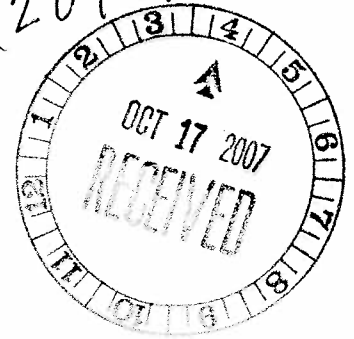


220461



Before the
SURFACE TRANSPORTATION BOARD

**Docket No. AB-204 (Sub-No. 2X)
CAPE FEAR RAILWAYS, INC.
- ABANDONMENT EXEMPTION -
IN CUMBERLAND COUNTY, NORTH CAROLINA
(SKIBO TO FORT BRAGG)**

ENTERED
Office of Proceedings

OCT 18 2007

Part of
Public Record

NOTICE OF EXEMPTION

FILED
OCT 17 2007
SURFACE
TRANSPORTATION BOARD

Cape Fear Railways ("CF") submits this verified Notice of Exemption pursuant to 49 § C.F.R. Part 1152, Subpart F - Exempt Abandonments and Discontinuances of Service and Trackage Rights, for an exempt abandonment of the Skibo-Fort Bragg line from Skibo to the southern border of Fort Bragg line, also known as the Skibo A&R line, a distance of 4.9 miles in Cumberland County, North Carolina (the "Line").

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

The abandonment is proposed to be consummated on or after December 7, 2007 (at least 50 days after filing the Notice of Exemption).

Certification: 49 C.F.R. § 1152.50(b)

CF certifies that no local traffic has moved over the Line for at least two years; and that no formal complaint filed by a user of rail service on the Line (or filed by a state or local governmental entity acting on behalf of such user) regarding cessation of service over the Line either is pending with this Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period. The subject Line has not been used for freight traffic for at least two years. There is no overhead traffic over the Line. Therefore, there is no necessity to reroute any traffic.

FEE RECEIVED

OCT 17 2007

SURFACE
TRANSPORTATION BOARD

Additional Information Required: 49 C.F.R. §§ 1152.50(d)(2) and 1152.22(a)(1), (4), (7)-(8) and (e)(4)

(a) General.

(a)(1) The railroad's exact name is Cape Fear Railways, Inc.

(a)(2) CF is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(a)(3) CF intends to abandon the Line Skibo to the southern border of Fort Bragg army reservation, a distance of 4.9 miles in Cumberland County, North Carolina.

(a)(4) A map showing the location of the Line in conjunction with other rail lines, highways and major roads in the area is attached hereto as Exhibit A and hereby made a part hereof.

(a)(7) The representative of Cape Fear to whom correspondence regarding this abandonment should be sent is:

Evelyn M. Suarez
Williams Mullen
A Professional Corporation
1666 K Street, NW
Suite 1200
Washington, DC 2006
(202) 293-8116
(202) 293-5939 FAX

(a)(8) The Line traverses U. S. Postal Service Zip Code 28301.

(e)(4) The Line would be appropriate for use for other public purposes, mostly notable for the possible expansion of an existing road.

The Line was originally constructed by the Fayetteville Street Railway and Power Company in 1906. In 1921 it came under control of the CF as part of an effort by the U.S. Army to have a second rail carrier serve Fort Bragg. The Line is out of service and has not been used since 1984.

The line closely parallels State Route 24 (in many cases just a few feet). Route 24 is a fast-growing area with many franchise restaurants and retail establishments. At many locations the rail line has been paved over to allow access to these local retailers and restaurants. The rail is 58-pound jointed rail.

The current CF interest in the right-of-way consists almost entirely of easements granted to commercial establishments along the route.

Because of the proximity to Route 24 and the need to widen the road, the Department of Transportation for the State of North Carolina ("NCDOT") approached CF seeking to acquire the property. CF and NCDOT have reached agreement for sale pending approval of the abandonment. A redacted copy of the agreement is included with this petition as Exhibit B.

After the abandonment, Fort Bragg will continue to be served by CF from a connection with CSXT that has been the only active connection since 1984. The base commander is aware of the proposed sale and has no objection. A copy of a letter from the Fort Bragg Public Works Business Center indicating no need for the line is included as Exhibit C.

The decision to stop service in 1984 was due to safety concerns from the combination of retail development along Route 24, extremely close proximity to Route 24 and aviation fuel being the primary commodity hauled.

Based on information in the Applicant's possession, the Line proposed for abandonment does not contain federally granted right-of-way. Title on the property has been the subject of litigation due to quality of title issues. It is one of the reasons why CF has elected to sell to the NCDOT.

Labor Protection: 49 C.F.R. § 1152.50 (d)(2)

The interests of railroad employees will be protected by the conditions discussed in *Oregon Short Line Railroad Co. -- Abandonment - Goshen*, 360 ICC 91 (1979).

Certifications: 49 C.F.R. §§ 1152.50 (d)(1)-(2) and 1152.11-.12

Attached hereto as Exhibit D and hereby made part hereof are Certificates of Service and Publication pursuant to the notice requirements of 49 C.F.R. §§ 1152.50(d)(1), 1105.11 and 1105.12.

Environmental and Historic Report: 49 C.F.R §§ 1105.7(c) and (e), 1105.8(d) and 1105.11

A copy of the Transmitted Letter of CF's Combined Environmental and Historic Report ("CEHR") containing the information required by 49 C.F.R. §§ 1105.7(e) and 1105.8(d), and delivered in accordance with 49 C.F.R. § 1105.11, is attached hereto as Exhibit E and hereby made a part hereof. The original and ten (10) copies were sent to Ms. Victoria Rutson, Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street NW, Washington, DC 20423 on September 25, 2007.

Dated this 17th day of October, 2007.

Respectfully submitted,

Evelyn M. Suarez / DAB

Evelyn M. Suarez
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, DC 2006
(202) 293-8116
(202) 293-5939 FAX

Attorney for Cape Fear Railways, Inc.

Send To Printer Back To TerraServer Change to 11x17 Print Size Show Grid Lines Change to Landscape

USGS 7 km NE of Fayetteville, North Carolina, United States 01 Jul 1983

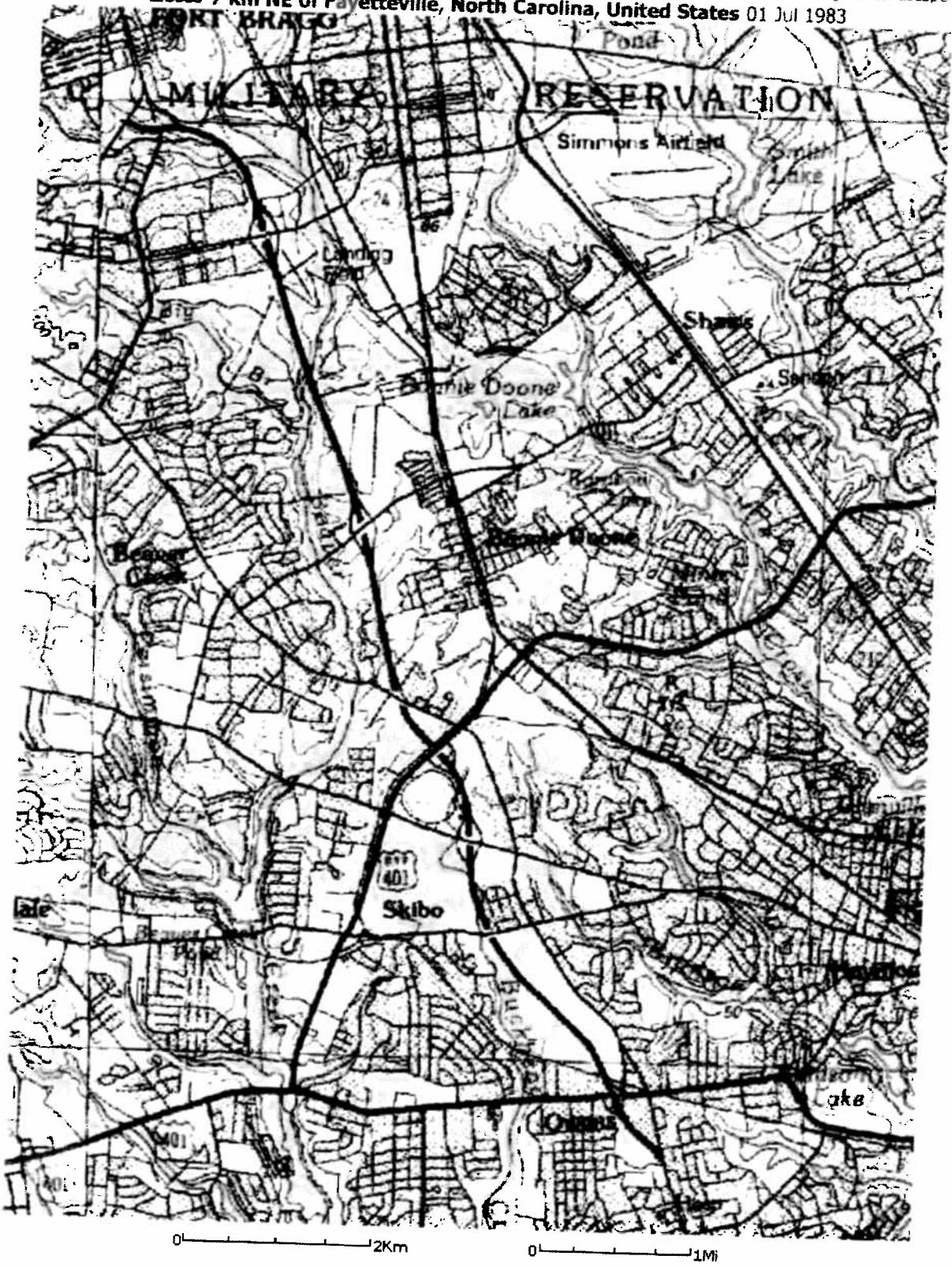
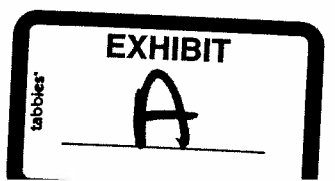


Image courtesy of the U.S. Geological Survey
© 2004 Microsoft Corporation. **Terms of Use** **Privacy Statement**



AGREEMENT

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("Buyer"), and CAPE FEAR RAILWAYS, INC. ("Seller").

RECITALS:

A. Whereas Seller is the owner of a certain railroad and right of way located in Cumberland County, North Carolina, and approximately seven (7) miles of the railroad right of way, extending from the boundary of Fort Bragg to Cliffdale Road, has been inactive for many years.

B. Whereas during the period of inactivity various encroachments have taken place along the inactive portion of the right of way, specifically including encroachments from highway improvement projects.

C. Whereas the cost of litigation to remove encroachments and to establish title would be time consuming and financially burdensome.

D. Whereas it has been determined that the highest and best use of the inactive right of way is to convey it to Buyer for the public good.

E. Whereas the fair market value of the inactive right of way is substantially in excess of the sum Buyer is able to pay for the public use, but the parties agree that the public good is served by the inactive right of way being conveyed to Buyer.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Property": The railroad tracks and improvements and the corridor currently held by Seller and running along either side of the centerline of the railroad tracks beginning at the property line of Fort Bragg and running south to Cliffdale Road in the City of Fayetteville, Cumberland County, North Carolina, as more particularly shown or described on Exhibit A attached hereto.

(b) "Purchase Price" shall mean the sum of ~~Seven Hundred Fifty Thousand and No/100 Dollars~~ ~~(\$750,000.00)~~, payable in cash at Closing by wire transfer in ~~immediately available federal funds~~.

(c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on or before thirty (30) days following the issuance of an order by the Federal Surface Transportation Board authorizing the abandonment of the railroad line or otherwise authorizing the transfer of the line to the Buyer. The Deed shall be in the form attached hereto as Exhibit B.

(d) "Broker(s)" Buyer and Seller represent and warrant to each other that no brokers' or real estate commissions will be due as a result of the sale of the Property from their respective actions. Seller agrees to indemnify, defend and save harmless Buyer from and against any cost and expense (including reasonable attorneys' fees) incurred by Buyer as a result of the untruth of the foregoing representation by Seller. Buyer agrees to indemnify, defend and save harmless Seller from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller as a result of the untruth of the foregoing representation by Buyer.

Section 2. Payment of Costs: Seller shall pay for preparation of a deed, excise tax (revenue stamps), and its attorney fees. Buyer shall pay recording costs, its attorney fees, and for any title search, title insurance, survey or other services or materials desired by Buyer in connection with the acquisition of the Property.



Section 3. Sale of Property: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 4. Evidence of Title: Seller agrees to convey the Property by non-warranty deed and does not make and shall not make any representations or warranties as to the status of title to the Property.

Section 5. Condition of Property: Seller does not make, and shall not be required to make, any warranties, express or implied, concerning the condition, size, or suitability of the Property, which shall be accepted, AS IS, at Closing.

Section 6. Risk of Loss/Damage/Repair: The risk of loss or damage to the Property shall be borne by Buyer. Buyer agrees to fulfill, at Buyer's sole cost and expense, any obligation or condition contained in any order issued by the federal Surface Transportation Board that requires the existing tracks to be removed or otherwise requires any work to be performed on or with regard to the Property.

Section 7. Closing: At Closing, Seller shall deliver to Buyer a Non-Warranty Deed and a non-foreign affidavit (pursuant to the Foreign Invest in Real Property Tax Act), and Buyer shall pay with certified or electronically transmitted (wired) funds to Seller the Purchase Price. The Closing shall be held at the office of Seller's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing.

Section 8. Condition to Closing: The Seller's obligation to close is expressly conditioned on the issuance of an order (satisfactory to Seller) by the federal Surface Transportation Board authorizing the abandonment of the railroad line or otherwise authorizing the conveyance of the Property to the Buyer. Seller shall apply for the order at Seller's cost and expense. In the event Seller has not obtained the order within three (3) years after the date Seller executes this Agreement, this Agreement shall terminate and neither Buyer nor Seller shall have any further obligations hereunder.

Section 9. Entire Agreement: This agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 10. Enforceability: This Agreement shall become an enforceable contract when a fully executed copy has been communicated to both parties. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 11. Applicable Law: This Agreement shall be construed under the laws of North Carolina.

Section 12. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement and on behalf of the party for whom he or she signs and that his or her signature binds such party.

BUYER:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

By: [Signature]
Name: D.D. ALLEN II
Title: RIGHT OF WAY BRANCH MANAGER

Date: 2/6/07

SELLER:

CAPE FEAR RAILWAYS, INC.

By: [Signature]
Name: STEVEN J. BRESKY
Title: PRESIDENT

Date: March 5, 2007

LEGAL REVIEW: [Signature]

Approved as to form:
[Signature]
Assistant Attorney General
RALEIGH 18185_1

EXHIBIT A

PROPERTY DESCRIPTION

That certain railroad right of way and all improvements thereon located in the City of Fayetteville, Cumberland County, North Carolina, beginning at the boundary line of the Fort Bragg Military Reservation and running thence southerly along the centerline of the existing railroad tracks to the right of way of Cliffdale Road, a distance of approximately seven (7) miles to the fullest width allowed by applicable law measured on each side of the centerline of the tracks, and being a part of the railroad conveyed to Cape Fear Railways in the deed from H.A. Page recorded at Book 316, Page 384, Cumberland County Registry of Deeds, and possessed by said railroad since 1925.

Subject to all conveyances, easements, restrictions, encumbrances, encroachments and other matters of record and to any encroachments, easements and other matter that could be discovered from visible inspection of the property.

EXHIBIT B

Revenue: \$ _____

(For Recording Data)

NORTH CAROLINA NON-WARRANTY DEED

Parcel Identifier No.: _____

Brief Description for the Index: _____

Prepared by: David R. Dorton
Maupin Taylor, P.A.
P.O. Drawer 19764
Raleigh, North Carolina 27619-9764

After recording return to: _____

THIS NON-WARRANTY DEED made this _____ day of _____, 2007, by and between CAPE FEAR RAILWAYS, INC., a North Carolina corporation (the "Grantor") and the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, whose mailing address is _____, (the "Grantee").

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee all right, title and interest of Grantor in and to that certain lot or parcel of land situated in Cumberland County, North Carolina and more particularly described as follows:

See EXHIBIT A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered the day and year first above-written.

CAPE FEAR RAILWAYS, INC.
a North Carolina corporation

By: [Signature]
Name: STEVEN BURLEY
Title: PRESIDENT

Johnson County, ^{Kansas} ~~North Carolina~~

I certify that the following person personally appeared before me this day, acknowledging to me that he/she signed the foregoing document: Steven Burley
(Name of Principal)

Date: 3/8/07

[Signature]
Shirley M Ziegenbein, Notary Public
(Notary's printed or typed name)

(Affix Official Seal)

My commission expires: 4/21/09

47

EXHIBIT A

PROPERTY DESCRIPTION

That certain railroad right of way and all improvements thereon located in the City of Fayetteville, Cumberland County, North Carolina, beginning at the boundary line of the Fort Bragg Military Reservation and running thence southerly along the centerline of the existing railroad tracks to the right of way of Cliffdale Road, a distance of approximately seven (7) miles to the fullest width allowed by applicable law measured on each side of the centerline of the tracks, and being a part of the railroad conveyed to Cape Fear Railways in the deed from H. A. Page recorded at Book 316, Page 384, Cumberland County Registry of Deeds, and possessed by said railroad since 1925.

Subject to all easements, encroachments, restrictions, covenants, conditions, and other matters of record and to any encroachments, easements and other matter that could be discovered from visible inspection of the property.



DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT AGENCY
HEADQUARTERS, FORT BRAGG GARRISON COMMAND (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28110

REPLY TO
ATTENTION OF

September 1, 2004

To: EVELYN SUAREZ
FROM: LYNNE W CO

Public Works Business Center

RECEIVED

SEP 10 2004

UTILITIES COORDINATION

Ms. Deborah M. Barbour
Director of Procurement
North Carolina Department of
Transportation
1541 Mail Service Center
Raleigh, North Carolina 27609-1541

Dear Ms. Barbour:

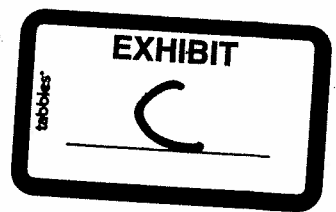
Fort Bragg has no plans to use the rail connection with Cape Fear Railroad that parallels Bragg Boulevard either now or in the future. In fact, we are currently installing a force protection perimeter fence around the perimeter of Fort Bragg's urban area. Because we do not use the rail south of Fort Bragg along Bragg Boulevard, we are fencing across the old rail line near our boundary. No gates will be installed.

To meet our mission needs, Fort Bragg only uses the CSX Transportation rail connection that parallels Murchison Road. Fort Bragg uses rail for two main mission functions - for providing fuel for aircraft at both Pope Air Force Base and Giamone Army Airfield, and for outloading our heavy equipment to support training exercises and mobilizing our soldiers. Cape Fear has an agreement with Fort Bragg under which they operate government-owned railroad equipment and maintain Fort Bragg rails. Cape Fear Railway delivers aviation fuel and transports equipment to and from Fort Bragg. Cape Fear Railroad can only use our rail to transport goods that directly support Fort Bragg and Pope Air Force Base. The agreement does not authorize Cape Fear Railroad to use Fort Bragg rail for other private business functions unrelated to the military.

Point of contact for additional information is Mr. Glen Prillaman, (910) 396-6761.

Sincerely,

Gregory G. Bean
Director of Public Works
Business Center



CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing letter, in Docket No. AB-204 (Sub-No. 2X) for the Skibo to Fort Bragg line in Cumberland County, North Carolina was sent by first class mail on the 13th day of July, 2007, on the following:

Edward J. McKay, Chief
National Geodetic Survey
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

Kenneth S. Edge, Chairman of the Board
Cumberland County Board of
Commissioners
117 Dick Street, Room 554
Fayetteville, NC 28301

Dr. Jeffrey J. Crow, Deputy Secretary
North Carolina Office of Archives and
History
4610 Mail Service Center
Raleigh, NC 27699-4610

Mr. Patrick Simmons
North Carolina Department of Transportation
Rail Division
1553 Mail Service Center
Raleigh, NC 27699-1553

Lewis Ledford, Director
State Game and Parks Commission
Parks and Recreation Division
1615 MSC
Raleigh, NC 27699

J. I. Palmer, Jr., Regional Administrator
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

Richard Hamilton, Executive Director
State Game and Parks Commission
Wildlife Resources Commission
1615 MSC
Raleigh, NC 27699

Sam Hamilton, Regional Director
US Fish & Wildlife Service
Southeast Regional Office
1875 Century Blvd., Suite 400
Atlanta, GA 30345

William G. Ross, Jr., Secretary
NC Department of Environment and Natural
Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

Colonel John Pulliam, District Commander
US Army Corps of Engineers
Wilmington District
P.O. Box 1890
Wilmington, NC 28402-1890


Larry Strickland, Director
Inspections Division
City of Raleigh
POB 590
Raleigh, NC 27602

John Ray, District Conservationist
U.S. Natural Resources Conservation
Service
Fayetteville Service Center
301 E Mountain Drive, Suite 229
Fayetteville, NC 28306-3444

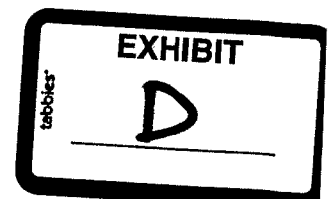
Mitch Silver, Director
Planning Division
City of Raleigh
One Exchange Plaza, Suite 304
Raleigh, NC 27601

Patricia Hooks, Regional Director
National Park Service
Southeast Region
100 Alabama St. SW, 1924 Building
Atlanta, GA 30303

Dated this 17th day of October, 2007.



Mirriam A. Shah



CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing letter, in Docket No. AB-204 (Sub-No. 2X) for the Skibo to Fort Bragg line in Cumberland County, North Carolina was sent by first class mail on the 8th day of August, 2007, on the following:

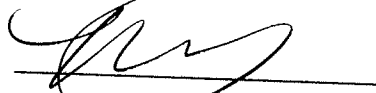
Department of Defense
Military Traffic Management Command
Transportation Engineering Agency
Railroads for National Defense Program
720 Thimble Shoals Blvd., Suite #130
Newport News, VA 23606-2575

Patricia Hooks
Regional Director
National Park Service
100 Alabama St. SW, 1924 Building
Atlanta, GA 30303

Abigail Kimble
U.S. Dept. of Agriculture
Chief of the Forest Service
201 14th St., SW
Washington, DC 20250

Patrick Simmons
North Carolina Department of Transportation
Rail Division
1553 Mail Service Center
Raleigh, NC 27699-1553

Dated this 17th day of October, 2007.



Miriam A. Shen

AFFIDAVIT OF PUBLICATION

STB DOCKET NO. AB-204
(Sub. No. 2X)
NOTICE OF INTENT TO
ABANDON RAIL SERVICE

CAPE FEAR RAILWAYS, INC., (CF) gives notice that on or about September 1, 2007, it intends to file with the Surface Transportation Board (the Board), Washington, DC, 20423, a notice of exemption under 49 CFR 1152. Subpart F-Exempt Abandonments permitting the abandonment of the 4.9 miles of railroad line between Skibo and the southern boundary of Fort Bragg, in Cumberland County, North Carolina. The rail line traverses through United States Postal Service Zip Code 28301. The proceeding will be docketed as STB Docket No. AB-204 (Sub-No. 2X). The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0295. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E Street SW, Washington, DC, 20423. [Sec. 49 CFR 1104.1 (a) and 1104.3(a)], and one copy must be served on applicant's representative [Sec. 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use, or trails use may be directed to the Board's Office of Congressional and Public Services at 202-245-0231. Copies of any comments or requests for conditions should be served on the applicant's representative Evelyn Suarez, Williams Mullen, 1666 K Street NW, Suite 1200, Washington, DC 20006, (202) 293-8116. 7/27 900571

Before the undersigned, a Notary Public of said County and state, duly commissioned and authorized to administer oaths, affirmations, etc., personally appeared. CINDY L. OROZCO Who, being duly sworn or affirmed, according to law, doth depose and say that he/she is LEGAL SECRETARY of THE FAYETTEVILLE PUBLISHING COMPANY, a corporation organized and doing business under the Laws of the State of North Carolina, and publishing a newspaper known as the FAYETTEVILLE OBSERVER, in the City of Fayetteville, County and State aforesaid, and that as such he/she makes this affidavit; that he/she is familiar with the books, files and business of said Corporation and by reference to the files of said publication the attached advertisement of CL Legal Line ABANDON RAIL SERVICE of WILLIAMS MULLEN was inserted in the aforesaid newspaper in space, and on dates as follows:

7/27/2007
and at the time of such publication The Fayetteville Observer was a newspaper meeting all the requirements and qualifications prescribed by Sec. No. 1-597 G.S. of N.C.
The above is correctly copied from the books and files of the aforesaid corporation and publication.

Cindy Orozco

LEGAL SECRETARY
Title

Sworn or affirmed to, and subscribed before me, this 27 day of July, A.D., 2007.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

Heather Kasey
Notary Public

My commission expires 9th day of March, 2009.

MAIL TO: WILLIAMS MULLEN
1666 K STREET N.W., SUITE 1200
WASHINGTON, DC 20006

CERTIFICATE OF SERVICE
OF THE
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report, prepared after consultation with all appropriate agencies, in Docket No. AB-204 (Sub-No. 2X) for the Skibo to Fort Bragg line in Cumberland County, North Carolina was served by first class mail on the 25th day of September, 2007, on the following:

State Clearinghouse (or alternate):
North Carolina Public Service Commission
4326 Mail Service Center
Raleigh, NC 27699

State Environmental Protection Agency:
North Carolina Environment & Natural
Resources Department
1601 Mail Service Center
Raleigh, NC 27699

State Coastal Zone Management Agency (if
applicable):
Not applicable.

Head of County (Planning):
Cumberland County Board of
Commissioners
Kenneth S. Edge, Chairman of the Board
117 Dick Street, Room 554
Fayetteville, NC 28301

Environmental Protection Agency (regional
office):

U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

U.S. Fish and Wildlife:
US Fish & Wildlife Service
Southeast Regional Office
1875 Century Boulevard, Suite 400
Atlanta, GA 30345

Ms. Victoria Rutson
Chief Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20024

U.S. Army Corps of Engineers:
US Army Corps of Engineers
Wilmington District
P.O. Box 1890
Wilmington, NC 28402-1890

National Park Service:
National Park Service
Southeast Region
100 Alabama St. SW
1924 Building
Atlanta, GA 30303

U.S. Natural Resources Conservation
Service:
U.S. Natural Resources Conservation
Service
Fayetteville Service Center
301 E Mountain Drive
Fayetteville, NC 28306-3444

National Geodetic Survey:
National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:
North Carolina Office of Archives and
History
4610 Mail Service Center
Raleigh, NC 27699-4610

Shipper:
Not applicable.

Dated this 25th day of September, 2007.

Evelyn M. Suarez /DAB
Evelyn M. Suarez



WILLIAMS MULLEN

Direct Dial: 202.293.8116
esuarez@williamsmullen.com

September 25, 2007

Ms. Victoria Rutson
Chief Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Proposed Abandonment by Cape Fear Railways, Inc., of its line from Skibo to the southern border of Fort Bragg, a distance of 4.9 miles in Cumberland County, North Carolina; STB Docket No. AB-204 (Sub-No. 2X)

Dear Chief Rutson:

On or after October 15th, 2007, and on behalf of Cape Fear Railways, Inc., we expect to file with the Surface Transportation Board a Notice of Exemption seeking authority for an exempt abandonment of the Skibo-Fort Bragg line from Skibo to the southern border of Fort Bragg line, also known as the Skibo A&R line, a distance of 4.9 miles in Cumberland County, North Carolina. Attached is an Environmental and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

As shown on the enclosed certificate of service, we are providing this report to required interested parties so that they may review the information that will form the basis for the STB's independent environmental analysis of this proceeding and, if desired, communicate with the Section of Environmental Analysis within the coming weeks.

If there are any questions concerning this proposal, please contact Evelyn Suarez by telephone at 202-293-8116 or by mail at 1666 K St. NW, Suite 1200, Washington, DC 20006.

Sincerely,

Evelyn M. Suarez / DAB

Evelyn Suarez,

Counsel to Cape Fear Railways

Enclosures

A Professional Corporation

NORTH CAROLINA • VIRGINIA • WASHINGTON, D.C. • LONDON
1666 K Street, N.W., Suite 1200 Washington, D.C. 20006 Tel: 202.833.9200 Fax: 804.783.6507 or 202.293.5939
www.williamsmullen.com

EXHIBIT

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Before the
SURFACE TRANSPORTATION BOARD

**Docket No. AB-204 (Sub-No. 2X)
CAPE FEAR RAILWAYS, INC.
- ABANDONMENT EXEMPTION -
IN CUMBERLAND COUNTY, NORTH CAROLINA
(SKIBO TO FORT BRAGG)**

Combined Environmental and Historic Report

Evelyn M. Suarez
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, DC 2006
(202) 293-8116
(202) 293-5939 FAX

Attorney for:
CAPE FEAR RAILWAYS, INC.

Dated: September 25, 2007
Filed: September 25, 2007

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB-204 (Sub-No.2X)
CAPE FEAR RAILWAYS, INC.
- ABANDONMENT EXEMPTION -
IN CUMBERLAND COUNTY, NORTH CAROLINA
(SKIBO TO FORT BRAGG)

Combined Environmental and Historic Report

Cape Fear Railway, Inc. ("CF") submits this Combined Environmental and Historic Report pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, for an exempt abandonment and discontinuance of service over the Skibo-Fort Bragg line from Skibo to the southern border of Fort Bragg line, also known as the Skibo A&R line, a distance of 4.9 miles in Cumberland County, North Carolina (the "Line"). The Line traverses U. S. Postal Service Zip Code 28301.

The CF anticipates that a Petition for Exemption to abandon the Line will be filed at the STB on or after October 15, 2007. A map of the Line marked **Attachment No. 1** is attached hereto and hereby made part hereof. CF's letter to federal, state and local government agencies marked **Attachments No. 2** is attached hereto and hereby made a part hereof. Responses received thus far to CF's letters are attached hereto and sequentially referenced as attachments in the appropriate sections of this Combined Environmental and Historic Report.

ENVIRONMENTAL REPORT

49 C.F.R.S 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:

The proposed action involves the abandonment and discontinuance of service over the Skibo to Fort Bragg line, a distance of 4.9 miles in Cumberland County, North Carolina (the "Line"). The proposed abandonment will permit CF to sell the Line to the North Carolina Department of Transportation (NCDOT). NCDOT plans to use the property to widen State Route 24. The right of way is precariously close to the highway. The Line has been out of service since 1985. One of the reasons for the stoppage was CF and the U.S. Army concerns for safety. At that time the major commodity still being delivered to Fort Bragg was volatile aviation fuel. CF serves Fort Bragg from an alternative line that avoids the highway safety issue.

There is no current rail customer on the Line and no location of a new rail served industry along the Line is anticipated. There is no overhead traffic.

The Line was originally constructed by the Fayetteville Street Railway and Power Company in 1906. In 1921 it came under control of the CF as part of an effort by the U.S. Army to have a second rail carrier serve Fort Bragg.

The Line closely parallels State Route 24 (in many cases just a few feet). Property bordering Route 24 is a fast growing area with many franchise restaurants and retail establishments. At many locations the rail line has been paved over to allow access

to these local retailers and restaurants. The rail that does exist is 58-pound jointed rail. The current CF interest in the right-of-way consists almost entirely of easement income from grants to commercial establishments along route to cross the Line.

Based on information in the Applicant's possession, the Line proposed for abandonment does not contain federally granted right-of-way.

CF believes sale of the Line to NCDOT is the highest and best use of the property. A map of the Line is attached as **Attachment No. 1**.

(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:

As the Line has been out of service since 1985, there should be no effect on regional or local transportation systems or patterns other than the improvement in highway flow due to the widening of Route 24. There will be no diversion to other modes or systems. **Attachment 3** is a letter from the U.S. Army transportation section at Fort Bragg indicating no need for the line for rail service to the base. **Attachment 4** is a letter from the rail division of NCDOT supporting the abandonment.

(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.
- (ii) Based on consultation with the U.S. Soil Conservation Service [now called the U.S. Natural Resources Conservation Service] state the effect of the proposed action on any prime agricultural land.
- (iii) If the action effects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.G. §10905 and explain why.

Response:

- (i) The Cumberland County Commissioners Office has been contacted and has no objections. Its response is included as **Attachment 5**.
- (ii) The United States Natural Resources Conservation Service has been contacted. To date CF has received no response.
- (iii) Not Applicable.
- (iv) The property will be used for highway improvements. It was not included in a 1999 study for a vintage trolley system between Fayetteville City Hall and Fort Bragg and therefore is not viewed as desirable for mass transit purposes.¹ A redacted copy of the sale agreement between CF and NCDOT is included as **Attachment 6**.

(4) Energy.

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

Response:

- (i) There will be no effects on the transportation of energy resources as none have moved over the Line in 22 years.
- (ii) There are no recyclable commodities handled over the Line.

¹ Alternative Transportation Corridor Feasibility Study, Kimley-Horn Associates, Inc. (February 1999).

(iii) There will be no effect on energy efficiency.

(iv) (A)(B) There will be no rail-to-motor diversion.

(5) Air.

(i) If the proposed action will result in either:

(A) an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) an increase in rail yard activity of at least 100% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in §§ (5)(i)(A) will apply.

Response:

There is no such effect anticipated.

(5) Air.

(ii) If the proposed action affects a class 1 or nonattainment area under the Clean Air Act, and will result in either;

(A) an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, or

(B) an increase in rail yard activity of at least 20% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

Response:

There will be no increase in rail traffic, rail yard activity or truck traffic as a result of the proposed action.

(5) Air.

- (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:

The proposed action will not affect the transportation of ozone depleting materials.

(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:

Not applicable.

(7) Safety.

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

- (i) The proposed action will have no detrimental effects on public health and safety.
- (ii) The proposed action will not affect the transportation of hazardous materials.
- (iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the subject right-of-way.

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

Response:

- (i) The U. S. Fish and Wildlife Service has been contacted and has not responded in writing.

(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.
- (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.
- (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

Response:

- (i) The North Carolina Department of Environment and Natural Resources has no objections. Its response is attached as **Attachment No. 7**.
- (ii) The U.S. Army Corps of Engineers has been contacted and has not responded.

(iii) It is not anticipated there will be any requirements for Section 402 permits.

The response of the U.S. E.P.A is attached as **Attachment 8**.

(10) Proposed Mitigation.

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

Response:

There are no known adverse environmental impacts.

HISTORIC REPORT
49C.F.R. §1105.8(d)

- (1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action.

Response:

See **Attachment No. 1.**

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

Response:

The right-of-way is generally 100 feet wide, being 50 feet on either side of the centerline of the track. The topography of the Line is level with adjacent ground, and is in a predominately suburban commercial area.

- (3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area.

Response:

There are no structures on the Line.

- (4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations to the extent such information is known:

Response:

Not applicable.

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

Response:

See the preceding pages for a brief history and description of carrier operations.

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

Response:

Not applicable.

- (7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities).

Response:

At this time, CF knows of no historic sites or structures or archeological resources on the Line or in the project area, CF believes that nothing in the scope of the project merits historical comment and that any archeological sites within the scope of the right-of-way would have previously been disturbed during the construction of the Line. The North Carolina Department of Cultural Resources has made a review of its records and is unaware of any historic resources. Its letter is included as **Attachment 9**.

- (8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

Response:

CF does not have any such readily available information,

- (9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified non-railroad owned properties or group of properties immediately adjacent to the railroad right-of-way. Photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the locations and type of the site (i.e., prehistoric or native American).

Response:

Not applicable.

Dated this 25th day of September, 2007.

Respectfully submitted,

Evelyn M. Suarez/DAB

Evelyn M. Suarez
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, DC 20006
(202) 293-8116
(202) 293-5939 FAX

Attorney for Cape Fear Railways, Inc.

Send To Printer

Back To TerraServer

Change to List/Print Size

Show Grid Lines

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80055 7 km NE of Fayetteville, North Carolina, United States 01 Jul 1983



Image courtesy of the U.S. Geological Survey
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M.E. MULLEN

July 12, 2007

CERTIFIED MAIL/RETURN RECEIPT

Edward J. McKay, Chief
National Geodetic Survey
Spatial Reference System Division
NOAA/NGS
1315 East-West Highway
Silver Spring, MD 20910-3282

Re: Proposed Abandonment by Cape Fear Railway, Inc., of its line from Skibo to the southern border of Fort Bragg, a distance of 4.9 miles in Cumberland County, North Carolina; STB Docket No. AB-204 (Sub-No. 23).

Dear Sir:

Cape Fear Railway, Inc., plans to request authority from the Surface Transportation Board ("STB") to abandon and discontinue service on its Skibo to the southern border of Fort Bragg line, also known as the Skibo A&R line, distance of 4.9 miles in Cumberland County, North Carolina. A map of the proposed track abandonment is highlighted in yellow and is attached as Exhibit A. This letter is being sent to various parties that may be potentially affected. A list of the recipients is listed in Exhibit B.

As background, the line has not been operated since 1984. If abandonment is approved, the North Carolina Department of Transportation ("NCDOT") and Cape Fear will implement an already signed agreement for NCDOT to acquire the property in connection with the widening of Route 24.

Pursuant to the STB's regulations, 49 C.F.R. Part 1152, and the environmental regulations, 40 C.F.R. Part 1105.7, this is to request your assistance in identifying any potential adverse effects of this action as indicated in the paragraphs below. Please respond to the area or areas of interest to your organization. We do not anticipate any adverse environmental impacts. However, if you identify any, please describe proposed actions to mitigate such impacts. Please provide us with a written response as soon as possible so that your comments can be included in an Environmental Report, which will be sent to the STB with our submission.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U. S. FISH AND WILDLIFE SERVICE/STATE GAME AND PARKS COMMISSION. State (1) 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; and, (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or Local water quality standards. Describe any inconsistencies.

U. S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action; and (2) whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

7/12/2007

Page 2

Cape Fear Railways AB 204 (Sub-No 2X)

U. S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY). (1) Identify any potential effects on the surrounding area; (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved; and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S. C. § 1342) are required for the proposed action.

STATE HISTORICAL ORGANIZATIONS. Indicate if there are any historical structures worthy of preservation associated with the rail line.

Thank you for your assistance. Please send your reply to the undersigned at William Mullen, 1656 K Street, NW, Suite 1200, Washington, DC, 20006. If you need further information, please contact me at (202) 293-8116.

Very truly yours,

Evelyn M. Suarez
Evelyn M. Suarez

Cc: David Oswalt
Gilbert C. Laite III
Robert Finley

Attachments

Send To Print Back To Top Click on 11x17 Print Size Show Grid Lines Change to Landscape



Image courtesy of the U.S. Geological Survey
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Dr. Jeffrey J. Crow, Deputy Secretary
North Carolina Office of Archives and History
4610 Mail Service Center
Raleigh, NC 27699-4610

Lewis Ledford, Director
State Game and Parks Commission
Parks and Recreation Division
1615 MSC
Raleigh, NC 27699

Richard Hamilton, Executive Director
State Game and Parks Commission
Wildlife Resources Commission
1615 MSC
Raleigh, NC 27699

William G. Ross, Jr., Secretary
NC Department of Environment and Natural
Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

Larry Strickland, Director
Inspections Division
City of Raleigh
POB 590
Raleigh, NC 27602

Mitch Silver, Director
Planning Division
City of Raleigh
One Exchange Plaza, Suite 304
Raleigh, NC 27601

Kenneth S. Edge, Chairman of the Board
Cumberland County Board of Commissioners
117 Dick Street, Room 554
Fayetteville, NC 28301

Mr. Patrick Simmons
North Carolina Department of Transportation
Rail Division
1553 Mail Service Center
Raleigh, NC 27699-1553

J. I. Palmer, Jr., Regional Administrator
U.S. EPA, Region 4
61 Fourth Street, SW
Atlanta, GA 30303

Sara Hamilton, Regional Director
US Fish & Wildlife Service
Southeast Regional Office
1675 Century Blvd., Suite 400
Atlanta, GA 30345

Colonel John Pulliam, District Commander
US Army Corps of Engineers
Wilmington District
P.O. Box 1890
Wilmington, NC 28402-1890

John Ray, District Conservationist
U.S. Natural Resources Conservation Service
Fayetteville Service Center
301 E Mountain Drive, Suite 229
Fayetteville, NC 28306-3444

Patricia Hooks, Regional Director
National Park Service
Southeast Region
100 Alabama St. SW, 1924 Building
Atlanta, GA 30303



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT AGENCY
HEADQUARTERS, FORT BRAGG GARRISON COMMAND (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28510

September 1, 2004

To: EVELYN SUAREZ
From: LYMARD CO.

Public Works Business Center

Ms. Deborah M. Barbour
Director of Preconstruction
North Carolina Department of
Transportation
1541 Mail Service Center
Raleigh, North Carolina 27699-1541

RECEIVED

SEP 10 2004
UTILITIES COORDINATION
UNIT
RALEIGH, NC

Dear Ms. Barbour:

Fort Bragg has no plans to use the rail connection with Cape Fear Railroad that parallels Bragg Boulevard either now or in the future. In fact, we are currently installing a force protection security fence around the perimeter of Fort Bragg's urban area. Because we do not use the rail south of Fort Bragg along Bragg Boulevard, we are fencing across the old rail line near our boundary. No gate will be installed.

To meet our mission needs, Fort Bragg only uses the CSX Transportation rail connection that parallels Murchison Road. Fort Bragg uses rail for two main mission functions - for providing fuel for aircraft at both Pope Air Force Base and Simmons Army Airfield, and for outloading our heavy equipment to support training exercises and mobilizing our soldiers. Cape Fear has an agreement with Fort Bragg under which they operate government-owned railroad equipment and maintain Fort Bragg rails. Cape Fear Railway delivers aviation fuel and transports equipment to and from Fort Bragg. Cape Fear Railroad can only use our rail to transport goods that directly support Fort Bragg and Pope Air Force Base. The agreement does not authorize Cape Fear Railroad to use Fort Bragg rail for other private business functions unrelated to the military.

Point of contact for additional information is Mr. Glen Prillaman, (910) 396-6761.

Sincerely,

Gregory G. Bean
Director of Public Works
Business Center



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

August 22, 2007

Evelyn M. Suarez
Williams Mullen
1666 K Street, NW, Ste. 1200
Washington, DC, 2006

Re: Proposed Abandonment by Cape Fear Railways, Inc., of its line from Skibo to the southern border of Fort Bragg, a distance of 4.9 miles in Cumberland County, North Carolina; STB Docket No. AB-204 (Sub-No. 2X)

Dear Ms. Suarez:

Receipt is acknowledged of your letter dated July 12, 2007 requesting comments on the proposed abandonment by Cape Fear Railways of 4.9 miles of inactive track between Skibo and the southern border of Fort Bragg, in Cumberland County North Carolina. We are supportive of the proposed discontinuance and abandonment of this track because it will facilitate the current efforts by the NC Department of Transportation to acquire land to widen NC Route 24 in Cumberland County. Please call me at 919-733-7245, extension 263 if you need additional information.

Sincerely,

Patrick B. Simmons, Director
Rail Division

PBS/

Cc: David Hinnant

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
RAIL DIVISION
1553 MAIL SERVICE CENTER

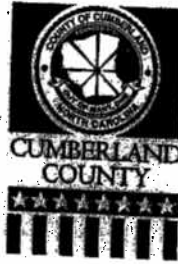
TELEPHONE: 919-733-7245
FAX: 919-715-6580
WEBSITE: WWW.BYTRAIN.ORG

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RAIL DIVISION

KENNETH S. EDGE
Chairman

J. BREEDEN BLACKWELL
Vice Chairman

JEANNETTE M. COUNCIL
JOHN T. HENLEY, JR.
BILLY R. KING
EDWARD G. MELVIN
DIANE WHEATLEY



MARSHA S. FOC
Clerk to the Board

MARIE COLGA
Deputy Clerk

BOARD OF COMMISSIONERS

5th Floor, New Courthouse • P.O. Box 1829 • Fayetteville, North Carolina 28302-1829
(910) 678-7771 • Fax: (910) 678-7770

August 21, 2007

Ms. Evelyn M. Suarez
Williams Mullen
1666 K Street, NW, Suite 1200
Washington, DC

Dear Ms. Suarez:

RE: Cape Fear Railways, Inc.
STB Docket No. AB-204
Sub-No: 2X

I am responding to your letter dated July 12, 2007 regarding the above project.

The abandonment of this 4.9 mile rail line will have no adverse impact on any of our transportation or land use plans.

If you should have any questions, please don't hesitate to let me know.

Sincerely,

Kenneth S. Edge

Kenneth S. Edge
Chairman

Copy to: James Martin, County Manager

AGREEMENT

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("Buyer"), and CAPE FEAR RAILWAYS, INC. ("Seller").

RECITALS:

- A. Whereas Seller is the owner of a certain railroad and right of way located in Cumberland County, North Carolina, and approximately seven (7) miles of the railroad right of way, extending from the boundary of Fort Bragg to Cliffdale Road, has been inactive for many years.
- B. Whereas during the period of inactivity various encroachments have taken place along the inactive portion of the right of way, specifically including encroachments from highway improvement projects.
- C. Whereas the costs of litigation to remove encroachments and to establish title would be time consuming and financially burdensome.
- D. Whereas it has been determined that the highest and best use of the inactive right of way is to convey it to Buyer for the public good.
- E. Whereas the fair market value of the inactive right of way is substantially in excess of the sum Buyer is able to pay for the public use, but the parties agree that the public good is served by the inactive right of way being conveyed to Buyer.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREBIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

- (a) "**Property**": The railroad tracks and improvements and the corridor currently held by Seller and running along either side of the centerline of the railroad tracks beginning at the property line of Fort Bragg and running south to Cliffdale Road in the City of Fayetteville, Cumberland County, North Carolina, as more particularly shown or described on Exhibit A attached hereto.
- (b) "**Purchase Price**" shall mean the sum of ~~Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00)~~, payable in cash at Closing by wire transfer in immediately available federal funds.
- (c) "**Closing**" shall mean the date and time of recording of the deed. Closing shall occur on or before thirty (30) days following the issuance of an order by the Federal Surface Transportation Board authorizing the abandonment of the railroad line or otherwise authorizing the transfer of the line to the Buyer. The Deed shall be in the form attached hereto as Exhibit B.
- (d) "**Broker(s)**" Buyer and Seller represent and warrant to each other that no brokers' or real estate commissions will be due as a result of the sale of the Property from their respective actions. Seller agrees to indemnify, defend and save harmless Buyer from and against any cost and expense (including reasonable attorneys' fees) incurred by Buyer as a result of the untruth of the foregoing representation by Seller. Buyer agrees to indemnify, defend and save harmless Seller from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller as a result of the untruth of the foregoing representation by Buyer.

Section 2. Payment of Costs: Seller shall pay for preparation of a deed, excise tax (revenue stamps), and its attorney fees. Buyer shall pay recording costs, its attorney fees, and for any title search, title insurance, survey or other services or materials desired by Buyer in connection with the acquisition of the Property.

Section 3. Sale of Property: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 4. Evidence of Title: Seller agrees to convey the Property by non-warranty deed and does not make and shall not make any representations or warranties as to the status of title to the Property.

Section 5. Condition of Property: Seller does not make, and shall not be required to make, any warranties, express or implied, concerning the condition, size, or suitability of the Property, which shall be accepted, AS IS, at Closing.

Section 6. Risk of Loss/Damage/Repair: The risk of loss or damage to the Property shall be borne by Buyer. Buyer agrees to fulfill, at Buyer's sole cost and expense, any obligation or condition contained in any order issued by the federal Surface Transportation Board that requires the existing tracks to be removed or otherwise requires any work to be performed on or with regard to the Property.

Section 7. Closing: At Closing, Seller shall deliver to Buyer a Non-Warranty Deed and a non-foreign affidavit (pursuant to the Foreign Invest in Real Property Tax Act), and Buyer shall pay with certified or electronically transmitted (wired) funds to Seller the Purchase Price. The Closing shall be held at the office of Seller's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing.

Section 8. Condition to Closing: The Seller's obligation to close is expressly conditioned on the issuance of an order (satisfactory to Seller) by the federal Surface Transportation Board authorizing the abandonment of the railroad line or otherwise authorizing the conveyance of the Property to the Buyer. Seller shall apply for the order at Seller's cost and expense. In the event Seller has not obtained the order within three (3) years after the date Seller executes this Agreement, this Agreement shall terminate and neither Buyer nor Seller shall have any further obligations hereunder.

Section 9. Entire Agreement: This agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 10. Enforceability: This Agreement shall become an enforceable contract when a fully executed copy has been communicated to both parties. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 11. Applicable Law: This Agreement shall be construed under the laws of North Carolina.

Section 12. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement and on behalf of the party for whom he or she signs and that his or her signature binds such party.

BUYER:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

By: [Signature]
Name: A.D. ALLEN II
Title: RIGHT OF WAY BRANCH MANAGER
Date: 2/6/07

SELLER:

CAPE FEAR RAILWAYS, INC.

By: [Signature]
Name: STEVEN J. BRESKY
Title: President
Date: March 5, 2007

LEGAL REVIEW: [Signature]

Approved as follows:
[Signature]
Assistant Attorney General

EXHIBIT A

PROPERTY DESCRIPTION

That certain railroad right of way and all improvements thereon located in the City of Fayetteville, Cumberland County, North Carolina, beginning at the boundary line of the Fort Bragg Military Reservation and running thence southerly along the centerline of the existing railroad tracks to the right of way of Cliffdale Road, a distance of approximately seven (7) miles to the fullest width allowed by applicable law measured on each side of the centerline of the tracks, and being a part of the railroad conveyed to Cape Fear Railways in the deed from H.A. Page recorded at Book 316, Page 384, Cumberland County Registry of Deeds, and possessed by said railroad since 1925.

Subject to all conveyances, easements, restrictions, encumbrances, encroachments and other matters of record and to any encroachments, easements and other matter that could be discovered from visible inspection of the property.

EXHIBIT B

Revenue: \$ _____

(For Recording Data)

NORTH CAROLINA NON-WARRANTY DEED

Parcel Identifier No.: _____

Brief Description for the Index: _____

Prepared by: David R. Dorton
Maupin Taylor, P.A.
P.O. Drawer 19764
Raleigh, North Carolina 27619-9764

After recording return to: _____

THIS NON-WARRANTY DEED made this _____ day of _____, 2007, by and between **CAPE FEAR RAILWAYS, INC.**, a North Carolina corporation (the "Grantor") and the **DEPARTMENT OF TRANSPORTATION**, an agency of the State of North Carolina, whose mailing address is _____, (the "Grantee").

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee all right, title and interest of Grantor in and to that certain lot or parcel of land situated in Cumberland County, North Carolina and more particularly described as follows:

See EXHIBIT A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered the day and year first above-written.

CAPE FEAR RAILWAYS, INC.
a North Carolina corporation

By: [Signature]
Name: STEVEN BUSBY
Title: PRESIDENT

Johnson County, ~~North Carolina~~ ^{Kansas}

I certify that the following person personally appeared before me this day, acknowledging to me that he/she signed the foregoing document: Steven Busby
(Name of Principal)

Date: 3/8/07

[Signature]
Shirley M Ziegenbein, Notary Public
(Notary's printed or typed name)

(Affix Official Seal)

My commission expires: 4/21/09

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EXHIBIT A

PROPERTY DESCRIPTION

That certain railroad right of way and all improvements thereon located in the City of Fayetteville, Cumberland County, North Carolina, beginning at the boundary line of the Fort Bragg Military Reservation and running thence southerly along the centerline of the existing railroad tracks to the right of way of Cliffdale Road, a distance of approximately seven (7) miles to the fullest width allowed by applicable law measured on each side of the centerline of the tracks, and being a part of the railroad conveyed to Cape Fear Railways in the deed from H.A. Page recorded at Book 316, Page 384, Cumberland County Registry of Deeds, and possessed by said railroad since 1925.

Subject to all conveyances, easements, restrictions, encumbrances, encroachments and other matters of record and to any encroachments, easements and other matter that could be discovered from visible inspection of the property.



North Carolina Department of Environment and Natural Resources
Division of Parks and Recreation

Michael F. Easley, Governor

William G. Ross Jr., Secretary

Lewis R. Ledford, Director

July 18, 2007

Evelyn M. Suarez
Williams Mullen
1666 K Street, N.W. Suite 1200
Washington, D.C. 20006

Dear Ms. Suarez:

The North Carolina Division of Parks and Recreation has reviewed your plans to abandon and discontinue service on its Skibo to the southern border of Fort Bragg line in Cumberland County, NC. We have no objections to the project as proposed.

Please let me know if you need additional information.

Sincerely,

Brian L. Strong
Head, Natural Resources Program





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 30, 2007

Ms. Evelyn M. Suarez
Williams Mullen
1666 K Street, NW, Suite 1200
Washington, DC 20006

Subject: Proposed Railroad Abandonment
From Skibo to Southern Border of Ft. Bragg
4.9 miles in Cumberland County, NC
STB Docket No. AB-204 (Sub-No. 2X)

Dear Ms. Suarez:

The U. S. Environmental Protection Agency (EPA) has received your request to abandon the subject railroad line in Cumberland County, North Carolina.

Because railroad abandonments generally have few environmental impacts, we have no comments to offer. This assumes, however, that no major environmental impacts are projected in this case. We also request that best management practices be used during the abandonment process concerning soil erosion control and any discovery of hazardous materials or cultural sites along the rail line.

We suggest that the rail corridor be seeded and allowed to naturally revegetate to blend into the environment, or be used for bike trails or other suitable linear projects. Rails might also be recycled to save resources and energy.

We appreciate your interest. Should you have questions, please contact Chris Hoberg of my staff at 404/562-9619 (or hoberg.chris@epa.gov).

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management



North Carolina Department of Cultural Resources
State Historic Preservation Office

Peter B. Sandbeck, Administrator

Michael F. Easley, Governor
Lisbeth C. Evans, Secretary
Jeffrey J. Crow, Deputy Secretary

Office of Archives and History
Division of Historical Resources
David Brook, Director

August 22, 2007

Evelyn Suarez
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, DC 20006

Re: Proposed Abandonment of Cape Fear Railways, Inc., from Skibo to the southern border of Fort Bragg (4.9 miles), Cumberland County, ER 07-1578

Dear Ms. Suarez:

Thank you for your letter of July 12, 2007, concerning the above project.

We have conducted a review of the proposed undertaking and are aware of no historic resources that would be affected by the project. Therefore, we have no comment on the undertaking as proposed.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919/733-4763, ext. 246. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

Peter B. Sandbeck
MPM

Peter Sandbeck

ADMINISTRATION
RESTORATION
SURVEY & PLANNING

Location
507 N. Blount Street, Raleigh NC
515 N. Blount Street, Raleigh NC
515 N. Blount Street, Raleigh, NC

Mailing Address
4617 Mail Service Center, Raleigh NC 27699-4617
4617 Mail Service Center, Raleigh NC 27699-4617
4617 Mail Service Center, Raleigh NC 27699-4617

Telephone/Fax
(919)733-4763/733-8653
(919)733-6547/715-4801
(919)733-6545/715-4801 9

Attachment No: 9

CERTIFICATE OF SERVICE
OF THE
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report, prepared after consultation with all appropriate agencies, in Docket No. AB-204 (Sub-No. 2X) for the Skibo to Fort Bragg line in Cumberland County, North Carolina was served by first class mail on the 25th day of September, 2007, on the following:

State Clearinghouse (or alternate):
North Carolina Public Service Commission
4326 Mail Service Center
Raleigh, NC 27699

State Environmental Protection Agency:
North Carolina Environment & Natural
Resources Department
1601 Mail Service Center
Raleigh, NC 27699

State Coastal Zone Management Agency (if
applicable):
Not applicable.

Head of County (Planning):
Cumberland County Board of
Commissioners
Kenneth S. Edge, Chairman of the Board
117 Dick Street, Room 554
Fayetteville, NC 28301

Environmental Protection Agency (regional
office):
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

U.S. Fish and Wildlife:
US Fish & Wildlife Service
Southeast Regional Office
1875 Century Boulevard, Suite 400
Atlanta, GA 30345

Ms. Victoria Rutson
Chief Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20024

U.S. Army Corps of Engineers:
US Army Corps of Engineers
Wilmington District
P.O. Box 1890
Wilmington, NC 28402-1890

National Park Service:
National Park Service
Southeast Region
100 Alabama St. SW
1924 Building
Atlanta, GA 30303

U.S. Natural Resources Conservation
Service:
U.S. Natural Resources Conservation
Service
Fayetteville Service Center
301 E Mountain Drive
Fayetteville, NC 28306-3444

National Geodetic Survey:
National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:
North Carolina Office of Archives and
History
4610 Mail Service Center
Raleigh, NC 27699-4610

Shipper:
Not applicable.

Dated this 25th day of September, 2007.

Evelyn M. Suarez / DAB
Evelyn M. Suarez

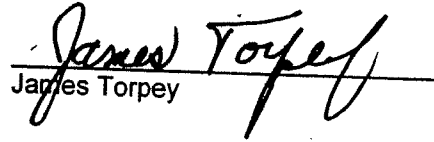
VERIFICATION

COPY

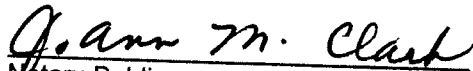
STATE OF NORTH CAROLINA)
)ss
COUNTY OF CUMBERLAND)

I, JAMES TORPEY, Superintendent, Cape Fear Railways, Inc., declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Cape Fear Railways, Inc.

Dated at Fayetteville, North Carolina, this 18 day of September, 2007


James Torpey

SUBSCRIBED AND SWORN TO
me this 18 day of September, 2007


Notary Public

My commission expires April 13, 2012.