

SERVICE DATE—JANUARY 4, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 404X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
THE CITY OF GREENSBORO, N.C.

Digest:¹ The Board clarifies that a portion of the width of a railbanked right-of-way in North Carolina, which is not needed to permit the reactivation of rail service, is no longer part of the notice of interim trail use or abandonment.

Decided: January 4, 2024

BACKGROUND

In 2019, Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.1-mile rail line in the City of Greensboro, N.C., extending between milepost CF-65.6 and milepost CF-68.7 (the Line). Notice of the exemption was served and published in the Federal Register on September 13, 2019 (84 Fed. Reg. 48,383). The exemption was scheduled to become effective on October 13, 2019.

On October 11, 2019, at the request of NSR and the City of Greensboro (Greensboro), the Board issued a notice of interim trail use or abandonment (NITU) authorizing Greensboro, as the proposed trail sponsor, to negotiate with NSR for interim trail use/railbanking of the Line's right-of-way under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² On November 8, 2019, NSR and Greensboro jointly notified the Board that they had reached a trail-use agreement. The following day, NSR conveyed the right-of-way to Greensboro by non-warranty deed subject to rail reactivation and various property encroachments. (Greensboro Pet. 4, Dec. 7, 2022.)

On December 7, 2022, Greensboro filed a petition seeking clarification that the right-of-way subject to the NITU may be narrowed along a 264-foot section of the Line to permit encroachment by Kotis Properties (Kotis) for development of a grocery store. In support, Greensboro submitted an Engineering Analysis Report by an independent rail engineering

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The abandonment also was made subject to two salvage-related conditions.

consultant, James R. Blaze, in which Blaze concluded that the proposed narrowed right-of-way “would be sufficient to permit trail use and the reestablishment of rail service.” (*Id.*, Ex. 3, Attach. 1 at 7.) NSR filed a response challenging Greensboro’s petition, arguing that the only means to remove the railroad’s residual common carrier obligation from the parcel at issue is through an “adverse abandonment” proceeding under 49 U.S.C. § 10903.³ (NSR Reply 2, Dec. 27, 2022.)

In a decision served on June 28, 2023, the Board rejected NSR’s argument that Greensboro must seek adverse abandonment authority and described the applicable standard for determining whether a portion of a right-of-way can be removed from a railbanked line. Norfolk S. Ry.—Aban. Exemption—City of Greensboro, N.C. (June 2023 Decision), AB 290 (Sub-No. 404X), slip op. at 3-5 (STB served June 28, 2023). The decision also provided NSR an opportunity to demonstrate that that standard had not been met. *Id.* at 5-6.

On July 27, 2023, NSR notified the Board that NSR and Greensboro had agreed to enter settlement discussions and requested a 30-day extension, which the Board granted in a decision served the next day. On August 25, 2023, the Board granted NSR’s unopposed request for a further 60-day extension to provide time for the parties to finalize a settlement.

In a letter filed on October 12, 2023, Greensboro notified the Board that the parties have reached a settlement agreement that the right-of-way subject to the NITU along the subject 264-foot section of the Line may be narrowed to 65 feet (at least 39 feet on the north side of the center line and 26 feet on the south side) through the removal of the Kotis parcel, which would not interfere with the potential reactivation of rail service on the Line in accordance with a map attached to the letter. (Greensboro Letter 2, Oct. 12, 2023; *id.*, Ex. A.) According to the letter, NSR is withdrawing its opposition to Greensboro’s petition and now supports its request. (*Id.* at 2.) Therefore, Greensboro asks the Board to approve its petition that the right-of-way subject to the NITU may be narrowed along a 264-foot section of the Line to permit encroachment by Kotis for the development of a grocery store in accordance with the map attached to the letter. (*Id.*)

DISCUSSION AND CONCLUSIONS

As described in the June 2023 Decision, in cases where a trail sponsor proposes to narrow the width of a right-of-way subject to a NITU, the Board has found it unnecessary to vacate the NITU and issue a replacement NITU under 49 C.F.R. § 1152.29(d)(2) if the trail sponsor has demonstrated with adequate specificity that the remaining width of the right-of-way would be sufficient to support the reactivation of rail service. See Mo. Pac. R.R.—Aban. Exemption—in Red River & Bowie Cntys., Tex., AB 3 (Sub-No. 137X), slip op. at 4 (STB served July 29, 2021) (and decisions cited therein). In such cases, the Board will instead issue a decision clarifying the width of the right-of-way and explaining that the portion of the right-of-way that the trail sponsor has demonstrated is not needed to reactivate rail service is no longer part of the NITU. *Id.*

³ Greensboro filed a rebuttal on January 9, 2023, to which NSR filed a response on January 30, 2023.

Here, the Board finds that Greensboro has demonstrated with adequate specificity that its current plan, which involves retaining 65 feet of right-of-way width, would leave sufficient room to support the reactivation of rail service. Not only does Greensboro advise that NSR agrees that the remaining right-of-way width would be sufficient, but it also provides material (a map) from NSR to support that claim. (Greensboro Letter 2, Oct. 12, 2023; id., Ex. A.) The Board has in the past permitted the narrowing of railbanked rights-of-way where the record showed that the statutory railbanking requirements of the Trails Act would continue to be met, see, e.g., Mo. Pac. R.R.—Aban. Exemption, AB 3 (Sub-No. 137X), slip op. at 4-5, and based on the Board’s review of the materials submitted for this location, the agency concurs that the 65-foot width remaining on this right-of-way will be sufficient. Therefore, the Board clarifies that the right-of-way may be narrowed along the subject 264-foot section of the Line in accordance with the map submitted with Greensboro’s October 12, 2023 letter. Any portion of the 264-foot section outside of the narrowed right-of-way is no longer part of the NITU served on October 11, 2019.

It is ordered:

1. Greensboro’s petition is granted as described herein.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.