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SERVICE DATE – JANUARY 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 266X)

NORFOLK SOUTHERN RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN  
MCDOWELL COUNTY, NC

Decided: December 29, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 3.5 miles of railroad between milepost SB 205.0 and milepost SB 208.5, near Marion, in McDowell County, NC. Notice of the exemption was served and published in the Federal Register on June 8, 2006 (71 FR 33334).<sup>1</sup>

By decision and notice of interim trail use or abandonment (NITU) served on July 7, 2006, the proceeding was reopened. The Board granted a 180-day period for the City of Marion, NC (City), to negotiate an agreement with NSR for interim trail use/rail banking and for a public use condition. The NITU negotiating period and the public use condition are scheduled to expire on January 4, 2007. In the same decision, the Board imposed four environmental conditions: two stormwater conditions, an archaeological condition, and a National Geodetic Survey (NGS) consultation condition.<sup>2</sup>

On December 6, 2006, the City filed a request for a 90-day extension of the negotiating period. The City states that it has been informed by NSR that an appraisal for the property on which an agreement hinges is presently being secured. On December 13, 2006, NSR filed a letter stating that it has not consummated the abandonment of the line, that it continues to negotiate with the City for an interim trail use agreement, and that it consents to the extension.

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<sup>1</sup> The exemption was scheduled to become effective on July 8, 2006.

<sup>2</sup> By decision served on November 1, 2006, the stormwater conditions and the archaeological condition were removed. The November 1 decision noted, however, that the NGS consultation condition remained in effect.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiation period may be extended. An extension of the negotiating period is warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).<sup>3</sup> Accordingly, the NITU negotiating period will be extended for an additional 90 days from January 4, 2007 (until April 4, 2007).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to April 4, 2007.
3. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments – Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).