seneca Creek Road between Union and Transit Roads, Town of West Seneca; Indian Church Road between Union Road and the former New York Central Railroad bed, Town of West Seneca; and the former rail bed from Indian Church Road, Town of West Seneca, northeast to the former Gardenville Yards in the Town of Cheektowaga.

Minor Civil Division: Town of Cheektowaga MCD 02906; Town of West Seneca MCD 2925
County: Erie

SURVEY AREA:

Length: Approximately 5.8 miles (9.2 km) within existing rights-of-way of Seneca Creek Road and the former rail bed.

Width: The bike path along roadways will measure approximately 5 feet wide.

U.S.G.S. 7.5' MINUTE QUADRANGLE MAP: Buffalo, SE and Orchard Park, NY

SENSITIVITY ASSESSMENT:

Prehistoric: High. The project area is highly sensitive for prehistoric sites. Buffalo and Cayuga creeks are major centers of settlement from earliest times to the contact period. Three prehistoric Native American sites, described as "traces of occupation," are within or immediately adjacent to the project area.

Historic: High. The project area is highly sensitive for historic period sites. A former mill race loops through Gardenville and a number of mills utilized the race from the mid-nineteenth century onward. The APE also lies within the former Buffalo Creek Reservation and Ebenezer lands.

ARCHAEOLOGICAL SURVEY METHODOLOGY:

Number of shovel test pits: Not applicable to this Phase 1A report.

Number of units: Not applicable to this Phase 1A report.

Surface survey (yes/no): Not applicable to this Phase 1A report.

Phase 1A Archaeological Investigation: archival, documentary and historic map research, a site visit and walkover reconnaissance, site file and literature searches, prehistoric and historic background research, a review of State and National Registers of Historic Places (S/NRHP), cultural resource sensitivity assessment, and past disturbance evaluation of the ROW.

RESULTS OF ARCHAEOLOGICAL SURVEY:

Based on the significant degree of prior disturbance and that the proposed pathway will be constructed within this disturbed context, the project will not impact archaeological resources eligible for the NRHP. As a result no additional investigations are recommended.

RESULTS OF ARCHITECTURAL SURVEY:

Number of buildings/structures in project area: 305 (see Table 4.1; page 4-6)

Number of known NR listed/eligible buildings/structures: None

Number of recommended eligible buildings/structures: Eight (see table 4.1, page 4-6: Table 4.2, p. 4-13)

Number of S/NRHP listed/eligible or recommended buildings / structures identified: Eight (see Table 4.2, p. 4-13)

AUTHOR/INSTITUTION: Panamerican Consultants, Inc., 2390 Clinton Street, Buffalo, New York 14227

DATE: January 2006

SPONSOR: NYSDOT & FHWA (if appropriate)

Federal Lead Agency:

State Lead Agency:

Table of Contents

Management Summary.....	ii
List of Illustrations	iv
List of Tables	v
List of Photographs.....	vi
1.0 Introduction	1-1
1.1 Project Description	1-1
2.0 Background Research.....	2-1
2.1 Archaeological Site File Review.....	2-1
2.2 Environmental Setting	2-3
2.3 Culture History.....	2-5
2.3.1 Prehistoric Period.....	2-5
2.3.2 Historic Period.....	2-8
2.3.3 Historic Maps	2-14
3.0 Archaeological Evaluation	3-1
3.1 Methodology.....	3-1
3.2 Results and Sensitivity Assessment	3-2
3.3 Recommendations.....	3-3
4.0 Architectural Investigation	4-1
4.1 Methodology.....	4-1
4.2 Architectural Summary	4-2
4.3 Results	4-4
4.4 Historic Resource Inventory Forms.....	4-14
4.5 Photographs of All Buildings/Structures at Least 50 Years of Age Not Recommended as S/NRHP-Eligible.....	4-59
5.0 References.....	5-1
Appendices	
A Existing NYS Building Structure Inventory Forms on File at NYS OPRHHP	A-1
B Architectural Survey Project Map	B-1

List of Illustrations

FIGURE	PAGE
1.1 Location of the Seneca Creek Pathway project area in the Towns of Cheektowaga and West Seneca, Erie County, New York	1-2
1.2 Project area on the 7.5 minute USGS quadrangles Buffalo, SE and Orchard Park, NY	1-3
1.3 Typical profiles for the proposed bike path construction on the former rail bed (top) and along Seneca Creek Road (bottom)	1-4
1.4 Photo angle map for project area photographs.....	1-5
2.1 The project area within the towns of West Seneca and Cheektowaga in 1854	2-14
2.2 The project area in the towns of West Seneca and Cheektowaga in 1866.....	2-15
2.3 The project area in the Village of Middle Ebenezer in 1866.....	2-15
2.4 The project area in the Towns of West Seneca and Cheektowaga in 1880	2-16
2.5 The project area in the Village of Gardenville in 1880	2-16
2.6 The project area in the towns of West Seneca and Cheektowaga in 1909	2-17
2.7 The project area, circa 1901.....	2-18
2.8 The project area, circa 1948.....	2-18
2.9 Locations of map documented structures (MDSs).....	following 2-18
3.1 Sanborn Fire Insurance maps from the 1930s of the Gardenville mill area.....	3-2
3.2 Nature of prior disturbance within the APE.....	3-3
3.3 Nature of prior disturbance within the APE for a section at the western end of Seneca Creek Road.....	3-4

List of Tables

TABLE	PAGE
2.1 Archaeological sites within one mile of the project area	2-2
2.2 Soils within and adjacent to the Seneca Creek Pathway project area	2-3
2.3 Map documented structures (MDSs)	following 2-18
4.1 List of Architectural Properties within the Project Area	4-6
4.2 Recommended S/NRHP Eligible Building/Structures and Districts	4-13

List of Photographs

PHOTOGRAPH	PAGE
1. The northern portion of the project area, facing northeast	1-6
2. Railroad bed behind Moridian Bus Center, facing southwest.....	1-6
3. Union Road and rail road, facing east	1-7
4. Bed taken from old street bridge over tracks; street was brick paved under asphalt, facing northeast	1-8
5. Bed from old street bridge over tracks; street was brick paved under asphalt, facing southwest.....	1-8
6. Bed from south end of U.S. Foodservice, facing southwest.....	1-9
7. Bed from fence northeast of Clinton Street, facing northeast.....	1-9
8. Bed from Clinton Street, facing southwest.....	1-10
9. Bridge from north side of Buffalo Creek, abutment is stone and concrete, facing southwest.....	1-10
10. Rail bed from Indian Church Road, facing northeast	1-11
11. Railroad bridge, facing east by northeast	1-11
12. Rail bed at Indian Church Road and Clinton Street, facing north	1-12
13. West end of Indian Church Road and railroad bridge, facing northeast.....	1-13
14. Indian Church Road from rail bed, facing east	1-14
15. Indian Church Road from Jack Berry Street, facing west	1-14
16. Race Street, Union Road, and Indian Church Road, facing west.....	1-15
17. Race Street from Union Road, facing east	1-16
18. Intersection of Race Street, opposite Indian Church Road, and Union Road, facing west	1-16
19. Indian Church Road, Union Road, and Race Street, facing east.....	1-17
20. Western end of Seneca Creek Road, facing east.....	1-18
21. The west end of Seneca Creek Road, facing north	1-19
22. The west and middle section of Seneca Creek Road, facing east	1-20
23. The west and middle section of Seneca Creek Road, facing north.....	1-21
24. Middle section of Seneca Creek Road, facing west	1-22
25. The middle and east section of Seneca Creek Road, facing north	1-23
26. Middle and east section of Seneca Creek Road, with Lein Road at left, facing east.....	1-24
27. East section of Seneca Creek Road.....	1-25
28. East section of Seneca Creek Road at Transit Road.....	1-25
29. Henrietta Avenue from 47, facing north.....	1-26
30. Seneca Creek Road from Henrietta Avenue, facing east.....	1-26
31. Seneca Creek Road from 245, facing west	1-27
32. Seneca Creek Road from 245, facing east.....	1-27
33. Seneca Creek Road from 465, facing east.....	1-28
34. Seneca Creek Road from 696, facing east.....	1-28
35. Seneca Creek Road from 1054, facing west	1-29
36. Seneca Creek Road and Lein Road intersection, facing east.....	1-29
37. Seneca Creek Road and Borden Road, facing east	1-30
38. Seneca Creek Road from 1377, facing west	1-30
39. Seneca Creek Road from 1377, facing east.....	1-31
40. Seneca Creek Road and Blossom Road, facing west.....	1-31
41. Seneca Creek Road from Transit Road, facing west.....	1-32
42. Blossom Cemetery, west side along Blossom Road.....	4-17

43. Blossom Cemetery, facing east	4-18
44. Blossom Cemetery	4-18
45. Southern edge of Blossom Cemetery, facing east.....	4-19
46. Eastern end of Blossom Cemetery, facing east.....	4-19
47. Blossom Cemetery, facing west-northwest.....	4-20
48. Northern edge of Blossom Cemetery, facing west.....	4-20
49. Residence at 30 Henrietta Avenue, facing south.....	4-23
50. Residence at 30 Henrietta Avenue, facing southeast	4-24
51. Residence at 30 Henrietta Avenue, facing southwest.....	4-24
52. Fourteen Holy Helpers Catholic Church, facing west.....	4-28
53. West and south elevations of Fourteen Holy Helpers Church, facing northeast.....	4-29
54. North elevation of Fourteen Holy Helpers Church, facing southeast.....	4-29
55. West end (apse) of Fourteen Holy Helpers Church, facing southeast	4-30
56. West end (apse) of Fourteen Holy Helpers Church, facing southeast.....	4-30
57. Detail of central portal on east façade of Fourteen Holy Helpers Church.....	4-31
58. Rectory, Fourteen Holy Helpers Church, facing southwest.....	4-31
59. School - Fourteen Holy Helpers Church facing southeast	4-32
60. Rear elevations of school and rectory, Fourteen Holy Helpers Church facing northwest	4-32
61. Maintenance garage, Fourteen Holy Helpers Church facing southeast	4-33
62. Convent, Fourteen Holy Helpers Church, facing southwest.....	4-33
63. Fourteen Holy Helpers Cemetery, facing south-southwest	4-34
64. Fourteen Holy Helpers Cemetery, facing south-southwest	4-34
65. The residence at 1371 Indian Church Road, facing northeast	4-38
66. The residence at 1371 Indian Church Road, facing northwest.....	4-39
67. The residence at 1371 Indian Church Road, facing northeast	4-39
68. Residence at 1377 Indian Church Road, facing northeast.....	4-42
69. Residence at 1377 Indian Church Road, facing northwest	4-43
70. Detail of residence at 1377 Indian Church Road, facing northwest.....	4-43
71. St. John's Evangelical Lutheran Cemetery, facing north.....	4-46
72. St. John's Evangelical Lutheran Cemetery, facing northwest	4-47
73. St. John's Evangelical Lutheran Cemetery, facing north.....	4-47
74. St. John's Evangelical Lutheran Cemetery, facing south-southwest.....	4-48
75. St. John's Evangelical Lutheran Cemetery, facing southwest.....	4-48
76. The residence at 227 Seneca Creek Road, facing south.....	4-52
77. The residence at 227 Seneca Creek Road, facing south.....	4-53
78. The residence at 227 Seneca Creek Road, facing south.....	4-53
79. St. Paul's Cemetery, facing northwest.....	4-56
80. St. Paul's Cemetery, facing north	4-57
81. St. Paul's Cemetery, facing north	4-57
82. St. Paul's Cemetery, facing east-southeast.....	4-58
82A. Example of a grave marker inscribed in German	4-58
83. Former New York Central Railroad Bridge over Buffalo Creek, facing west- northwest	4-60
84. West elevation of former New York Central Railroad Bridge over Buffalo Creek, facing north-northeast.....	4-60
85. Former New York Central Railroad Bridge over Buffalo Creek, facing north.....	4-61
86. Detail of former New York Central Railroad Bridge over Buffalo Creek, facing north	4-62
87. Residence at 180 Blossom Road, facing west-northwest	4-63
88. Residence at 180 Blossom Road, facing west-northwest	4-63

89.	Residence at 32 Henrietta Avenue, facing southwest.....	4-64
90.	Residence at 47 Henrietta Avenue.....	4-64
91.	Residence at 1214 Indian Creek Road.....	4-65
92.	Residence at 1214 Indian Creek Road.....	4-65
93.	Residence at 1218 Indian Creek Road.....	4-66
94.	Residence at 1218 Indian Creek Road.....	4-66
95.	Residence at 1222 Indian Creek Road.....	4-67
96.	Residence at 1222 Indian Creek Road.....	4-67
97.	Residence at 1245 Indian Creek Road.....	4-68
98.	Residence at 1246 Indian Creek Road.....	4-68
99.	Residence at 1249 Indian Creek Road.....	4-69
100.	Residence at 1253 Indian Creek Road.....	4-69
101.	Residence at 1258 Indian Creek Road.....	4-70
102.	Residence at 1262 Indian Creek Road.....	4-70
103.	Residence at 1264 Indian Creek Road.....	4-71
104.	Residence at 1268 Indian Creek Road.....	4-71
105.	Residence at 1276 Indian Creek Road.....	4-72
106.	Residence at 1276 Indian Creek Road.....	4-72
107.	Residence at 1282 Indian Creek Road.....	4-73
108.	Residence at 1282 Indian Creek Road.....	4-73
109.	Residence at 1285 Indian Creek Road.....	4-74
110.	Residence at 1288 Indian Creek Road.....	4-74
111.	Residence at 1299 Indian Creek Road.....	4-75
112.	Residence at 1300 Indian Creek Road.....	4-75
113.	Residence at 1300 Indian Creek Road.....	4-76
114.	Residence at 1303 Indian Creek Road.....	4-76
115.	Residence at 1307 Indian Creek Road.....	4-77
116.	Residence at 1325 Indian Creek Road.....	4-77
117.	Residence at 1325 Indian Creek Road.....	4-78
118.	Building at 1365(1367) Indian Creek Road.....	4-78
119.	Building at 1365(1367) Indian Creek Road.....	4-79
120.	Residence at 25 Race Street.....	4-79
121.	Residence at 28 Race Street.....	4-80
122.	Residence at 28 Race Street.....	4-80
123.	Residence at 28A Race Street.....	4-81
124.	Residence at 47 Race Street.....	4-81
125.	Residence at 47 Race Street.....	4-82
126.	Outbuilding at 47 Race Street, facing west.....	4-82
127.	Residence at 75 Seneca Creek Road.....	4-83
128.	Residence at 76 Seneca Creek Road.....	4-83
129.	Residence at 86 Seneca Creek Road.....	4-84
130.	Residence at 86 Seneca Creek Road.....	4-84
131.	Residence at 96 Seneca Creek Road.....	4-85
132.	Residence at 146 Seneca Creek Road.....	4-85
133.	Residence at 146 Seneca Creek Road.....	4-86
134.	Residence at 160 Seneca Creek Road.....	4-86
135.	Residence at 160 Seneca Creek Road.....	4-87
136.	Residence at 170 Seneca Creek Road.....	4-87
137.	Residence at 178 Seneca Creek Road.....	4-88
138.	Residence at 189 Seneca Creek Road.....	4-88

139.	Residence at 189 Seneca Creek Road	4-89
140.	Residence at 190 Seneca Creek Road	4-89
141.	Residence at 204 Seneca Creek Road	4-90
142.	Residence at 224 Seneca Creek Road	4-90
143.	Residence at 230 Seneca Creek Road	4-91
144.	Residence at 230 Seneca Creek Road	4-91
145.	Residence at 244 Seneca Creek Road	4-92
146.	Residence at 244 Seneca Creek Road	4-92
147.	Residence at 245 Seneca Creek Road	4-93
148.	Residence at 261 Seneca Creek Road	4-93
149.	Residence at 278 Seneca Creek Road	4-94
150.	Residence at 278 Seneca Creek Road	4-94
151.	Residence at 279 Seneca Creek Road	4-95
152.	Residence at 300 Seneca Creek Road	4-95
153.	Residence at 347 Seneca Creek Road	4-96
154.	Residence at 347 Seneca Creek Road	4-96
155.	Residence at 396 Seneca Creek Road	4-97
156.	Residence at 396 Seneca Creek Road	4-97
157.	Residence at 399 Seneca Creek Road	4-98
158.	Residence at 399 Seneca Creek Road	4-98
159.	Residence at 450 Seneca Creek Road	4-99
160.	Residence at 461 Seneca Creek Road	4-99
161.	Residence at 461 Seneca Creek Road	4-100
162.	Residence at 478 Seneca Creek Road	4-100
163.	Residence at 517 Seneca Creek Road	4-101
164.	Residence at 521 Seneca Creek Road	4-101
165.	Outbuilding associated with 521 Seneca Creek Road	4-102
166.	Residence at 527 Seneca Creek Road	4-102
167.	Residence at 550 Seneca Creek Road	4-103
168.	Residence at 550 Seneca Creek Road	4-103
169.	Residence at 559 Seneca Creek Road	4-104
170.	Residence at 559 Seneca Creek Road	4-104
171.	Residence at 600 Seneca Creek Road	4-105
172.	Residence at 600 Seneca Creek Road	4-105
173.	Residence at 601 Seneca Creek Road	4-106
174.	Residence at 601 Seneca Creek Road	4-106
175.	Barn at 601 Seneca Creek Road	4-107
176.	Barn at 601 Seneca Creek Road	4-107
177.	Residence at 602 Seneca Creek Road	4-108
178.	Residence at 604 Seneca Creek Road	4-108
179.	Residence at 626 Seneca Creek Road	4-109
180.	Residence at 627 Seneca Creek Road	4-109
181.	Residence at 639 Seneca Creek Road	4-110
182.	Residence at 639 Seneca Creek Road	4-110
183.	Residence at 691 Seneca Creek Road	4-111
184.	Residence at 691 Seneca Creek Road	4-111
185.	Residence at 696 Seneca Creek Road	4-112
186.	Residence at 696 Seneca Creek Road	4-112
187.	Residence at 720 Seneca Creek Road	4-113
188.	Residence at 735 Seneca Creek Road	4-113

189.	Residence at 735 Seneca Creek Road	4-114
190.	Residence at 751 Seneca Creek Road	4-114
191.	Residence at 751 Seneca Creek Road	4-115
192.	Pine Rest Pet Cemetery 757 Seneca Creek Road	4-115
193.	Pine Rest Pet Cemetery 757 Seneca Creek Road	4-116
194.	Residence at 760 Seneca Creek Road	4-116
195.	Residence at 760 Seneca Creek Road	4-117
196.	Residence at 790 Seneca Creek Road	4-117
197.	Residence at 791 Seneca Creek Road	4-118
198.	Residence at 791 Seneca Creek Road	4-118
199.	Residence at 795 Seneca Creek Road	4-119
200.	Residence at 795 Seneca Creek Road	4-119
201.	Residence at 803 Seneca Creek Road	4-120
202.	Residence at 810 Seneca Creek Road	4-120
203.	Residence at 812 Seneca Creek Road	4-121
204.	Residence at 821 Seneca Creek Road	4-121
205.	Residence at 821 Seneca Creek Road	4-122
206.	Residence at 824 Seneca Creek Road	4-122
207.	Residence at 827 Seneca Creek Road	4-123
208.	Residence at 827 Seneca Creek Road	4-123
209.	Residence at 861 Seneca Creek Road	4-124
210.	Residence at 861 Seneca Creek Road	4-124
211.	Residence at 862 Seneca Creek Road	4-125
212.	Residence at 875 Seneca Creek Road	4-125
213.	Residence at 881 Seneca Creek Road	4-126
214.	Residence at 891 Seneca Creek Road	4-126
215.	Residence at 894 Seneca Creek Road	4-127
216.	Residence at 905 Seneca Creek Road	4-127
217.	Residence at 928 Seneca Creek Road	4-128
218.	Residence at 928 Seneca Creek Road	4-128
219.	Residence at 946 Seneca Creek Road	4-129
220.	Residence at 968 Seneca Creek Road	4-129
221.	Residence at 968 Seneca Creek Road	4-130
222.	Residence at 975 Seneca Creek Road	4-130
223.	Residence at 975 Seneca Creek Road	4-131
224.	Residence at 978 Seneca Creek Road	4-131
225.	Residence at 978 Seneca Creek Road	4-132
226.	Residence at 988 Seneca Creek Road	4-132
227.	Residence at 998 Seneca Creek Road	4-133
228.	Residence at 998 Seneca Creek Road	4-133
229.	Residence at 1015 Seneca Creek Road	4-134
230.	Residence at 1015 Seneca Creek Road	4-134
231.	Residence at 1018 Seneca Creek Road	4-135
232.	Residence at 1021 Seneca Creek Road	4-135
233.	Residence at 1037 Seneca Creek Road	4-136
234.	Residence at 1037 Seneca Creek Road	4-136
235.	Residence at 1054 Seneca Creek Road	4-137
236.	Residence at 1054 Seneca Creek Road	4-137
237.	Residence at 1087 Seneca Creek Road	4-138
238.	Residence at 1104 Seneca Creek Road	4-138

239.	Residence at 1104 Seneca Creek Road	4-139
240.	Residence at 1111 Seneca Creek Road	4-139
241.	Residence at 1111 Seneca Creek Road	4-140
242.	Residence at 1115 Seneca Creek Road	4-140
243.	Residence at 1115 Seneca Creek Road	4-141
244.	Residence at 1125 Seneca Creek Road	4-141
245.	Residence at 1125 Seneca Creek Road	4-142
246.	Residence at 1145 Seneca Creek Road	4-142
247.	Residence at 1150 Seneca Creek Road	4-143
248.	Residence at 1155 Seneca Creek Road	4-143
249.	Residence at 1180 Seneca Creek Road	4-144
250.	Residence at 1186 Seneca Creek Road	4-144
251.	Residence at 1194 Seneca Creek Road	4-145
252.	Residence at 1194 Seneca Creek Road	4-145
253.	Outbuilding at 1194 Seneca Creek Road	4-146
254.	Residence at 1201 Seneca Creek Road	4-146
255.	Residence at 1255 Seneca Creek Road	4-147
256.	Residence at 1281 Seneca Creek Road	4-147
257.	Residence at 1295 Seneca Creek Road	4-148
258.	Residence at 1347 Seneca Creek Road	4-148
259.	Residence at 1349 Seneca Creek Road	4-149
260.	Residence at 1363 Seneca Creek Road	4-149
261.	Residence at 1371 Seneca Creek Road	4-150
262.	Residence at 1377 Seneca Creek Road	4-150
263.	Residence at 1377 Seneca Creek Road	4-151
264.	Residence at 1458 Seneca Creek Road	4-151
265.	Residence at 1395 Seneca Creek Road	4-152
266.	Residence at 1395 Seneca Creek Road	4-152
267.	Mayer Brothers property at 1544 Seneca Creek Road	4-153
268.	Barn associated with Mayer Brothers Cider Mill Complex at 1540 Seneca Creek Road	4-153
269.	Mayer Brothers Cider Mill/Store at 1540 Seneca Creek Road	4-154
270.	Mayer Brothers Office at 1540 Seneca Creek Road	4-154
271.	Building at 1550 Seneca Creek Road	4-155
272.	Building at 1550 Seneca Creek Road	4-155

PCI BUFFALO • TUSCALOOSA • MEMPHIS • TAMPA

Panamerican Consultants, Inc. • 2390 Clinton St. • Buffalo, NY 14227 • (716) 821-1650 • Fax (716) 821-1607

August 22, 2005

Mr. Steve Ranalli, P.E.
Clark Patterson Associates
4245 Union Road, Suite 208
Buffalo, New York 14225

Subject: Phase IA Cultural Resources Investigation for the proposed Seneca Creek Pathway,
Town of West Seneca, Erie County, New York

Dear Mr. Ranalli:

Panamerican Consultants, Inc. has completed the Phase IA field work and the bulk of the background research for the proposed Seneca Creek Pathway. Based on the archaeological field inspection, it appears that some Phase IB field testing will be necessary in those area of the ROW for which prior disturbance can not be documented.

The section of ROW that follows the former railroad bed appears sufficiently disturbed that no further work will be recommended. The area of potential effect (APE) along Mineral Springs Road is at or near grade with the road and it appears that Phase IB testing is warranted along this section of the project area. The remainder of the project area between Union and Transit Roads is intermittently disturbed by driveways, culverts and drainage ditch and utility construction. All undisturbed areas should be shovel tested unless impacts from utility line construction can be documented.

We have completed the fieldwork portion for the Phase I Architectural survey. In total, 317 buildings, four cemeteries, one bridge and one municipal park were identified as within or partially within the Seneca Creek Pathway APE. The municipal park, Charles E. Burchfield Nature and Art Center, contains the Middle Ebenezer Cemetery and a former mill race. Eight properties have been previously inventoried, two of which are not NR eligible and the remainder have no determinations of eligibility. Panamerican is in the process of assessing the NR-eligible status for 12 properties within the Seneca Creek Pathway APE.

Fieldwork involved the identification of standing buildings / structures (including bridges), districts, and objects within the project area, or partially within the project area but extend beyond the project limits, that are eligible for listing on the State / National Register of Historic Places (NRHP). New York State Building Forms on file at NYS OPRHP were reviewed for previously inventoried or NRHP Listed/Eligible properties. Copies of these earlier forms will be included in the final report. Panamerican staff consulted with Claire Ross, the National Register and Survey Territory Regional Contact, of New York State Office of Parks, Recreation and Historic Preservation to discuss any concerns about the project.

Panamerican conducted a walkover survey of the project area to correlate existing buildings/structures with those shown on historic maps. Buildings/structures that are at least 50 years old were identified by visual inspection from the public right-of-way and from property

information on file with the Town of West Seneca. All buildings/structures at least 50 years old were photographed with a digital camera. General information recorded for each building/structure included location, street address, and an approximate construction date. For properties at least 50 years old, recorded baseline building information included function, condition, integrity, and architectural style (if apparent). Additional building details and setting information were recorded for those properties that appeared to be NRHP Eligible. All data collected during the walkover survey was entered on a survey matrix form.

The final report will include a list of all properties in the project area and a photographic inventory of all properties in the project area older than 50 years. A New York State DOT Historic Resource Survey Inventory Form will be completed for NR Eligible properties. Panamerican is currently conducting historic research for Seneca Creek Pathway that will aid in completion of the forms and NRHP assessments, as information gathered from background research or local informants may yield significant information about individual properties that was not readily apparent from only visual inspection. Previously inventoried properties with forms on file at the NYSDOT will be included in the report along with an updated photograph of the property.

If you have any questions, please do not hesitate to contact me or Dr. Michael Cinquino at your convenience.

Sincerely,

A handwritten signature in black ink, reading "Frank J. Schieppati". The signature is written in a cursive style with a large initial "F".

Frank J. Schieppati, Ph.D.
Senior Archaeologist

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 367X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN ERIE COUNTY, NEW YORK**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**DRAFT NOTICE OF EXEMPTION
[CAPTION SUMMARY]**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 367X)]

Norfolk Southern Railway Company – Abandonment Exemption – In Erie County, New York

Norfolk Southern Railway Company (“NS”) has filed on December 24, 2014, a verified notice of exemption under 49 C.F.R. part 1152 subpart F–Exempt Abandonments to abandon approximately 1.60 miles of rail line (referred to herein as the “Line”) located in Erie County, New York. The Line extends from milepost VK 3.90 (near Scrivner Drive) to milepost VK 5.50 (near Indian Church Road). The Line traverses United States Postal Zip Code territories 14224 and 14227. All of the track is located in Erie County, New York.

NSR has certified that: (1) no local traffic has moved over the Line for at least 2 years; (2) that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To

address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January __, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),² and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by _____, 2015. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by _____, 2015, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative:
William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300,
Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by _____, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).

through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by _____, 2015, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2015.

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