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ENTERED
Office of Proceedings
January 29, 2019
Part of
Public Record

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January 29, 2019

VIA E-FILING

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

Re: Greenville County Economic Development Corporation – Abandonment
Exemption – In Greenville County, SC
AB-490 (Sub-No. 2x)
Notice of Intent to Partially Vacate Trail Use And Issue A Replacement
NITU

Dear Ms. Brown:

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. 2X), on May 18, 2015 and agreed upon by parties on September 1, 2015.¹ As explained herein, Greenville County would like to terminate interim trail use/rail banking on a small portion of the right-of-way that arguably is covered by the NITU, consummate its abandonment over that small segment, and convey that portion for the creation of a public road, greenway, and related parking facility.

By notice of exemption served and published in the Federal Register on January 9, 2015, the Surface Transportation Board ("STB" or "Board") granted Greenville County Economic Development Corporation ("GCEDC") authority to abandon approximately 3.29 miles of rail line between milepost AJK 585.34 in East Greenville, SC, and milepost AJK 588.63 in Greenville, SC (the "Line"). By decision served on February 6, 2015, the Board imposed four environmental conditions. The exemption became effective on February 8, 2015.

¹ The Notice of Agreement on Rail Banking/ Interim Trails Use was entered into the public record on September 14, 2015.

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On March 16, 2015, the County of Greenville, S.C. (“Greenville County” or “County”) filed a request for the issuance of an NITU for the Line under the National Trails System Act, 16 U.S.C. § 1247(d) (“Trails Act”). The County supplemented its request on April 8, 2015. By decision served May 18, 2015, the STB modified the notice exempting GCEDC's abandonment of the Line to the extent necessary to implement interim trail use by the County. In a letter filed on September 14, 2015, Greenville County and GCEDC jointly notified the Board that an interim trail use/rail-banking agreement had been reached between the parties with Greenville County as the owner of the Line and trail sponsor and GCEDC holding the residual common carrier obligation and the right to restart freight service under the NITU.

On February 12, 2016, 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 February 26, 2016, the Board served its decision in County of Greenville, S.C. – Acquisition Exemption – Rail Line of Greenville County Economic Development Corporation, FD 35997 allowing for the transfer of all of GCEDC's ownership rights and responsibilities in the rail-banked Line to Greenville County effective March 13, 2016. 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 portion of the real property constituting the Line, requesting the Board to issue a replacement NITU excerpting this portion, and consummating its abandonment authority over this portion. The portion of the Line that the County is seeking to remove from the NITU and consummate any abandonment authority for that portion consists of approximately 75' wide of its 150' right-of-way and runs longitudinal between milepost 587 and road crossing 640378Y. (See Exhibit A showing the section to be removed from the NITU, hereinafter referred to as the “Removed Portion”). The Removed Portion constitutes excess right-of-way that is not necessary for the restoration of rail service. The Removed Portion has never been used for railroad purposes and is well outside where railroad tracks previously existed. The Removed Portion is on a drastically higher grade than the historic railroad line, making railroad purposes in the proposed removal area all but impossible. Furthermore, the remaining 75' of the right-of-way will continue to be subject to the NITU and is more than sufficient for the restoration of rail service consistent with the Trails Act. The purpose of the County's request is to allow the Removed Portion to be conveyed for the construction of a greenway/public road adjacent to the rail-banked Line.

Although Greenville County is filing this request under 49 C.F.R. § 1152.29(d)(2),² STB precedent is somewhat mixed on whether excess right-of-way that is not needed for the

² Pursuant to those regulations, a copy of the Board's Decision and Notice of Interim Trail Use or Abandonment in Docket No. AB-490 (Sub-No. 2X) served on May 18, 2015 is attached as Exhibit B. As previously noted, a copy of the map of the property to be removed and sold is attached as Exhibit A.

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restoration of rail service needs to be officially removed from the NITU and a replacement NITU issued or whether such excess right-of-way can be conveyed outside of the STB process as long as the conveyance does not impact the rail banked status of the line or prevent the future restoration of rail service.³ Given this mixed precedent, Greenville County is unsure as to whether it is actually necessary for the Board to issue a replacement NITU when small portions of excess real property are conveyed and such a conveyance does not result in a severance and does not impact the future reactivation of rail service. Indeed, in this instance, the excess extra-width property to be conveyed will involve the transfer of a small strip of land along the edge of the Line's right-of-way and its conveyance will not disrupt the continuity of the Line for rail reactivation purposes. As noted, the Removed Portion is not needed for rail service and was never used for rail purposes when the Line was active, although it was part of the real property that constituted the Line that was subject to the abandonment proceeding.

Given the above facts, the County believes it may have been possible to convey the Removed Portion without first complying with 49 C.F.R. § 1152.29(d)(2).⁴ To remove any uncertainty, however, Greenville County is nonetheless formally asking the Board to partially vacate the existing NITU and issue a replacement NITU. The replacement NITU will remain effective for, 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 Portion effective immediately upon issuance of the replacement NITU.

³ Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS, AB-406 (Sub-No. 6X) (STB served December 8, 1999) (noting that parties should notify the Board of land sales but appearing not to require issuance of a replacement NITU); Union Pacific Railroad Company – Abandonment Exemption – Whittier Junction – Colima Junction Line in Los Angeles County, California, AB-33 (Sub-No. 93X) (STB served July 20, 2018) (issuing a replacement NITU to terminate interim trail use over excess property being sold despite the fact that the sale would not disrupt the continuity of the line for the possible future restoration of rail service and was never necessary for the provision of rail service); But cf., Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat And Goldendale, WA; and Burlington Northern Railroad Company – Abandonment Exemption – In Klickitat County, WA, AB-6 (Sub-No. 335X); AB-6 (Sub-No. 346) (STB served June 8, 2005) (noting that BNSF sold excess right-of-way without any Board involvement and noting that as long as there is no severance, the Board plays a very limited role in managing and overseeing trails).

⁴ The Board might want to consider issuing guidance as to what STB procedures, if any, are required when excess right-of-way that is part of a rail banked corridor is conveyed, especially when the conveyance of that excess right-of-way does not result in a severance of the rail banked line and is not needed for the restoration of rail service.

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If there are any questions about this matter, please contact me directly or contact my associate, Crystal Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Respectfully submitted,



William A. Mullins
Attorney for The County of Greenville, S.C.

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

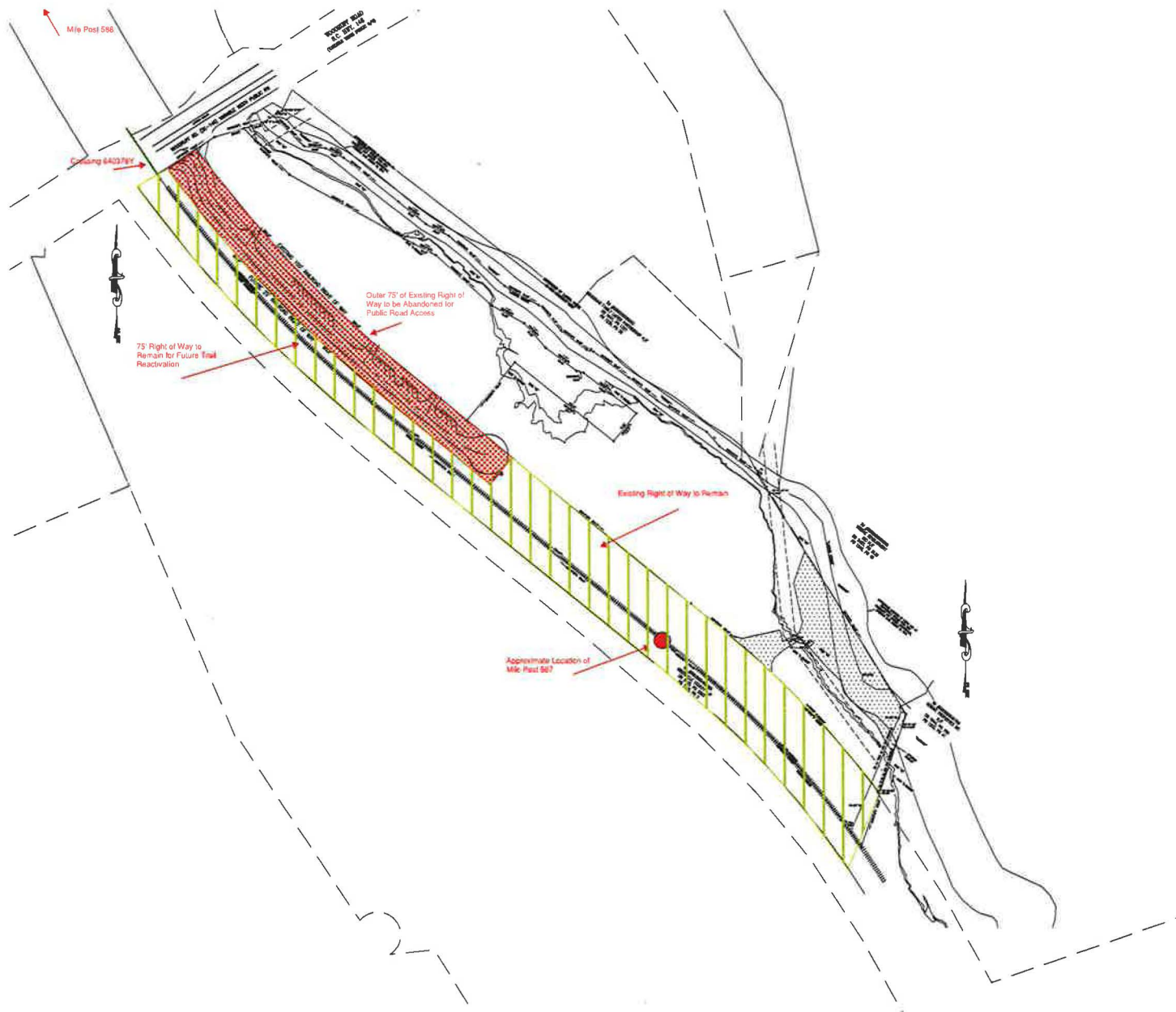
DOCKET NO. AB-490 (SUB-NO. 2X)

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

EXHIBIT A

MAP

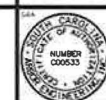
LAUREL CREEK RESERVE SUBDIVISION, GREENVILLE, SOUTH CAROLINA. THIS DRAWING IS THE PROPERTY OF ARBOR ENGINEERING, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF ARBOR ENGINEERING, INC. IS PROHIBITED. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN PERMISSION OF ARBOR ENGINEERING, INC.



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REVISIONS			
NO.	DATE	DESCRIPTION	BY

LEGEND	

**LAUREL CREEK
RESERVE
SUBDIVISION**

GREENVILLE SOUTH CAROLINA

**ROAD
EXHIBIT
DRAWING**

DRAWN	AMA	DATE	10/18/17
DESIGN		REVISION SCALE	1:100
APPROVED		PLAN SCALE	
DRAWING SCALE			
SHEET NO.	18017		
DRAWING NO.		SHEET NO.	OF

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

DOCKET NO. AB-490 (SUB-NO. 2X)

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

EXHIBIT B

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

SERVICE DATE – MAY 18, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 490 (Sub-No. 2X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION—
ABANDONMENT EXEMPTION—IN GREENVILLE COUNTY, S.C.

Decided: May 18, 2015

This decision reopens this proceeding, issues a notice of interim trail use (NITU), and denies a request for the imposition of a public use condition.

Greenville County Economic Development Corporation (GCEDC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for GCEDC to abandon approximately 3.29 miles of railroad line extending between milepost AJK 585.34 in East Greenville, S.C., and milepost AJK 588.63 in Greenville, S.C. Notice of the exemption was served and published in the Federal Register on January 9, 2015 (80 Fed. Reg. 1,470). By decision served on February 6, 2015, the Board imposed four environmental conditions, and the exemption became effective on February 8, 2015.

On March 16, 2015, the County of Greenville, S.C. (the County), filed late a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, to negotiate with GCEDC for acquisition of the right-of-way for other public use. The County supplemented its request on April 8, 2015.¹

In support of its request for a NITU, the County submitted a statement of willingness to assume full responsibility for the management of, and indemnify the railroad against any potential liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the line for rail service. In a letter filed on April 10, 2015, as

¹ The January 9, 2015 notice provided that requests for trail use/rail banking were to be filed by January 20, 2015. However, in Abandonment & Discontinuance Of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cnty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

supplemented by a letter filed on April 17, 2015, GCEDC states that it is willing to negotiate with the County for interim trail use.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29 and GCEDC is willing to negotiate with the County for trail use, this proceeding will be reopened and a NITU will be issued. The parties may negotiate an agreement during the 180-day 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. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, GCEDC may fully abandon the line, subject to any outstanding conditions imposed in this proceeding. 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.

The County also has requested the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way to allow the County to explore alternative public use of the line. As an alternative to interim trail use under the Trails Act, a 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) a justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Here, however, the County has not satisfied the requirements of § 1152.28(a)(2). Specifically, the County has not set forth the condition sought, provided the period of time for which the condition would be effective, or justified the imposition of the period of time requested. As a result, the County's request for the imposition of a public use condition will be denied.

This action 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 County's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted and granted.
3. The County's late-filed request for the imposition of a public use condition is denied.

4. Upon reconsideration, the notice served and published in the Federal Register on January 9, 2015, 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 the County to negotiate with GCEDC for trail use for a period of 180 days from the service date of this decision and notice (until November 14, 2015).

5. 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 trail 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.

6. 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 ordering paragraph 5 above.

7. 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) and (h).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by November 14, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, GCEDC may fully abandon the line, subject to any outstanding conditions imposed in this proceeding.

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

By the Board, Rachel D. Campbell, Director, Office of Proceedings.