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SERVICE DATE - MARCH 7, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 183X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--  
IN GREENWOOD AND NEWBERRY COUNTIES, SC

Decided: March 4, 1997

By decision served and notice published in the Federal Register (62 FR 5881) on February 7, 1997, Norfolk Southern Railway Company (NS) was exempted from the prior approval requirements of 49 U.S.C. 10903, permitting NS to abandon a 13-mile line of railroad between milepost V-58.0, at Conrad, and milepost V-71.0, at Brickdale, in Greenwood and Newberry Counties, SC (the line). The exemption is scheduled to become effective on March 9, 1997.

On February 21, 1997, The Ninety-Six Development Association (Association) filed a request for the issuance of a notice of interim trail use/rail banking (NITU) pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d) and 49 CFR 1152.29, and a 180-day public use condition so that it could negotiate with NS for use of the line as a recreational trail. The Association states that the 180-day period is needed to review title information, complete a trail plan, and begin negotiations with NS. By letter dated March 3, 1997, NS indicates its willingness to negotiate with the Association for interim trail use.

The Association submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that use of the right-of-way for trail purposes is subject to future reactivation for rail service. In light of this and NS's willingness to enter into negotiations, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, our further approval is unnecessary. If no agreement is reached within 180 days, NS may fully abandon the line. See 49 CFR 1152.29(d)(1).

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, Rail Abandonments - Use of Rights-of-Way as Trails (Trails), 2 I.C.C.2d 591 (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.

The Association's submission meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period requested. Accordingly, the requested 180-day public use condition will be imposed.

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.

When the need for interim trail use/rail banking and public use is shown, it is our policy to impose both conditions concurrently, subject to execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609.

As conditioned, 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. Upon reconsideration, the exemption published in the Federal Register on February 7, 1997, 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, and is subject to the condition that NS keep intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not tracks, ties and signal equipment) for a period of 180 days after the March 9, 1997 effective date of the exemption to permit the Association and any other State or local government agency, or other interested persons, to negotiate for 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 segment.
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 specific date.
6. If an agreement for interim trail use/rail banking is reached by September 5, 1997, interim trail use may be implemented. If no agreement is reached by that time, NS may fully abandon the line.
7. This decision is effective on the service date.

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

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Vernon A. Williams  
Secretary