



241243

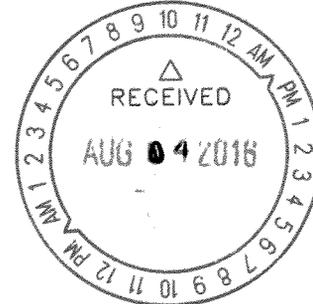
ENTERED  
Office of Proceedings  
August 4, 2016

**Anthony Fox**  
*Partner*  
Telephone: 704.335.9841  
Direct Fax: 704.335.9565  
anthonyfox@parkerpoe.com

Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC  
Part of  
Public Record

July 26, 2016

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001



**Re: *Norfolk Southern Railway Company—Abandonment Exemption—in Gaston County, NC; STB Docket No. AB-290 (Sub-No. 275-X)***

To Whom It May Concern:

Enclosed for filing in STB Docket No. AB-290 (Sub-No. 275-X), Norfolk Southern Railway Company—Abandonment Exemption—in Gaston County, NC, are the original and ten copies of the Notice of Intent to Partially Terminate Trail Use.

Copies of this filing have been sent via first class mail to all other parties of record in this case.

Please do not hesitate to contact us if you have any questions.

Sincerely,

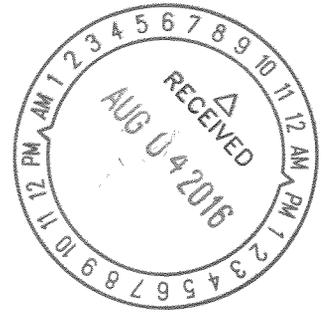
Anthony Fox,  
On behalf of the City of Gastonia

cc: Greg Summy (NSR)  
Melissa A. Magee (City of Gastonia)

PPAB 3163359v2

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
395 E Street, S.W.  
WASHINGTON, D.C. 20423

---



STB Docket No. AB-290 (Sub-No. 275X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—IN GASTON COUNTY, NC

---

NOTICE OF INTENT TO PARTIALLY  
TERMINATE TRAIL USE

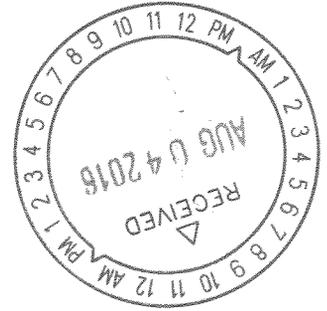
Anthony Fox, Esq.  
Parker Poe Adams & Bernstein LLP  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Tel: 704-335-9841

Attorney for the City of Gastonia

Dated: July 26, 2016

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
395 E Street, S.W.  
WASHINGTON, D.C. 20423

---



STB Docket No. AB-290 (Sub-No. 275X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—IN GASTON COUNTY, NC

---

NOTICE OF INTENT TO PARTIALLY  
TERMINATE TRAIL USE

Pursuant to 49 C.F.R. § 1152.29(d)(2), the City of Gastonia (the “City”) respectfully requests that the Surface Transportation Board (“STB”) partially vacate the Notice of Interim Trail Use (“NITU”) issued in Norfolk Southern Railway Company—Abandonment Exemption—In Gaston County, NC, STB Docket No. AB-290 (Sub-No. 275X) (Decided October 26, 2006) (the “Decision”). In support of this request, the City states as follows:

1. In September 2006, Norfolk Southern Railway Company (“NFS”) filed a Verified Notice of Exemption with the STB for abandonment of its railroad right of way extending 2 miles from milepost HG 45.0 to milepost HG 47.0 in Gastonia, Gaston County, North Carolina.

2. In October 2006, the City filed a request for issuance of a Public Use Condition as well as an Interim Trail Use Condition with the STB for a segment of the railroad right of way extending from milepost HG 45.0 to milepost HG 46.8, a distance of 1.8 miles.

3. Pursuant to the Decision, the STB issued a NITU for that 1.8 mile segment of the railroad right of way requested by the City.

4. The City now wishes to terminate interim trail use on a portion of that 1.8 mile segment of the railroad right of way. Specifically, the City wishes to terminate interim trail use on that portion more fully described on Exhibit A attached hereto and incorporated herein (“Release Premises”).

5. Accordingly, the City respectfully requests that the STB vacate the NITU insomuch only as it applies to the Release Premises on August 29, 2016.

6. Pursuant to 49 C.F.R. § 1152.29(d)(2), a copy of the Decision is attached hereto as Exhibit B and incorporated herein.

7. Copies of the revised Decision and Notice of Interim Trails Use or Abandonment should be sent as follows:

A. The abandonment exemption applicant:

Norfolk Southern Railway Company  
Attn: Greg Summy  
Three Commercial Place  
Norfolk, VA 23510-9241

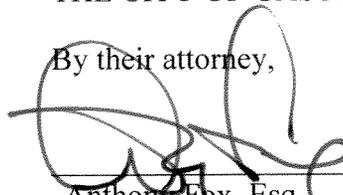
B. The owner of the railroad right of way and trail sponsor:

The City of Gastonia  
Attn: Melissa A. Magee  
P.O. Box 1748  
Gastonia, NC 28053-1748

Respectfully submitted,

THE CITY OF GASTONIA

By their attorney,



Anthony Fox, Esq.

Parker Poe Adams & Bernstein LLP  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Tel: 704-335-9841

Dated: July 26, 2016

**VERIFICATION**

J. Philip Bombardier, Assistant City Manager, declares under penalty of perjury, in accordance with 18 U.S.C. § 1621, that she is authorized on behalf of the City to file the foregoing Notice of Intent to Partially Terminate Trail Use, that she is familiar with its contents and the factual assertions therein made are true and correct to the best of her knowledge and belief.

Executed this 26 day of July, 2016.

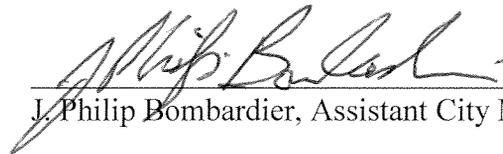
  
\_\_\_\_\_  
J. Philip Bombardier, Assistant City Manager

EXHIBIT A

BEING a railroad right of way 100 feet wide (50 feet wide on either side of the centerline of the right of way) located in Gaston County, North Carolina, more particularly described as follows:

BEGINNING AT A POINT located at Railroad Valuation Station 2451+05, more or less, as shown on Railway Valuation Map V.S.-2 C&NW/S-3, which map is attached as Exhibit A-1 and made a part hereof; thence running along the centerline of the right of way in a northerly direction a distance of 1,572 feet (0.30 of a mile), more or less, to the ENDING POINT located at the point of intersection of the centerline of the right of way with the centerline of Rankin Lake Road located at Railroad Valuation Station 2466+77, more or less (Railway Milepost HG-46.8), as shown on Railway Valuation Map V.S.-2 C&NW/S-3, such portion of right of way containing 3.6 acres, more or less.

EXHIBIT A-1

[COPY OF MAP OF THE RELEASE PREMISES ATTACHED HERETO]



EXHIBIT B  
[COPY OF THE DECISION ATTACHED HERETO]

37403  
DO

SERVICE DATE – LATE RELEASE OCTOBER 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 275X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN GASTON COUNTY, NC

Decided: October 26, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.0-mile line of railroad between milepost HG 45.0 and milepost 47.0 in Gastonia, in Gaston County, NC. Notice of the exemption was served and published in the Federal Register on September 27, 2006 (71 FR 56585). The exemption was scheduled to become effective on October 27, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 2, 2006. In the EA, SEA states that the U.S. Environmental Protection Agency, Region 4 (USEPA), submitted comments stating that the proposed abandonment did not appear to be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements. However, because the North Carolina Department of Environment and Natural Resources (DENR) has been authorized to implement the NPDES permit program, USEPA recommends that NSR consult with DENR. Accordingly, SEA recommends a condition requiring NSR to consult with DENR prior to beginning salvage activities regarding NPDES permitting requirements.

SEA also states that National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring NSR to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the markers' possible relocation by NGS.

Comments to the EA were due by October 17, 2006. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On October 10, 2006, the City of Gastonia (the City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way (ROW), between milepost HG 45.0 and milepost HG 46.8, a distance of 1.8 miles, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905 for that portion of the line,<sup>1</sup> to negotiate with NSR for acquisition of the ROW as a recreational trail.

---

<sup>1</sup> SEA indicated in the EA that the ROW may be suitable for other public use following abandonment.

The City has submitted a statement of willingness to assume full financial responsibility for the 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 payment of any and all taxes that may be levied or assessed against, the ROW for trail purposes, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By facsimile filed on October 12, 2006, NSR states that it consents to negotiating with the City for interim trail use.<sup>2</sup>

Because the City'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 for the portion of the ROW being sought. 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 that portion of the line subject to the NITU, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As noted above, the City also requested a 180-day public use condition. The City requests that NSR be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment. The City states that the time period is needed to complete negotiations with NSR.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (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.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the October 27, 2006 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement.

---

<sup>2</sup> NSR states that the City did not include a 0.2-mile segment of the subject line between milepost HG-46.8 and milepost HG-47.0 in its requests. NSR further states that it will advise the Board of its disposition of this segment of the line at a later date.

If a trail use agreement is reached on a portion of the ROW, NSR must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, 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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NSR is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

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 notice served and published in the Federal Register on September 27, 2006, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below for that portion of the ROW described above for a period of 180 days commencing from the October 27, 2006 effective date of the exemption (until April 25, 2007), and subject to the conditions that NSR shall: (1) consult with DENR prior to beginning salvage activities regarding NPDES permitting requirements; and (2) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the affected geodetic station markers by NGS.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, NSR may discontinue service and salvage track and related materials. For the above-described portion of the line, NSR shall keep intact the ROW, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the above-described portion of the line for public use. If an interim trail use/rail banking agreement is executed before April 25, 2007, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. 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 ROW.
5. 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 ROW.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by April 25, 2007, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the above-described portion of the line, provided the conditions imposed in this proceeding are met.

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

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

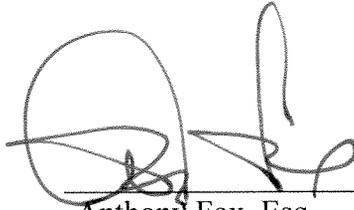
Vernon A. Williams  
Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 3 day of August, 2016, I have served all parties of record in this proceeding, as listed below, with the foregoing Notice of Intent to Partially Terminate Trial Use via first class mail.

Norfolk Southern Railway Company  
Attn: Greg Summy  
Three Commercial Place  
Norfolk, VA 23510-9241

The City of Gastonia  
Attn: Melissa A. Magee  
P.O. Box 1748  
Gastonia, NC 28053-1748

A handwritten signature in black ink, appearing to read 'Anthony Fox', is written over a horizontal line.

Anthony Fox, Esq.  
Parker Poe Adams & Bernstein LLP  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Tel: 704-335-9841