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April 29, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

**Re: Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public above-grade crossing by replacing the existing bridge where State Route 3022 (Maclay Street) crosses above grade the tracks of Norfolk Southern Railroad (DOT 518 088 K) in the City of Harrisburg, Dauphin County, and the allocation of costs incident thereto
Docket No. A-2023-3037711**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter, please find an Objection to Final Right-of-Way Plan Submission for SR 3022 Section 005 R/W on behalf of Norfolk Southern Railway Company. Copies have been served upon all interested parties as indicated on the Certificate of Service.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCD:klg
Enclosures
cc: All Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2023-3037711
Pennsylvania for approval to alter the public :
above-grade crossing by replacing the : Electronically Filed
existing bridge where State Route 3022 :
(Maclay Street) crosses above grade the :
tracks of Norfolk Southern Railroad (DOT :
518 088 K) in the City of Harrisburg, :
Dauphin County, and the allocation of costs :
incident thereto. :

**OBJECTION TO FINAL RIGHT-OF-WAY PLAN
SUBMISSION FOR SR 3022 SECTION 005 R/W**

Norfolk Southern Railway Company (“Norfolk Southern”), by and through its undersigned attorneys file this objection to the drawings authorizing acquisition of right-of-way plans for State Route 3022 Section 005 R/W in the City of Harrisburg, Dauphin County, filed with the Commission on April 9, 2025, based upon the following:

1. PennDOT served its Final Right-of-Way Plans via email to Norfolk Southern on April 9, 2025.
2. Norfolk Southern sent PennDOT its objections to the plans on April 10, 2025, via email to Ahmed Lasloudji in the plan markup attached hereto as Exhibit A.
3. While Norfolk Southern objects to the plans for all the reasons listed on Exhibit A, the most serious objection concerns the Temporary Construction Easement sought to be taken by PennDOT as a contractor staging area for the project, shown as the yellow area surrounded by red highlighting on Exhibit A. The taking of this area for the two-to-three years projected to complete this project would directly interfere with Norfolk Southern’s intermodal operations on the property.

4. Exhibit B shows an overlay of the proposed area of taking for the Temporary Construction Easement on a Google Earth map. This shows that this area in the bottom right quadrant is currently being used actively for intermodal operations, which would interfere with truck parking and completely sever the driveway connection within the facility. Utilizing the area as a contractor laydown yard would make it essentially unavailable during the two to three-year construction period.¹

5. This use of a portion of the intermodal facility for a contractor laydown yard was suggested by PennDOT with the major caveat of only if Norfolk Southern is not using it. However, Norfolk Southern is actively using it. There was no inquiry from PennDOT about the availability of that location prior to generation and submission of the real estate plan by PennDOT.

6. The Commission should deny that portion of the proposed taking as its effects would impede and unduly burden Norfolk Southern's current and future rail operations and could pose undue safety risks, and thus is preempted by the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* ("ICCTA").

7. Among other things, ICCTA grants the federal Surface Transportation Board the "exclusive" jurisdiction over:

- (1) transportation by rail carriers, and the remedies provided in this part with respect to . . . rules (including car service, interchange, and other operating rules), practices, routes, *services, and facilities* of such carriers; and
- (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks,

¹ This is in contrast to the operating track area which is also shown as a Temporary Construction Easement on PennDOT's plans for potential temporary crossings. The use of such crossings would require close cooperation with Norfolk Southern Operations for the relatively brief periods that the temporary crossings would be utilized by PennDOT's contractor, as in any other construction project over active railroad property.

or *facilities*, even if the tracks are located, or intended to be located, entirely in one State

49 U.S.C. § 10501(b) (emphasis added). Moreover, ICCTA expressly provides that “the remedies provided under [ICCTA] with respect to regulation of rail transportation are *exclusive and preempt the remedies provided under Federal or State law*.” *Id.* (emphasis added).

8. Consistent with its expansive scope, ICCTA broadly defines “transportation” to include any “property, facility . . . or equipment of any kind related to the movement of passengers or property, or both, by rail” and any “services related to that movement.” *See* 49 U.S.C. § 10102(9)(A)&(B). This definition clearly encompasses Norfolk Southern’s property at issue here.

9. Based on ICCTA’s plain language, numerous courts have held that ICCTA preempts state law claims that “would prevent or unduly interfere with” current and future rail operations. *Union Pac. R.R. v. Chi. Transit Auth.*, 647 F.3d 675, 680 (7th Cir. 2011) (holding that ICCTA preempted condemnation that would prevent and unreasonably interfere with rail transportation).

10. Applying these principles, courts have held that ICCTA preempts all manner of state law condemnation claims that seek possession of railroad property. *See Chi. Transit Auth.*, 647 F.3d 675, 679 (state condemnation action preempted); *see also Ark. State Highway Comm'n v. Union Pac. R.R. Co.*, No. 06-2010, 2007 U.S. Dist. LEXIS 117473, at *5 (W.D. Ark. Mar. 27, 2007) (striking highway commission’s declaration of taking because ICCTA preempted requested condemnation); *City of Lincoln v. Surface Transp. Bd.*, 414 F.3d 858, 860–61 (8th Cir. 2005) (same); *Soo Line R.R. Co. v. City of St. Paul*, 827 F. Supp. 2d 1017, 1022 (D. Minn. 2010) (same); *Columbiana Cnty. Port Auth. v. Boardman Twp. Park Dist.*, 154 F. Supp. 2d 1165, 1181 (N.D. Ohio 2001) (same).

11. Transloading activities fall within ICCTA’s definition of transportation. *New York Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 247-48 (3d Cir. 2007). Thus, it was undisputed that transloading facilities used for the receipt, storage, handling, and interchange of rail cargo fell within the plain text of the ICCTA preemption clause. *Id.*; *see also Green Mountain R.R. Corp. v. Vt.*, 404 F.3d 638, 642 (2d Cir. 2005) (“Certainly, the plain language [of ICCTA] grants the [STB] wide authority over the transloading and storage facilities”); *Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 530 (5th Cir. 2012) (determining that “transloading qualifies as rail transportation”); *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 158 (4th Cir. 2010) (holding that “ethanol transloading falls within the ICCTA’s preemptive scope”).

12. This is because claims seeking to take operating railroad property constitute the “*most extreme type*” of preempted “regulation of rail transportation” under ICCTA. *Wedemeyer v. CSXT*, 850 F.3d 889, 895 (7th Cir. 2017) (adjacent landowner’s state law claims for ejection and possession of CSXT’s railroad right of way preempted) (emphasis added); *see also Jie Ao*, at *7 (taking property “for another use that would conflict with potential future rail use is exercising the most extreme type of control over railroad transportation.”).

13. The Department’s proposed taking here is preempted as “extreme” regulation because it would deprive Norfolk Southern the use of its railroad property for present and future rail operations.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that this Honorable Commission deny approval of PennDOT's Final Right-of-Way Plan submissions for SR 3022 Section 005 R/W, or alternatively refer this matter to the Office of Administrative Law Judge for hearing.

Respectfully submitted,

**COHEN, SEGLIAS, PALLAS,
GREENHALL & FURMAN, PC**

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

Joshua D. Bonn, Esquire
Supreme Court I.D. # 93967

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Counsel for Norfolk Southern Railway Company

Date: April 29, 2025

VERIFICATION

I, Shawn Starling, P.E., Senior Engineer Public Improvements, 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 Objection to Final Right-of-Way Plan Submission for SR 3022 Section 005 R/W 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.



Shawn Starling, P.E.

Date: April 29, 2025

EXHIBIT A

MACLAY STREET
 PI STA 34+98.85
 $\Delta = 03^{\circ}14'11''$ LT
 T = 84.75'
 L = 169.46'
 R = 3000.00'
 E = 1.20'
 PC STA 34+14.10
 PT STA 35+83.55

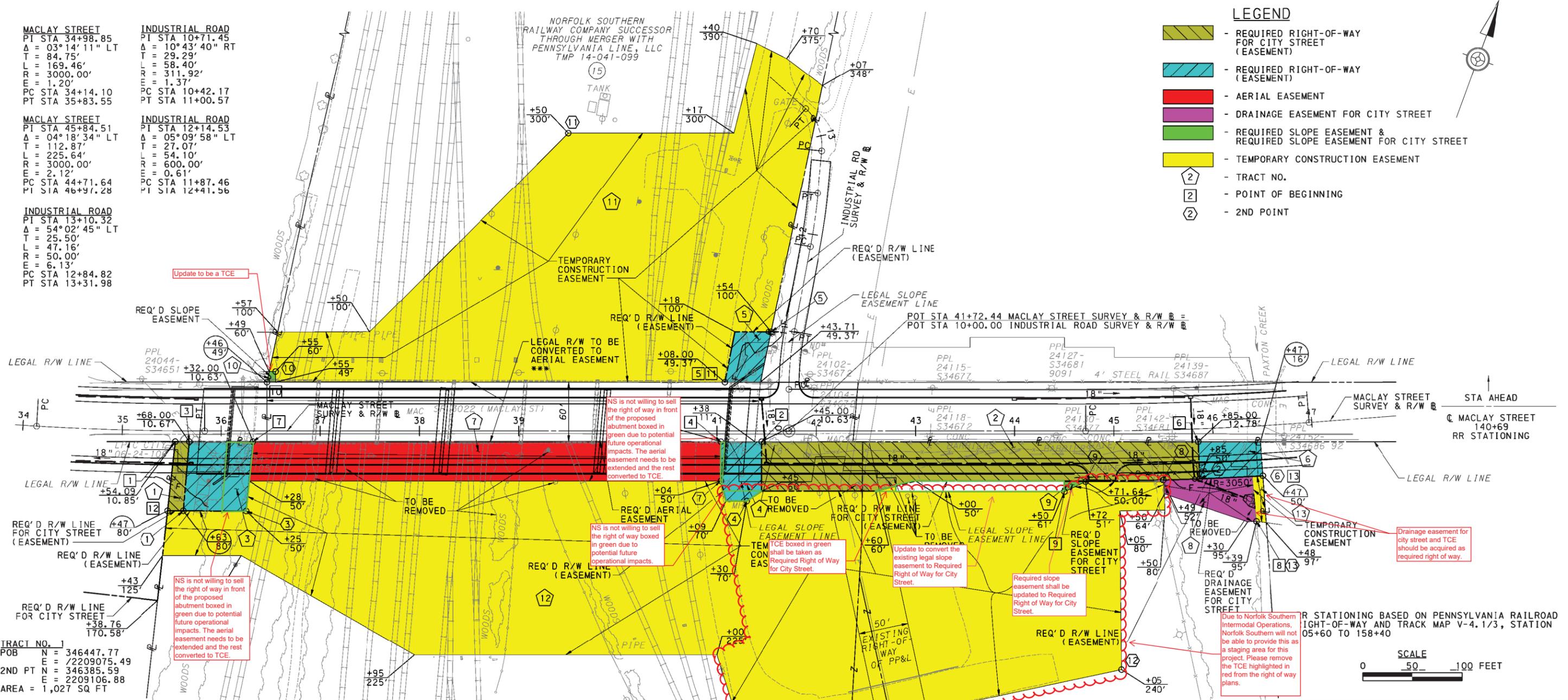
MACLAY STREET
 PI STA 45+84.51
 $\Delta = 04^{\circ}18'34''$ LT
 T = 112.87'
 L = 225.64'
 R = 3000.00'
 E = 2.12'
 PC STA 44+71.64
 PT STA 46+97.28

INDUSTRIAL ROAD
 PI STA 10+71.45
 $\Delta = 10^{\circ}43'40''$ RT
 T = 29.29'
 L = 58.40'
 R = 311.92'
 E = 1.37'
 PC STA 10+42.17
 PT STA 11+00.57

INDUSTRIAL ROAD
 PI STA 12+14.53
 $\Delta = 05^{\circ}09'58''$ LT
 T = 27.07'
 L = 54.10'
 R = 600.00'
 E = 0.61'
 PC STA 11+87.46
 PT STA 12+41.56

INDUSTRIAL ROAD
 PI STA 13+10.32
 $\Delta = 54^{\circ}02'45''$ LT
 T = 25.50'
 L = 47.16'
 R = 50.00'
 E = 6.13'
 PC STA 12+84.82
 PT STA 13+31.98

- LEGEND**
- REQUIRED RIGHT-OF-WAY FOR CITY STREET (EASEMENT)
 - REQUIRED RIGHT-OF-WAY (EASEMENT)
 - AERIAL EASEMENT
 - DRAINAGE EASEMENT FOR CITY STREET
 - REQUIRED SLOPE EASEMENT & REQUIRED SLOPE EASEMENT FOR CITY STREET
 - TEMPORARY CONSTRUCTION EASEMENT
 - TRACT NO.
 - POINT OF BEGINNING
 - 2ND POINT



TRACT NO. 1	POB N = 346447.77 E = 2209075.49 2ND PT N = 346385.59 E = 2209106.88 AREA = 1,027 SQ FT
TRACT NO. 2	POB N = 346651.50 E = 2209630.27 2ND PT N = 346768.90 E = 2210057.87 AREA = 18,636 SQ FT
TRACT NO. 3	POB N = 346452.58 E = 2209088.58 2ND PT N = 346407.13 E = 2209166.05 AREA = 4,401 SQ FT
TRACT NO. 4	POB N = 346637.36 E = 2209591.78 2ND PT N = 346590.59 E = 2209636.65 AREA = 2,309 SQ FT
TRACT NO. 5	POB N = 346695.06 E = 2209574.85 2ND PT N = 346758.62 E = 2209601.04 AREA = 1,828 SQ FT
TRACT NO. 6	POB N = 346803.33 E = 2210043.73 2ND PT N = 346793.61 E = 2210116.29 AREA = 2,251 SQ FT

TRACT NO. 7	POB N = 346474.66 E = 2209148.71 2ND PT N = 346600.40 E = 2209605.35 AREA = 18,662 SQ FT
TRACT NO. 8	POB N = 346748.71 E = 2210125.88 2ND PT N = 346755.26 E = 2210024.10 AREA = 2,768 SQ FT
TRACT NO. 9	POB N = 346709.86 E = 2209934.25 2ND PT N = 346726.54 E = 2209950.67 AREA = 106 SQ FT
TRACT NO. 10	POB N = 346535.93 E = 2209141.51 2ND PT N = 346548.89 E = 2209145.96 AREA = 80 SQ FT
TRACT NO. 11	POB N = 346695.06 E = 2209574.85 2ND PT N = 346875.87 E = 2209340.14 AREA = 93,858 SQ FT

TRACT NO. 12	POB N = 346380.20 E = 2209092.09 2ND PT N = 346561.39 E = 2210049.71 AREA = 169,160 SQ FT
TRACT NO. 13	POB N = 346793.61 E = 2210116.29 2ND PT N = 346748.71 E = 2210125.88 AREA = 466 SQ FT

NORFOLK SOUTHERN RAILWAY COMPANY SUCCESSOR THROUGH MERGER WITH PENNSYLVANIA LINE, LLC
 TMP 07-102-043

NORFOLK SOUTHERN RAILWAY COMPANY SUCCESSOR THROUGH MERGER WITH PENNSYLVANIA LINE, LLC
 TMP 07-051-007

* - TOO INNUMERABLE TO CALCULATE
 ** - REQ'D R/W (EASEMENT) INCLUDES: 0.108 ACRES LEGAL SLOPE EASEMENT
 *** - REQ'D R/W FOR CITY STREET INCLUDES: 0.362 ACRE OF LEGAL SLOPE EASEMENT
 Δ - 0.686 ACRES OF LEGAL R/W TO BE CONVERTED TO AERIAL EASEMENT

TOTAL REQ'D R/W INCLUDES:
 R/W (EASEMENT), R/W FOR CITY STREET (EASEMENT), SLOPE EASEMENT, SLOPE EASEMENT FOR CITY STREET, REQ'D AERIAL EASEMENT, AND DRAINAGE EASEMENT FOR CITY STREET

REVISED	DESCRIPTION	DATE
	UPDATE DRAINAGE EASEMENT AREA	2/22/2025
	UPDATE TOTAL R/W AREA	2/26/2025

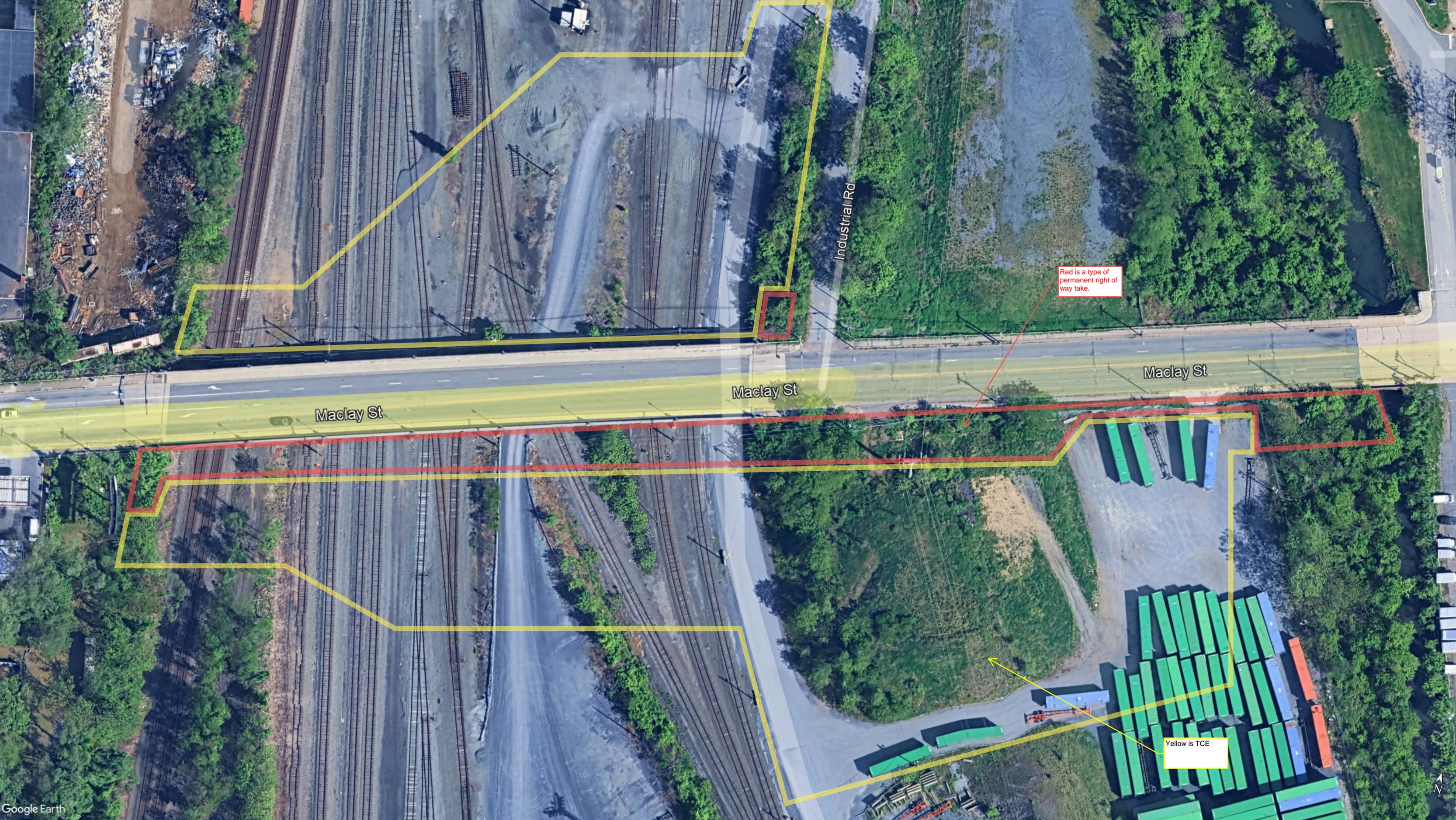
NS DRAWING NO.

RIGHT-OF-WAY CLAIM INFORMATION
 COMMONWEALTH OF PENNSYLVANIA - DEPARTMENT OF TRANSPORTATION
 STATE RTE 3022 SEC NO. 005 R/W CITY OF HARRISBURG DAUPHIN COUNTY
 PARCEL NO. 15 SHEET NO. CLAIM NO.
 PROPERTY OWNER(S) NORFOLK SOUTHERN RAILWAY COMPANY SUCCESSOR THROUGH MERGER WITH PENNSYLVANIA LINE, LLC
 GRANTOR(S) NO. 1 CONSOLIDATED RAIL CORPORATION
 GRANTOR(S) NO. 2 HEMPT BROTHERS INC.

DEED 1	DEED 2	AREAS CALCULATED	ACRES	REQUIRED AREA RIGHT-OF-WAY (EASEMENT)	ACRES
DEED BOOK 3536	INSTRUMENT NO. 20110012165	CALCULATED	*	0.248 **	
PAGE 10	DATE OF DEED 4/15/2011	ADVERSES	*	RIGHT-OF-WAY FOR CITY STREET (EASEMENT)	0.451 ***
DATE OF DEED 5/10/1999	DATE OF RECORD 5/02/2011	LEGAL R/W	0.686 Δ	SLOPE EASEMENT	0.002
DATE OF RECORD 10/22/1999	CONSIDERATION \$1,000,000	EFFECTIVE	1.195	SLOPE EASEMENT FOR CITY STREET	0.002
CONSIDERATION NONE	TAX STAMPS N/A	TOTAL REQ'D R/W	1.196 Δ	AERIAL EASEMENT	0.428
TAX STAMPS N/A	TAX MAP 07	TOTAL RESIDUE	Δ	DRAINAGE EASEMENT FOR CITY STREET	0.064 Δ
TAX MAP 7	PARCEL NO. 051-007	RESIDUE LT	*	TEMP CONSTR EASEMENT	6.049
PARCEL NO. 7		RESIDUE RT	*	VERIFICATION DATE	2/20/2024
∇ - 07-102-043				DRAWN BY	EA
- 07-052-PRR				SCALE: AS SHOWN	
- 07-051-007					
- 14-041-099					

FILENAME: S57839-01-MacLay_S1\Drawings\001\an\Ra:1\roac\3022005_RW\PL15-Nor fo K&S\ou\The n.dcn

EXHIBIT B



Industrial Rd

Red is a type of permanent right of way take.

Maclay St

Maclay St

Maclay St

Yellow is TCE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2023-3037711
Pennsylvania for approval to alter the public :
above-grade crossing by replacing the : Electronically Filed
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(Maclay Street) crosses above grade the :
tracks of Norfolk Southern Railroad (DOT :
518 088 K) in the City of Harrisburg, :
Dauphin County, and the allocation of costs :
incident thereto. :

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Objection in the above-captioned
action this day via electronic mail to the following:

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Date: April 29, 2025

/s/ Karen L. Gagne
Karen L. Gagne, Administrative Assistant to
Benjamin C. Dunlap, Jr., Esquire