

43967
DO

SERVICE DATE – LATE RELEASE AUGUST 29, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 361X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN PRINCE EDWARD COUNTY, VA.

Decided: August 29, 2014

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.0 mile of rail line located in Prince Edward County, Va., extending from milepost N 167.9 (near the intersection of Pamplin Road/US Rte. 460 Bypass and Heights School Road) to milepost N 168.9 (0.6 miles east of the Appomattox County-Prince Edward County line), all of which is located in the Town of Pamplin City. Notice of the exemption was served and published in the Federal Register on April 7, 2014 (79 Fed. Reg. 19,172). The exemption became effective on May 7, 2014, subject to standard employee protective conditions, and by a decision served on May 6, 2014 (May 2014 decision) to an historic preservation condition.

The historic preservation condition required NSR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f. This condition also required NSR to report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the Virginia Department of Historic Resources (State Historic Preservation Officer or SHPO) and the public, and this condition prohibited NSR from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process had been completed and the Board had removed this condition. The condition was imposed in response to the SHPO's request for additional information and to allow the SHPO adequate time before providing comments regarding the potential effect of the proposed abandonment on historic properties that may be eligible for listing in the National Register.

In a Supplemental Final Environmental Assessment dated August 8, 2014, OEA states that, on July 11, 2014, it received comments from the SHPO stating that, based on its determination, the Line proposed for abandonment is potentially eligible for listing in the

National Register, and that the abandonment would have no adverse effect on historic properties.

OEA states that the SHPO requests that NSR's consultations with the SHPO be continued in the event that the Line is converted into a recreational trail pursuant to Federal law. OEA notes that the National Trails System Act (Trails Act)¹ gives interested parties an opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. OEA states that the Board's role under the Trails Act is ministerial² and, therefore, does not constitute a major Federal action under the National Environmental Policy Act (as defined at 40 C.F.R. § 1508.18) or a Federal undertaking under Section 106 (as defined at 42 C.F.R. § 137.289). Therefore, OEA does not recommend any new mitigation in response to the SHPO's request.

OEA has reviewed the available information and following consultation with the SHPO, NSR, and the public and finds, pursuant to the Section 106 regulations of the NHPA, that the proposed abandonment would not adversely affect historic properties or archaeological resources listed in or eligible for inclusion in the National Register. Therefore, OEA recommends that the Section 106 condition imposed in the Board's May 2014 decision be removed.

Accordingly, based on OEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

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 Section 106 historic preservation condition imposed in the May 2014 decision is removed.
3. This decision is effective on its date of service.

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

¹ 16 U.S.C. § 1247(d).

² Goos v. ICC, 911 F.2d 1283, 1283, 1295 (8th Cir. 1990).