

SERVICE DATE – MAY 24, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1315X

NEW ENGLAND CENTRAL RAILROAD, INC.
—ABANDONMENT EXEMPTION—
IN FRANKLIN COUNTY, VT.

Decided: May 23, 2022

New England Central Railroad, Inc. (NECR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a line of railroad between approximately milepost 0.436 (Railroad Station 23+03) at the south side of Lower Newton Road and milepost 0.60 (Railroad Station 31+68) in St. Albans, Franklin County, Vt. (the Line). Notice of the exemption was served and published in the Federal Register on April 25, 2022 (87 Fed. Reg. 24,387). The exemption is scheduled to become effective on May 25, 2022.¹

On May 4, 2022, the Vermont Agency of Transportation (VTrans) filed a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and for imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. On May 6, 2022, NECR notified the Board that it has entered into negotiations for an interim trail agreement with VTrans and, according to NECR, these negotiations are complete, pending the issuance of a NITU.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on April 29, 2022, recommending two conditions be imposed on any decision granting abandonment authority. First, OEA stated that the Vermont Agency of Natural Resources (ANR) commented that further review of the proposed salvage operation may be needed by its Department of Environmental Conservation, Sites Management Section (DEC) prior to initiating salvage to ensure that appropriate measures are taken during the removal and disposal of any potentially hazardous wastes, such as contaminated soil or chemically treated railroad ties. Therefore, to ensure appropriate consideration of these concerns, OEA recommended a condition requiring NECR to consult with DEC prior to initiating any salvage activities.

¹ The verified notice noted that, in a letter dated April 5, 2022, NECR supplemented its historic report to revise the description of the right-of-way from 82.5 feet wide to 36.5 feet wide. According to NECR, the corridor's 36.5-foot width would not disrupt the continuity of service for future rail common carrier operations or for use as a trail if the Board were to issue a NITU. (Verified Notice 4 n.2.)

Second, OEA stated that NECR served its historic report on the State of Vermont, Division for Historic Preservation (the State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA stated that, according to the SHPO, the Richford Branch line is eligible for listing on the National Register of Historic Places (National Register) due to its prior association with the Missisquoi Railroad. OEA further stated that the SHPO indicated that much of the Richford Branch remains intact as the Missisquoi Valley Trail and that any post-abandonment development of the Line, including the transfer of property, may have an adverse effect on historic resources, pursuant to the National Historic Preservation Act (NHPA). OEA stated that the SHPO recommended that a preservation easement be established and imposed as a mitigation measure, in which case the SHPO indicated that it could concur that the proposed abandonment would have no adverse effect on historic resources. According to OEA, the SHPO recommended that, if no preservation easement were established, the area of potential effects (APE) be delineated to include the right-of-way and a width of five meters on either side of the right-of-way, so the potential adverse effects of the proposed abandonment may be evaluated.

In light of these concerns, OEA recommended a condition requiring NECR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the APE that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed and the Board has removed the condition.

OEA served its Final Environmental Assessment (Final EA) on May 20, 2022. The Final EA notes that no new comments were received and OEA therefore continues to recommend that the two conditions recommended in the Draft EA be imposed.²

Interim Trail Use. VTrans has submitted a statement of willingness as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service. As noted above, NECR has notified the Board that it is willing to negotiate an agreement for interim trail use with the VTrans.

Because VTrans' request complies with the requirements of 49 C.F.R. § 1152.29 and NECR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within one year, NECR may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

² OEA notes that in the Draft EA, the first condition inadvertently omitted the words "abandonment-related" before the word "salvage." Therefore, OEA recommends modifying the first condition to add that phrase.

Public Use. As noted above, VTrans also requested imposition of a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28 prohibiting disposal of the corridor other than tracks, ties, and signal equipment, if applicable, except for public use on reasonable terms. VTrans argues that the condition should be imposed because the Line would make an excellent recreational trail connecting downtown St. Albans and the existing Missisquoi Valley Rail Trail.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Here, VTrans omitted requirements (iii) and (iv). VTrans' request for a public use condition will therefore be denied.

This decision, and the proposed abandonment if implemented as conditioned, 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. Upon reconsideration, the notice served and published in the Federal Register on April 25, 2022, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit VTrans to negotiate with NECR. The abandonment is also subject to the following conditions:³

(a) Prior to commencement of any abandonment-related salvage activities, NECR shall consult with the DEC to ensure DEC's concerns are addressed regarding the handling and disposal of any potentially hazardous waste.

(b) NECR shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed; NECR shall report back to OEA regarding any consultations with the SHPO and the public; NECR may not file its consummation notice or initiate any salvage

³ If VTrans implements trail use on the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by May 24, 2023, interim trail use may be implemented. If no agreement is reached, NECR may fully abandon the Line, subject to any outstanding conditions.

8. VTrans' request for a public use condition is denied.

9. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.