

BAKER & MILLER PLLC

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

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

Crystal M. Zorbaugh

Direct Dial: (202) 663-7831
E-Mail: czorbaugh@bakerandmiller.com

November 24, 2020

301312

VIA E-FILING

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

ENTERED
Office of Proceedings
November 24, 2020
Part of
Public Record

Re: Greenville County Economic Development Corporation – Abandonment
Exemption – In Greenville County, SC
AB-490 (Sub-No. 1x)
Notice of Intent to Partially Vacate Trail Use And Issue A Replacement
NITU

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

Pursuant to 49 C.F.R. §1152.29(d)(2), the County of Greenville, S.C. (“Greenville County”) seeks to partially vacate the Notice of Interim Trail Use (“NITU”) served in this docket, AB-490 (Sub-No. 1X), on November 13, 2006,¹ and agreed upon by parties as confirmed by Greenville County Economic Development Corporation’s (“GCEDC”) September 29, 2006 filing.² As explained herein, Greenville County would like to terminate interim trail use/rail banking effective December 15, 2020, on a small segment³ of the right-of-

¹ The November 13, 2006 NITU (attached as Exhibit A) was a replacement NITU for a NITU originally issued on October 12, 2005 (“Oct. 12th Decision”). The replacement NITU substituted Greenville County Recreation District (“GCRD”) in place of the original NITU proponent Upstate Forever.

² The Notice of Agreement on Rail Banking/ Interim Trails Use was entered into the public record on September 28, 2006.

³ The segment of rail line being removed from the NITU is located in the middle of 60 acres of real property that the City of Greenville South Carolina (“City of Greenville”) is redeveloping called Unity Park. Greenville County is requesting expedited consideration because the City of

Cynthia T. Brown
November 24, 2020
Page 2

way, consummate its abandonment over that segment, and convey that segment to the City of Greenville for expansion of a public greenway.

By petition for exemption filed on June 24, 2005,⁴ as served and published in the Federal Register on July 14, 2005 (70 FR 40782), the Surface Transportation Board ("STB" or "Board") granted GCEDC authority to abandon approximately 11.8 miles of rail line, extending from milepost 0.0 in Greenville, SC, to milepost 11.8 in Travelers Rest, SC (the "Line") in Greenville County, SC. The Oct. 12th Decision, which granted the petition, imposed a 180-day public use condition, established the initial NITU, imposed several salvaging conditions, and directed GCEDC to serve a copy of the decision on all businesses located on the Line within 5 days after the date of the decision.

On July 27, 2005, as amended on August 25, 2005, and September 28, 2005, Upstate Forever filed a request for issuance of a NITU for the Line under the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act") and for imposition of a public use condition for the Line. While Upstate Forever was the original trails proponent, by letter filed on September 27, 2006, Upstate Forever requested that the Board vacate the initial NITU and issue an appropriate replacement NITU for GCRD. In a letter filed on September 27, 2006, GCRD submitted a request for a NITU, along with a statement of willingness to assume financial responsibility for the right-of-way and an acknowledgment that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. As stated previously, the Board issued a replacement NITU making GCRD the trails proponent on November 13, 2006. See Exhibit A.

On July 26, 2010, Greenville County filed a notice of exemption to acquire all of GCEDC's interest in the rail-banked Line, including GCEDC's residual common carrier obligation on the Line and GCEDC's right to reactivate freight service pursuant to that residual common carrier obligation. On August 11, 2010, the Board served its decision in the County of Greenville, S.C. – Acquisition Exemption – Greenville County Economic Development Corporation, FD 35396 allowing for the transfer of all of GCEDC's ownership rights and responsibilities in the rail-banked Line to Greenville County on or after August 25, 2010. Greenville County is currently the owner of the rail-banked Line and holds the right to reactivate service over the Line.

In this request, Greenville County is seeking to partially terminate the NITU over a small segment of the Line, requesting the Board to issue a replacement NITU excerpting this segment, and consummating its abandonment authority over this segment. The segment of the Line that the County is seeking to remove from the NITU and consummate any abandonment authority for

Greenville needs to complete certain processes related to establishing the park prior to the end of the year.

⁴ In its petition, Greenville County Economic Development Corporation also sought authority to discontinue service over 3.29 miles of rail line, extending from milepost AJK 585.34 in East Greenville, SC, to milepost AJK 588.63 in Greenville (Southern Segment), Greenville County, SC. Note, the 3.29-mile segment is not included in the NITU.

BAKER & MILLER PLLC

Cynthia T. Brown
November 24, 2020
Page 3

extends from milepost 0.8 to milepost 0.0, which dead-ends in a city park. (Exhibit B – Map, shows the section to be removed from the NITU, hereinafter referred to as the “Removed Segment”). The Removed Segment is not necessary for the restoration of rail service. The remaining 11 miles of right-of-way from milepost 0.8 in Greenville, SC, to milepost 11.8 in Travelers Rest, SC will continue to be subject to the NITU consistent with the Trails Act. The purpose of the County’s request is to allow the Removed Segment to be conveyed for the expansion of a public greenway at the end of the rail-banked Line.

Accordingly, Greenville County respectfully requests that the Board partially vacate the existing NITU and issue a replacement NITU effective December 15, 2020. The replacement NITU will remain effective and Greenville County will continue interim trail use over, the remainder of the Line. By this request, Greenville County is also notifying the Board that it will consummate its abandonment over the Removed Segment effective immediately upon issuance of the replacement NITU.

If there are any questions about this matter, please contact me directly or contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Respectfully submitted,

/s/ Crystal M. Zorbaugh

Attorney for The County of Greenville, S.C.

cc: Parties of Record
Kimberly Wunder
Logan M. Wells

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

AB-490 (Sub-No. 1x)

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
ABANDONMENT EXEMPTION – IN GREENVILLE COUNTY, SC**

**NOTICE OF INTENT TO PARTIALLY CAVATE TRAIL USE AND ISSUE A
REPLACEMENT NITU**

EXPEDITED CONSIDERATION REQUESTED

EXHIBIT A

**DECISION AND NOTICE OF INTERIM
TRAIL USE OR ABANDONMENT**

37424
DO

SERVICE DATE – NOVEMBER 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-490 (Sub-No. 1X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT
CORPORATION–ABANDONMENT AND DISCONTINUANCE EXEMPTION–IN
GREENVILLE COUNTY, SC

Decided: November 9, 2006

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2005, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Greenville County Economic Development Corporation (GCEDC) of an 11.8-mile line of railroad, extending from milepost 0.0 in Greenville, SC, to milepost 11.8 in Travelers Rest, SC (Northern Segment), and the discontinuance of service over 3.29 miles of rail line, extending from milepost AJK 585.34 in East Greenville, SC, to milepost AJK 588.63 in Greenville (Southern Segment), Greenville County, SC. The NITU authorized a 180-day period for Upstate Forever to negotiate an agreement with GCEDC for interim trail use/rail banking for the Northern Segment. A 180-day public use condition was also imposed for the Northern Segment under 49 U.S.C. 10905. The public use condition expired on May 10, 2006, and by statute may not be extended beyond the 180-day period.

By letter filed on September 27, 2006, Upstate Forever requested that the Board vacate the existing NITU and issue an appropriate replacement NITU to the Greenville County Recreation District (GCRD).

GCRD, in a letter filed on September 27, 2006 (and supplemented in a letter filed on October 19, 2006), submitted a request for a public use condition and a NITU, along with a statement of willingness to assume financial responsibility for the right-of-way. GCRD also acknowledged that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As noted, the public use condition may not be extended and, therefore, the request for a public use condition will be denied. GCRD's request for a NITU, however, meets the requirements of 49 CFR 1152.29(a) and will be granted. Accordingly, this proceeding will be reopened and the existing NITU vacated and replaced with a NITU issued to GCRD.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on October 12, 2005, is vacated.
3. A replacement NITU applicable to GCRD as interim trail user is issued, effective on the service date of this decision and notice.
4. A trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If GCRD enters into a trail use agreement with GCEDC, and subsequently intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. GCRD's request for a public use condition is denied as the statutory time period for such a condition has expired.
8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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

AB-490 (Sub-No. 1x)

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
ABANDONMENT EXEMPTION – IN GREENVILLE COUNTY, SC**

**NOTICE OF INTENT TO PARTIALLY CAVATE TRAIL USE AND ISSUE A
REPLACEMENT NITU**

EXPEDITED CONSIDERATION REQUESTED

EXHIBIT B

MAP



city of
greenville
South Carolina

Greenville County Rail Line



Legend

- Parcels with Ownership
- City of Greenville Limits
- 2019 Aerial Photography

1:3,600



Notes

This map was automatically generated using Geocortex Essentials.

This map is user generated from the City of Greenville's MapIT 2.0 Intranet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable and should be appropriately used with caution. Contact the GIS Division for all questions pertaining to the MapIT 2.0 program and data.

600 300 0 600 Feet

NAD_1983_HARN_StatePlane_South_Carolina_FIPS_3900_Feet_Intl
© City of Greenville, SC Date Created: 11/20/2020