

SERVICE DATE – JUNE 30, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 408X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
HUDSON AND ESSEX COUNTIES, N.J.

Decided: June 29, 2022

By decision and notice of interim trail use or abandonment (NITU) served on September 29, 2020, the Board authorized Norfolk Southern Railway Company (NSR) to abandon an approximately 8.6-mile rail line, extending from milepost WD 2.9 in the City of Jersey City, to milepost WD 11.5 in the Township of Montclair, in Hudson and Essex Counties, N.J. (the Line), subject to trail use, historic preservation, environmental, and standard employee protective conditions. The NITU authorized a one-year period for Open Space Institute Land Trust, Inc. (OSI), as proposed trail sponsor, to negotiate with NSR for interim trail use/rail banking of the Line's right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d). A decision served on September 3, 2021 extended the NITU negotiating period until September 29, 2022.

On June 21, 2022, OSI requested that the Board reopen the abandonment exemption, vacate the existing NITU, and issue a replacement NITU substituting the New Jersey Department of Environmental Protection (NJDEP) as the proposed trail sponsor. The request includes a copy of the extant NITU and a statement of NJDEP's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. NJDEP acknowledges that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By letter filed on June 21, 2022, NSR notified the Board that it consents to the substitution of NJDEP as the proposed trail sponsor.

The request complies with the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the proceeding will be reopened and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on September 29, 2020 is vacated.

3. A replacement NITU is issued to NJDEP as the new interim trail sponsor for the Line's right-of-way effective on the service date of this decision and notice, for a period of one-year from the service date, until June 30, 2023.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

7. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by June 30, 2023, interim trail use/rail banking may be implemented. If no agreement is reached, NSR may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.