

Nauman Smith

Attorneys At Law

Please Reply to:
P. O. Box 840
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.
E-mail: bdunlapjr@nssh.com
Telephone Extension 21

August 14, 2012

**Filed Electronically
Confirmed via U.S. Mail**

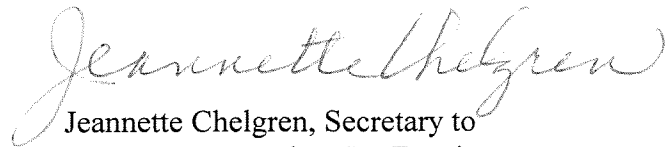
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

**In re: Cecile and Edward Coble, Complainants v. Norfolk Southern Railway Company; Carroll Township; York County; Dillsburg Borough; and Commonwealth of Pennsylvania, Department of Transportation
PUC Docket No. C-20054723**

Dear Secretary Chiavetta:

I am enclosing the original of a Revised Petition to Amend Order and to Withdraw Prior Petition for filing on behalf of Norfolk Southern Railway Company in connection with the above-referenced matter. As evidenced by the attached Certificate of Service, a copy of the Petition has been served on all interested parties. In accordance with the new requirements, a hard copy of the Prehearing Conference Memorandum will **not** be delivered to your office. If you have any questions, please advise.

Sincerely yours,



Jeannette Chelgren, Secretary to
Benjamin C. Dunlap, Jr., Esquire

Enclosures

cc: All Parties of Record (w/enc.)
Ronald Hull, PA Public Utility Commission (via electronic mail, w/enc.)
Holly Swartz, PA Public Utility Commission (via electronic mail, w/enc.)
Jason Morris, Esquire (w/enc.)

Superior analysis. Effective solutions. Since 1871.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cecile and Edward Coble,	Complainants	:	
		:	
vs.		:	Docket No. C-20054723
		:	
Norfolk Southern Railway Company; Carroll Township; York County; Dillsburg Borough; and Commonwealth of Pennsylvania, Department of Transportation,	Respondents	:	Filed Electronically
		:	

**REVISED PETITION TO AMEND ORDER AND TO
WITHDRAW PRIOR PETITION**

Norfolk Southern Railway Company (“Norfolk Southern”), by and through its counsel, Nauman, Smith, Shissler & Hall, LLP, hereby files this Revised Petition to Amend the Tentative Opinion and Order (“Tentative Order”) entered May 19, 2011, made final 10 days thereafter in this matter, pursuant to the provisions of 66 Pa.C.S. § 703(g) and 52 Pa. Code § 5.572, and to withdraw its prior Petition to Amend Order filed on August 13, 2012, based upon the following:

1. The Tentative Order entered May 19, 2011, *inter alia* approved the cul-de-sac plans attached as Exhibit “A” to the previously filed Stipulation of Settlement among the parties. Such approval was provided in Ordering Paragraph 3 on page 10 of the Tentative Order.
2. The Tentative Order further provided in Ordering Paragraph 10 on page 11 that if no adverse comments or objections were filed within 10 days of the entry date of the Tentative Order, the Tentative Order “shall become final without further action by this Commission.”

3. Confirmation that no adverse comments or objections had been filed within the requisite time period, thereby confirming the finality of the Tentative Order, was made in a Secretarial Letter dated June 17, 2011.

4. Norfolk Southern completed the work to abolish the crossing within the requisite time period for doing so.

5. A final inspection of the work was held by Commission staff of the Bureau of Technical Utility Services at the crossing site on July 23, 2012. In attendance were the Complainant, Cecile Coble (“Mrs. Coble”), and representatives of Norfolk Southern, Carroll Township and the Pennsylvania Department of Transportation.

6. Norfolk Southern responded to an assertion by Mrs. Coble that the slope and open condition of the area from the cul-de-sac to Norfolk Southern’s tracks on the south side of the former crossing would permit access by vehicular trespassers by offering to place rip rap rock of sufficient size within its right-of-way to deter such trespassing.

7. Norfolk Southern filed a Petition to Amend Order for Commission approval of its proposal to place rip rap rock across the former approach roadway on the south side of its tracks on August 13, 2012. That filing contained a revised Exhibit “A” to the Stipulation of Settlement showing the proposed work, marked as Exhibit “A” Revised.

8. Mrs. Coble objected to Norfolk Southern’s proposal in correspondence received by Norfolk Southern on August 24, 2012.

9. Another PUC field meeting was subsequently held at the site on September 24, 2012. Representatives of the same parties who attended the prior field meeting were in

attendance, and along with Mrs. Coble, another adjacent property owner, James Richwine, also attended.

10 At that field meeting, Mrs. Coble expressed her concern that Norfolk Southern's proposed resolution to prevent vehicular trespassers on the property did not address her concern regarding drainage on the south side of the former crossing.

11 Subsequent to the field meeting, Norfolk Southern circulated to Mrs. Coble and the other adjacent property owners on the south side of the former crossing, all of whom were added as parties pursuant to the Tentative Order, Norfolk Southern's Grading Concept Plan of Culvert Removal and Swale/Channel Restoration having a revision date of December 10, 2012, attached hereto as Exhibit "A," to address the drainage as well as the vehicular trespasser issues raised by Mrs. Coble.

12 The plan attached hereto as Exhibit "A" has been agreed to by all adjacent property owners, who have also given permission for Norfolk Southern to enter their property south of the former crossing in order to perform the work, pursuant to the Agreements for Temporary Right of Entry attached hereto as Exhibits "B" and "C" respectively.


13. Norfolk Southern hereby withdraws its prior Petition to Amend Order filed on August 13, 2012, and requests that its revised proposal to resolve the issues raised regarding potential vehicular access by trespassers and drainage on the southern approach to the former crossing be approved as herein requested.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that this Honorable Commission approve the plans attached hereto as Exhibit "A" as additional work to

effect the crossing abolition approved in the Tentative Opinion and Order entered May 19, 2011,
and to close out this proceeding upon completion of that work.

Respectfully submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 
Benjamin C. Dunlap, Jr., Esquire
Supreme Court I.D. #66283

200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108-0840
Telephone: 717-236-3010
Counsel for Norfolk Southern Railway
Company

Date: January 29, 2013

VERIFICATION

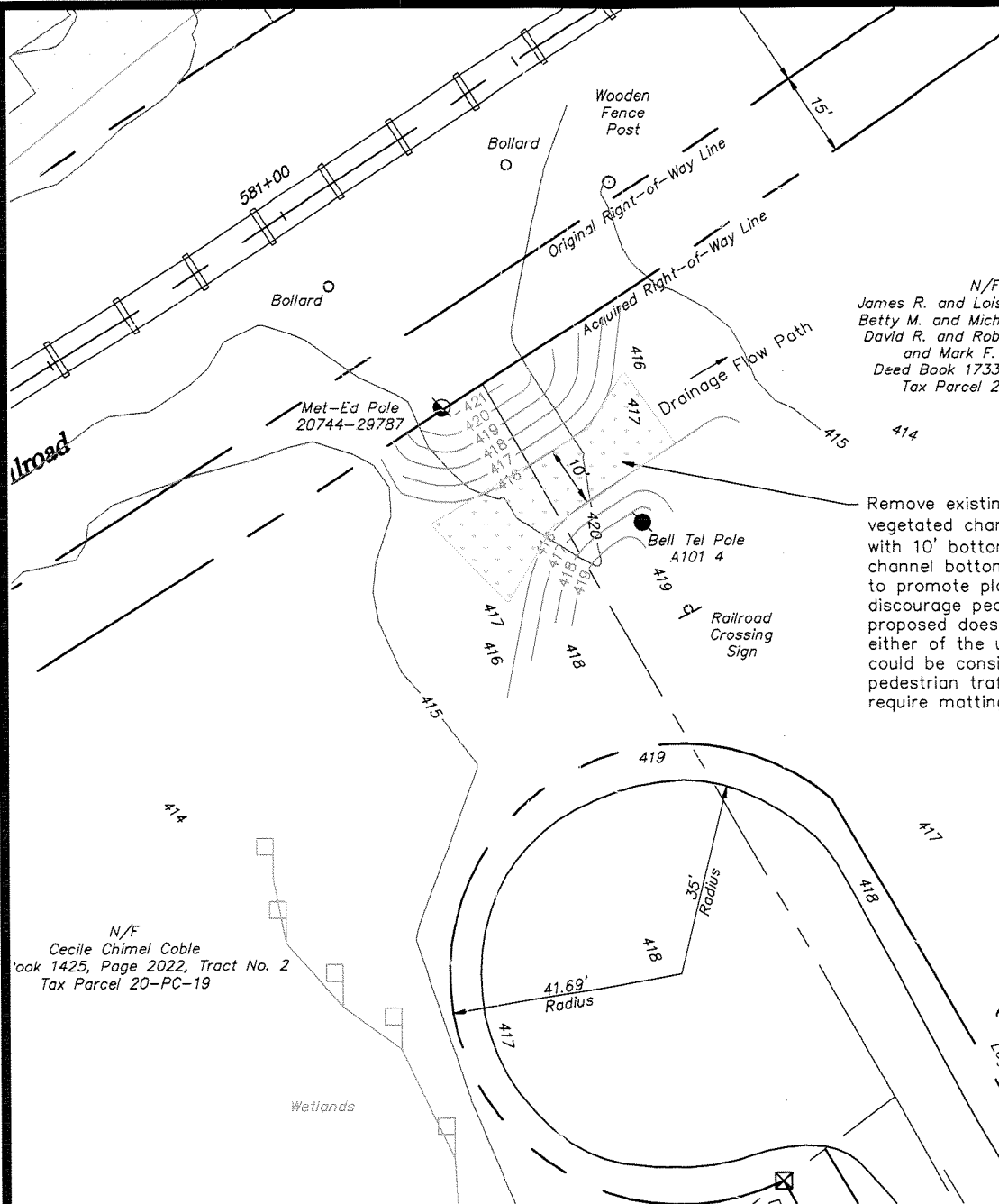
I, Timothy E. Grove, Assistant Division Engineer, Norfolk Southern Corporation, do state that I am authorized to make this statement on behalf of Norfolk Southern Railway Company and verify that I have read the attached document and that the within information is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, Verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Timothy E. Grove

Date: January 29, 2013

Zone C



N/F
 James R. and Lois Nell Richwine,
 Betty M. and Michael J. Guidara,
 David R. and Robin L. Richwine
 and Mark F. Richwine
 Deed Book 1733, Page 3927
 Tax Parcel 20-PC-18

Remove existing culvert and construct vegetated channel/swale. 3:1 side slopes with 10' bottom width. Recommend planting channel bottom with wetland seed mixture to promote plant growth that will further discourage pedestrian traffic. Grading proposed does not require relocation of either of the utility poles. 2:1 side slopes could be considered to further discourage pedestrian traffic although 2:1 slopes would require matting during installation

N/F
 Cecile Chimel Coble
 Book 1425, Page 2022, Tract No. 2
 Tax Parcel 20-PC-19

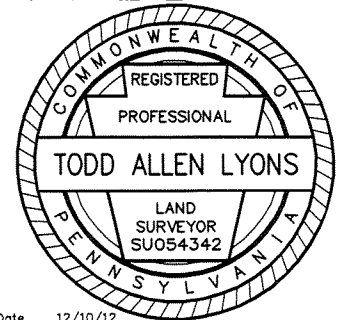
NOTE: Field Adjustment of Proposed Grading must be done to achieve positive flow, if the existing contours depicted create pooling/standing water or negative drainage flow.

I CERTIFY THIS PLAN AND SURVEY TO BE ACCURATE AND CORRECT.

Todd A. Lyons

TODD A. LYONS, PLS/OWNER SURVEYOR NO. SU054342
 LYONS SURVEYING, LLC

Chestnut Grove Road (33' Right of Way Line)
 Legal Right-of-Way Line



Revision Date 12/10/12

Lyons Surveying
 Boundary, Topography & Construction Stakeout

GRADING CONCEPT PLAN
 OF
CULVERT REMOVAL AND SWALE/CHANNEL RESTORATION
 FOR
NORFOLK SOUTHERN CORPORATION
 CHESTNUT GROVE ROAD CROSSING, DILLSBURG, PENNSYLVANIA 17019
 CARROLL TOWNSHIP YORK COUNTY PENNSYLVANIA

Surveyed T.A.L., Z.R.C.
 Drawn T.A.L.
 Checked & Approved T.A.L.
 Scale 1"=30'
 Project No. 2012-13
 Date 10/05/12
 CAD File 2012-13GC
 XREF File N/A

Drawing Title
GRADING CONCEPT PLAN

Sheet No.

1 of 1

Lyons Surveying, LLC
 Todd A. Lyons, PLS/Owner
 P.O. Box 367
 Dillsburg, PA 17019
 (717) 432-1105 phone/fax

AGREEMENT FOR TEMPORARY
RIGHT OF ENTRY

2013

THIS AGREEMENT FOR TEMPORARY RIGHT OF ENTRY, made this 2 day of JAN, ~~2012~~, by and between Cecile Coble and Edward Coble ("Licensor") and Norfolk Southern Railway Company, its contractors, agents, servants or employees (collectively "Licensee").

Licensor hereby permits Licensee to enter upon property owned or controlled by Licensor located in Carroll Township, York County, Pennsylvania, and being depicted upon the Grading Concept Plan prepared by Todd A. Lyons, Lyons Surveying, LLC, dated October 5, 2012, and attached hereto as Exhibit "A" and made a part hereof.

INCLUDING REVISION DATED
12/10/12 FROM LYONS
SURVEYING, LLC
PRINTED ON REVERSE
[Signature]

This Right of Entry is granted upon the following terms and conditions:

1. The Right of Entry is granted only for the purpose of the culvert removal and swale/channel restoration to be performed by Licensee on the property of Licensor in conjunction with the closure of Chestnut Grove Road.
2. Licensor shall be given at least seventy-two (72) hours' advance notice prior to any entry by Licensee upon the property.
3. Licensee shall undertake work consisting of the removal of the existing culvert and construction of a vegetated channel/swale with 3:1 side slopes and a 10 foot bottom width and planting of the channel bottom with wetland seed mixture to promote plant growth (the "Work") in accordance with the Grading Concept Plan attached as Exhibit "A."
4. Upon completion of the Work by Licensee, Licensee shall have no duty to monitor the vegetated channel/swale or to repair any berm or other drainage feature that has materially failed or allowed material slope erosion to occur or to repair any unintended drainage swales occurring upon the slope, including but not limited to, the addition of new soil, additional seeding, mulching and/or matting of the eroded area.
5. Licensor hereby agrees to release, indemnify and save harmless Licensee from and against any and all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorneys' fees) for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, the presence of Licensee, its contractors, agents, servants or employees upon or about the property of Licensor or in connection with the privileges herein granted and any work undertaken by Licensee under this Agreement, whether or not such liability, losses, damages, claims, actions, causes of action, costs and expenses shall have been caused or contributed by the negligence of Licensee, except to the extent such liability, losses, damages, claims, actions, causes of action, costs and expenses shall have been solely caused by the gross negligence of Licensee.



6. At the termination of this Right of Entry, Licensor's property shall be restored by Licensee to its original condition, or to a condition satisfactory to Licensor, with the exception of the improvements associated with the culvert removal and swale/channel restoration performed by Licensee.


7. Licensor shall assume full responsibility for the maintenance and repair of all vegetation and the channel/swale following completion of the culvert removal and swale/channel restoration by Licensee.

8. Licensee undertakes to act and will continue to act as a self-insurer of its liabilities, if any, and will pay all sums which it shall become legally obligated to pay in connection with this Agreement. Licensee further certifies that it maintains insurance coverage above its self-insured retention.

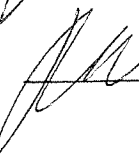
9. Where appropriate, the terms when used in this Right of Entry shall be understood to indicate the masculine, feminine or neuter, and the singular or plural, as the case may be. The term "Licensee" shall include any parent company or companies, subsidiary or subsidiaries of Licensee, and the contractors, agents, servants or employees of Licensee, and also shall include servants, agents or employees of said parent company or companies or subsidiaries of Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Right of Entry in duplicate as of the date first hereinabove written.

Witness:

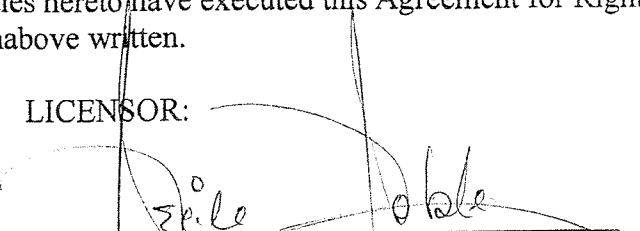


PAUL L. LERIC

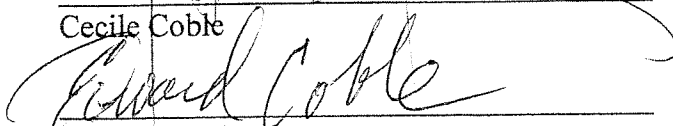


PAUL L. LERIC

LICENSOR:



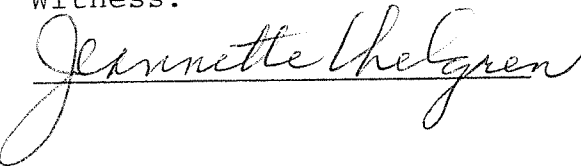
Cecile Coble



Edward Coble

~~Attest:~~

Witness:



Jannette Helgren

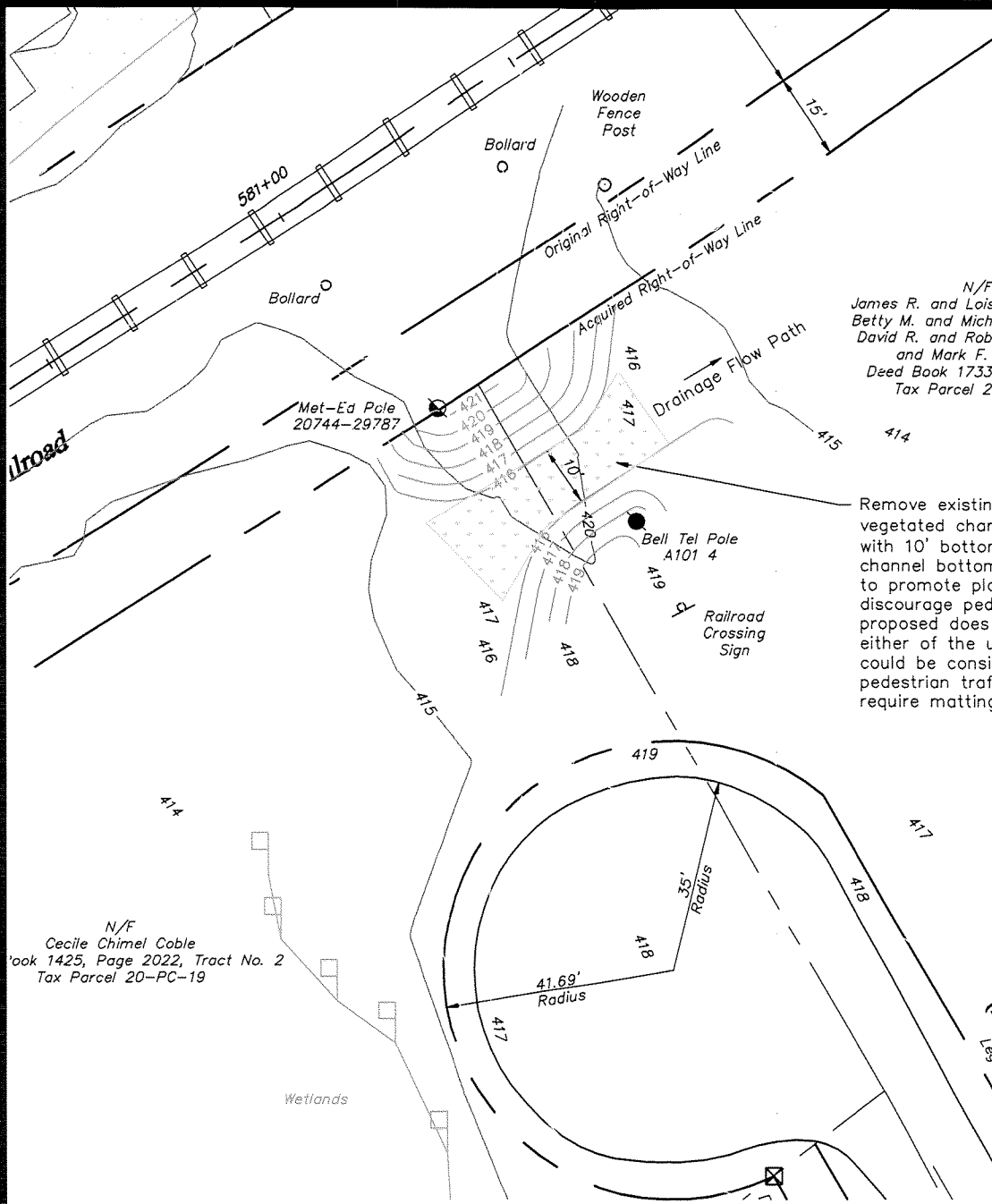
LICENSEE:

Norfolk Southern Railway Company

By: 

Title: ADE Track

Zone C



N/F
 James R. and Lois Nell Richwine,
 Betty M. and Michael J. Guidara,
 David R. and Robin L. Richwine
 and Mark F. Richwine
 Deed Book 1733, Page 3927
 Tax Parcel 20-PC-18

Remove existing culvert and construct vegetated channel/swale. 3:1 side slopes with 10' bottom width. Recommend planting channel bottom with wetland seed mixture to promote plant growth that will further discourage pedestrian traffic. Grading proposed does not require relocation of either of the utility poles. 2:1 side slopes could be considered to further discourage pedestrian traffic although 2:1 slopes would require matting during installation

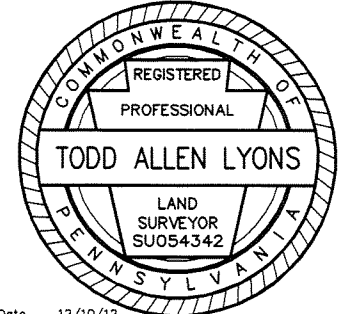
N/F
 Cecile Chimel Coble
 Book 1425, Page 2022, Tract No. 2
 Tax Parcel 20-PC-19

NOTE: Field Adjustment of Proposed Grading must be done to achieve positive flow, if the existing contours depicted create pooling/standing water or negative drainage flow.

I CERTIFY THIS PLAN AND SURVEY TO BE ACCURATE AND CORRECT.

Todd A. Lyons

TODD A. LYONS, PLS./OWNER SURVEYOR NO. SU054342
 LYONS SURVEYING, LLC



Revision Date 12/10/12

Lyons Surveying

Boundary, Topography

Construction Stakeout

GRADING CONCEPT PLAN
 OF
CULVERT REMOVAL AND SWALE/CHANNEL RESTORATION
 FOR
NORFOLK SOUTHERN CORPORATION
 CHESTNUT GROVE ROAD CROSSING, DILLSBURG, PENNSYLVANIA 17019
 CARROLL TOWNSHIP YORK COUNTY PENNSYLVANIA

Surveyed T.A.L., Z.R.C.
 Drawn T.A.L.
 Checked & Approved T.A.L.
 Scale 1"=30'
 Project No. 2012-13
 Date 10/05/12
 CAD File 2012-136C
 XREF File N/A

Drawing Title
GRADING CONCEPT PLAN
 Sheet No.
1 of 1

Lyons Surveying, LLC
 Todd A. Lyons, PLS./Owner
 P.O. Box 367
 Dillsburg, PA 17019
 (717) 432-1105 phone/fax

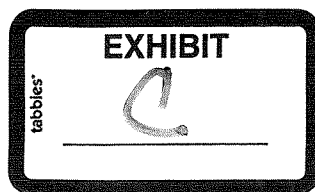
**AGREEMENT FOR TEMPORARY
RIGHT OF ENTRY**

THIS AGREEMENT FOR TEMPORARY RIGHT OF ENTRY, made this 31st day of December, 2012, by and between James R. Richwine and Lois Nell Richwine, husband and wife, Betty M. Guidara and Michael J. Guidara, wife and husband, David R. Richwine and Robin L. Richwine, husband and wife, and Mark F. Richwine, a single person (collectively "Licensor") and Norfolk Southern Railway Company, its contractors, agents, servants or employees (collectively "Licensee").

Licensor hereby permits Licensee to enter upon property owned or controlled by Licensor located in Carroll Township, York County, Pennsylvania, and being depicted upon the Grading Concept Plan prepared by Todd A. Lyons, Lyons Surveying, LLC, dated October 5, 2012, and attached hereto as Exhibit "A" and made a part hereof.

This Right of Entry is granted upon the following terms and conditions:

1. The Right of Entry is granted only for the purpose of the culvert removal and swale/channel restoration to be performed by Licensee on the property of Licensor in conjunction with the closure of Chestnut Grove Road.
2. Licensor shall be given at least seventy-two (72) hours' advance notice prior to any entry by Licensee upon the property.
3. Licensee shall undertake work consisting of the removal of the existing culvert and construction of a vegetated channel/swale with 3:1 side slopes and a 10 foot bottom width and planting of the channel bottom with wetland seed mixture to promote plant growth (the "Work") in accordance with the Grading Concept Plan attached as Exhibit "A."
4. Upon completion of the Work by Licensee, Licensee shall have no duty to monitor the vegetated channel/swale or to repair any berm or other drainage feature that has materially failed or allowed material slope erosion to occur or to repair any unintended drainage swales occurring upon the slope, including but not limited to, the addition of new soil, additional seeding, mulching and/or matting of the eroded area.
5. Licensor hereby agrees to release, indemnify and save harmless Licensee from and against any and all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorneys' fees) for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, the presence of Licensee, its contractors, agents, servants or employees upon or about the property of Licensor or in connection with the privileges herein granted and any work undertaken by Licensee under this Agreement, whether or not such liability, losses, damages,



claims, actions, causes of action, costs and expenses shall have been caused or contributed by the negligence of Licensee, except to the extent that such liability, losses, damages, claims, actions, causes of action, costs and expenses shall have been solely caused by the gross negligence of Licensee.

6. At the termination of this Right of Entry, Licensor's property shall be restored by Licensee to its original condition, or to a condition satisfactory to Licensor, with the exception of the improvements associated with the culvert removal and swale/channel restoration performed by Licensee.

7. Licensor shall assume full responsibility for the maintenance and repair of all vegetation and the channel/swale following completion of the culvert removal and swale/channel restoration by Licensee.

8. Licensee undertakes to act and will continue to act as a self-insurer of its liabilities, if any, and will pay all sums which it shall become legally obligated to pay in connection with this Agreement. Licensee further certifies that it maintains insurance coverage above its self-insured retention.

9. Where appropriate, the terms when used in this Right of Entry shall be understood to indicate the masculine, feminine or neuter, and the singular or plural, as the case may be. The term "Licensee" shall include any parent company or companies, subsidiary or subsidiaries of Licensee, and the contractors, agents, servants or employees of Licensee, and also shall include servants, agents or employees of said parent company or companies or subsidiaries of Licensee.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Right of Entry in duplicate as of the date first hereinabove written.

Witness:

LICENSOR:

Candy L. Abram
Candy L. Abram
Candy L. Abram
Candy L. Abram
Candy L. Abram
Candy L. Abram
Candy L. Abram

James R. Richwine
James R. Richwine
Lois Nell Richwine
Lois Nell Richwine
Betty M. Guidara
Betty M. Guidara
Michael J. Guidara
Michael J. Guidara
David R. Richwine
David R. Richwine
Robin L. Richwine
Robin L. Richwine
Mark F. Richwine
Mark F. Richwine

Witness:
~~Attest:~~

LICENSEE:

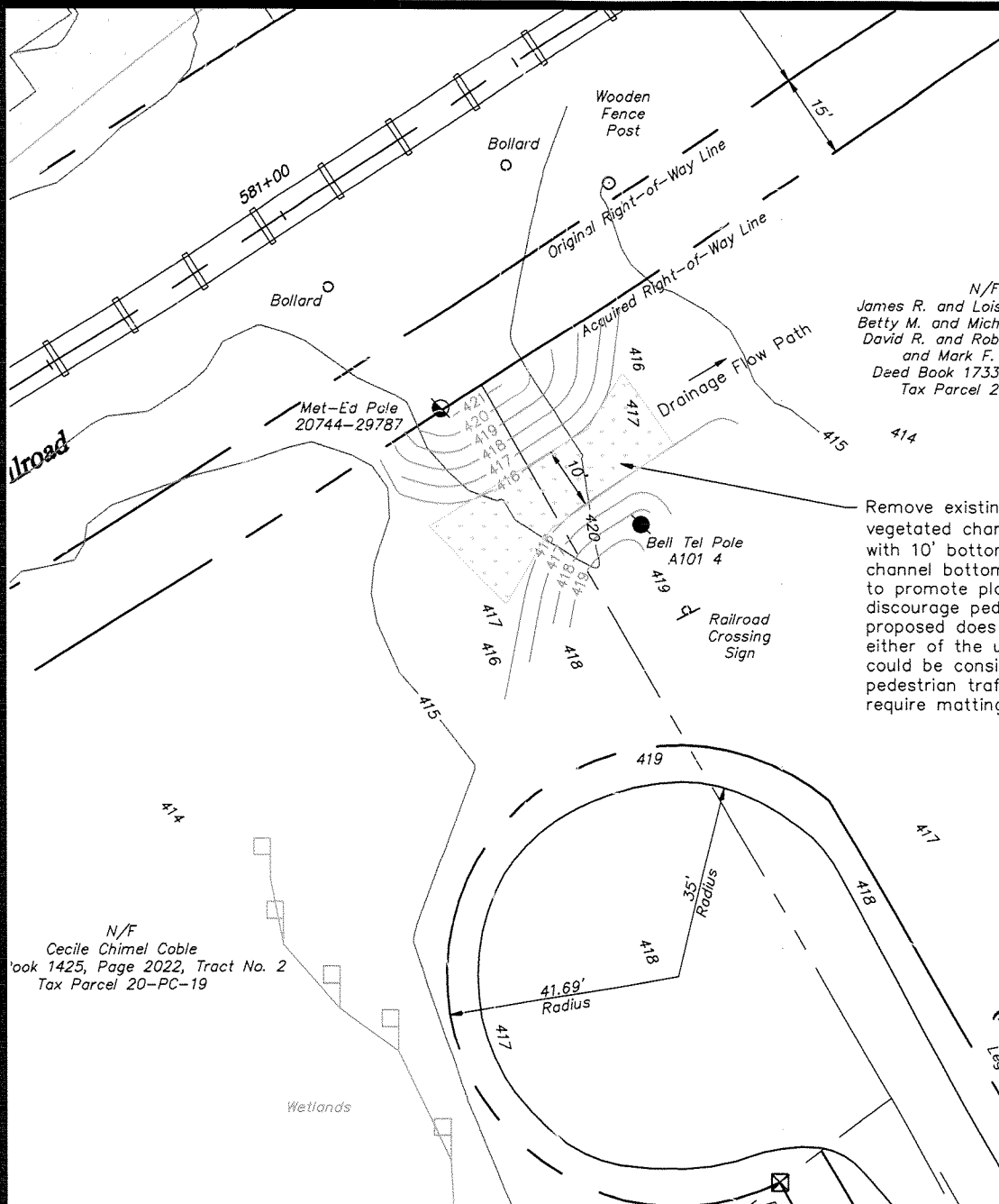
Norfolk Southern Railway Company

Jeanette Helgren

By: Jeanette Helgren

Title: ADE Track

Zone C



N/F
 James R. and Lois Nell Richwine,
 Betty M. and Michael J. Guidara,
 David R. and Robin L. Richwine
 and Mark F. Richwine
 Deed Book 1733, Page 3927
 Tax Parcel 20-PC-18

Remove existing culvert and construct vegetated channel/swale. 3:1 side slopes with 10' bottom width. Recommend planting channel bottom with wetland seed mixture to promote plant growth that will further discourage pedestrian traffic. Grading proposed does not require relocation of either of the utility poles. 2:1 side slopes could be considered to further discourage pedestrian traffic although 2:1 slopes would require matting during installation

N/F
 Cecile Chimel Cable
 Book 1425, Page 2022, Tract No. 2
 Tax Parcel 20-PC-19

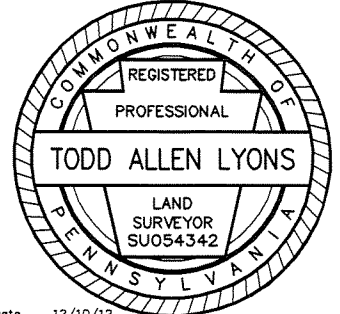
NOTE: Field Adjustment of Proposed Grading must be done to achieve positive flow, if the existing contours depicted create pooling/standing water or negative drainage flow.

I CERTIFY THIS PLAN AND SURVEY TO BE ACCURATE AND CORRECT.

Todd A. Lyons

TODD A. LYONS, PLS/OWNER SURVEYOR NO. SU054342
 LYONS SURVEYING, LLC

(Public Road) Chestnut Gro
 Legal Right-of-Way Lin



Revision Date 12/10/12

Lyons Surveying
 Boundary, Topography
 Construction Stakeout

Lyons Surveying, LLC
 Todd A. Lyons, PLS/Owner
 P.O. Box 367
 Dillsburg, PA 17019
 (717) 432-1105 phone/fax

GRADING CONCEPT PLAN
 OF
CULVERT REMOVAL AND SWALE/CHANNEL RESTORATION
 FOR
NORFOLK SOUTHERN CORPORATION
 CHESTNUT GROVE ROAD CROSSING, DILLSBURG, PENNSYLVANIA 17019
 CARROLL TOWNSHIP YORK COUNTY PENNSYLVANIA

Surveyed T.A.L., Z.R.C.
 Drawn T.A.L.
 Checked & Approved T.A.L.
 Scale 1"=30'
 Project No. 2012-13
 Date 10/05/12
 CAD File 2012-13GC
 XREF File N/A

Drawing Title
GRADING CONCEPT PLAN

Sheet No.

1 of 1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cecile and Edward Coble,	Complainants	:	
		:	
vs.		:	Docket No. C-20054723
		:	
Norfolk Southern Railway Company; Carroll		:	
Township; York County; Dillsburg Borough;		:	
and Commonwealth of Pennsylvania,		:	
Department of Transportation,		:	
	Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the foregoing Revised Petition to Amend Order and to Withdraw Prior Petition of Norfolk Southern Railway, in the above action, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Craig A. Doll, Esquire
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036

Cecile and Edward Coble
10 Chestnut Grove Road
Dillsburg, PA 17019

Michael W. Flannelly, Esquire
Solicitor for York County
45 North George Street, Room 241
York, PA 17401

Gina M. D'Alfonso, Esquire
Assistant Counsel in Charge
PennDOT Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

Steven A. Stine, Esquire
Solicitor for Carroll Township
23 Waverly Drive
Hummelstown, PA 17036

Mark. W. Allshouse, Esquire
Solicitor for Dillsburg Borough
4833 Spring Road
Shermans Dale, PA 17090

Eric R. Rohrbaugh
Deputy Chief Counsel
PA Public Utility Commission - Law Bureau
P. O. Box 3265
Harrisburg, PA 17105-3265

Timothy P. Ruth, Esquire
Stock & Leader
Susquehanna Commerce Center East
221 W. Philadelphia Street, Ste. 600
York, PA 17401-2994

James R. & Lois Nell Richwine
370 Chestnut Grove Rd
Dillsburg, PA 17019

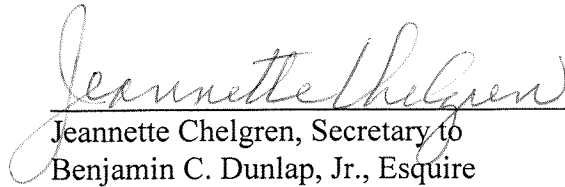
Michael J. & Betty M. Guidara
235 Dorseys Lane
Dillsburg, PA 17019

Roger C. and Mary C. Petrone
310 Al-Pat Dr
Dillsburg, PA 17019

David R. & Robin L. Richwine
3360 Bitternut Blvd.
York, PA 17404

Mark Richwine
240 Dorseys Lane
Dillsburg, PA 17019

Date: January 29, 2013


Jeannette Chelgren, Secretary to
Benjamin C. Dunlap, Jr., Esquire