

47235
DO

SERVICE DATE -- OCTOBER 11, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 404X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
THE CITY OF GREENSBORO, N.C.

Decided: October 10, 2019

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.1-mile rail line in the City of Greensboro, N.C., extending between milepost CF-65.6 and milepost CF-68.7 (the Line). Notice of the exemption was served and published in the Federal Register on September 13, 2019 (84 Fed. Reg. 48,383). The exemption is scheduled to become effective on October 13, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on September 20, 2019, recommending that three conditions be imposed on any decision granting abandonment authority. OEA noted that the North Carolina Department of Environmental Quality (NCDEQ) commented that salvage activities resulting from the proposed abandonment could be subject to an erosion control plan review. NCDEQ indicated that NSR should consult with Guilford County, N.C., the county responsible for enforcing erosion control for the proposed abandonment. Accordingly, OEA recommended that a condition be imposed on any decision granting abandonment authority requiring NSR to consult with Guilford County prior to beginning any salvage activities to determine whether an erosion control plan review is required and, if so, to comply with the plan's reasonable requirements.

OEA also stated that the National Geodetic Survey (NGS) indicated that ten geodetic survey markers are present in the right-of-way and could be disturbed by the proposed abandonment. Therefore, OEA recommended that a condition be imposed on any decision granting abandonment authority requiring NSR to notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning salvage activities to allow time for the geodetic survey markers to be preserved.

The EA stated that NSR served a historic report on the North Carolina State Historic Preservation Officer (SHPO), pursuant to 49 C.F.R. § 1105.8(c). NSR indicated that there are four bridges located along the Line but asserted that neither the bridges, nor the Line itself, meet the criteria for listing in the National Register of Historic Places (National Register). OEA stated that the SHPO had not yet commented and, therefore, OEA had not been able to consider the SHPO's opinion in determining the impact of the proposed abandonment on historic resources. Accordingly, OEA recommended a condition requiring the railroad 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 project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register 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 issued its final EA on October 7, 2019, noting that it received one comment after issuance of the EA. The SHPO commented that no historic resources would be affected by the proposed abandonment, and OEA therefore no longer recommends that a Section 106 condition be imposed. OEA does continue to recommend imposing the other two conditions.

Accordingly, based on OEA's analysis and recommendations, the Section 106 condition recommended in the EA will not be imposed, and the two conditions recommended in the final EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On September 13, 2019, the City of Greensboro (the City) filed a request for issuance of notice of interim trail use or abandonment (NITU) to negotiate with NSR to establish interim trail use and rail banking on the Line under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.¹ Pursuant to 49 C.F.R. § 1152.29, the City has submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the 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. In a response filed on September 20, 2019, NSR notified the Board that it is willing to negotiate an agreement for interim trail use with the City.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an interim trail use/rail banking agreement for the right-of-way 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. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, NSR may fully abandon the Line, subject to any outstanding conditions. 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.

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.

¹ The City initially also sought a public use condition, but it withdrew that request on September 19, 2019.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 13, 2019, 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 NSR to negotiate with the City for trail use for the Line for a period of 180 days from the service date of this decision and notice, until April 8, 2020. The abandonment is also subject to the conditions that NSR shall: (1) prior to commencement of any salvage activities, consult with Guilford County to determine whether an erosion control plan review is required and, if so, comply with the plan's reasonable requirements; and (2) notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning salvage activities.
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) and (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 April 8, 2020, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, NSR may fully abandon the Line, subject to any outstanding conditions.
8. This decision and notice is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.