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SERVICE DATE – DECEMBER 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 14, 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. Notice of the exemption was served and published in the Federal Register on May 2, 2007 (72 FR 15755-56). The exemption became effective on June 1, 2007.

By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2007, the proceeding was reopened and a 180-day period (until November 28, 2007) was authorized for Roanoke River Rails-to-Trails, Inc. (Roanoke), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The decision also imposed a condition requiring NSR 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 of Historic Places (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).<sup>1</sup>

According to SEA, in a letter dated October 22, 2007, the Virginia State Historic Preservation Office (VASHPO) indicates that the proposed abandonment would have no adverse effect upon the Lawrence Historic District provided that NSR agrees to: (1) reclassify the rail line between mileposts FD 90.20 and FD 92.40 as industrial lead track, with no salvage of tracks or materials, and (2) leave intact the 2.8-mile segment between mileposts FD 92.40 and FD 95.20 for potential interim trail use to preserve the historic character of the Lawrenceville Historic District. SEA further states that, in a letter dated October 31, 2007, NSR has agreed to the conditions outlined by VASHPO, and has also agreed to leave the bridges, culverts and appurtenant railroad structures such as round houses, lights, signs, etc., in place. SEA adds that NSR has requested that the Board remove the section 106 condition.

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<sup>1</sup> The May 31 decision also imposed a public use condition, which expired on November 28, 2007.

Based on the information provided, SEA recommends that the section 106 historic preservation condition imposed in the May 31, 2007 decision be removed. Given SEA's recommendation, the section 106 condition will be removed.

By letter dated November 30, 2007, Roanoke filed a request for an additional 180-day extension of the NITU negotiating period. Roanoke states that it and NSR are currently negotiating terms for acquisition of the right-of-way as a recreational trail, but that additional time is needed to complete the contract. NSR states that it is willing to continue to negotiate for interim trail use/rail banking with Roanoke and supports Roanoke's request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from November 28, 2007, to May 26, 2008.

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

It is ordered:

1. Roanoke's request to extend the negotiating period is granted.
2. The negotiating period under the NITU is extended to May 26, 2008.
3. Upon reconsideration, the section 106 historic preservation condition imposed in the decision served May 31, 2007, is removed.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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