

SERVICE DATE – MAY 31, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 287X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BRUNSWICK COUNTY, VA

Decided: May 30, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 5.00-mile line of railroad between mileposts FD 90.20 and FD 95.20, in Lawrenceville, Brunswick County, VA. On May 16, 2007, Roanoke River Rails-to-Trails, Inc. (Roanoke), filed a request for the issuance of a notice of interim trail use (NITU) and a public use condition. The notice of exemption was served and published in the Federal Register on May 2, 2007 (72 FR 15755-56). The exemption is scheduled to become effective on June 1, 2007.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on May 7, 2007. In the EA, SEA states that NSR submitted an historic report as required by the Board's environmental rules (49 CFR 1105.8(a)) and served a copy of the report on the Virginia State Historic Preservation Office (VASHPO) pursuant to 49 CFR 1105.8(c). SEA states that it has not heard from VASHPO and therefore has not been able to consider VASHPO's opinion before determining if the rail line may be potentially eligible for listing in the National Register of Historic Places (National Register). Therefore, SEA recommends that NSR be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), that NSR be required to report back to SEA regarding any consultations with VASHPO and any other section 106 consulting parties, and that NSR not be allowed to file its consummation notice or initiate any salvage activities related to the abandonment (including removal of track and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by May 22, 2007. No comments were filed. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

As stated, Roanoke filed 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 for a public use condition under

49 U.S.C. 10905,¹ to permit it to negotiate with NSR for the acquisition of the right-of-way for use as a recreational trail. Roanoke requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Roanoke states that the time is needed to review title information and commence negotiations with NSR.

Roanoke also submitted a statement of willingness to assume financial responsibility for the 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. NSR has indicated its willingness to negotiate with Roanoke for interim trail use.

Because Roanoke's request complies with the requirements of 49 CFR 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NRS may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration of railroad purposes.

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 Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 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. See 49 CFR 1152.28(a)(2). Because Roanoke has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 1, 2007 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, NSR must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public

¹ The EA indicated that the right-of-way may be suitable for other public use following abandonment.

use condition, NSR is not required to deal exclusively with Roanoke, but may engage in negotiations with other interested persons.

As conditioned, this decision and notice 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 May 2, 2007, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the June 1, 2007 effective date of the exemption (until November 28, 2007), subject to the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register (generally, 50 years old or older) until completion of the section 106 process of the NHPA. NSR shall report back to SEA regarding any consultations with VASHPO and any other section 106 consulting parties, and shall not file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, NSR may discontinue service and salvage track and related materials. NSR shall otherwise keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user 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 interim trail use is implemented, and subsequently the user 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. If an agreement for interim trail use/rail banking is reached by November 28, 2007, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line.

8. This decision and notice is effective on its date of service.

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

Vernon A. Williams
Secretary