

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 304X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN HENRY COUNTY, VA

Decided: February 4, 2009

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.20-mile line of railroad between milepost DW 41.60, and milepost DW 45.80, in Martinsville, Henry County, VA. Notice of the exemption was served and published in the Federal Register on January 6, 2009 (74 FR 492-93). The exemption is scheduled to become effective on February 5, 2009.

On January 7, 2009, the County Administrator, on behalf of Henry County (the County), filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, to enable it to negotiate with NSR for use of the line as an interim trail. The County also submitted a statement of willingness to assume full responsibility for the management of, for any legal 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 at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on January 8, 2009, NSR consents to the request for interim trail use.

Because the County'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, NSR 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 for railroad purposes. See 49 CFR 1152.29(d)(2).

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. Upon reconsideration, the notice served and published in the Federal Register on January 6, 2009, 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 NSR for trail use of the subject line, for a period of 180 days commencing from the February 5, 2009 effective date of the exemption (until August 4, 2009).

3. 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.

4. 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.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by August 4, 2009, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line.

7. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary