

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

Fax: (312) 252-2400

www.fletcher-sippel.com

June 15, 2021

BRADON J. SMITH

(312) 252-1516

bsmith@fletcher-sippel.com

302528

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

ENTERED
Office of Proceedings
June 16, 2021
Part of
Public Record

Re: **AB 1306X**
Blue Ridge Southern Railroad, L.L.C. — Abandonment Exemption — in
Henderson and Transylvania Counties, North Carolina

Petition for Interim Trails Use and Notification of Trails Use/Railbanking Agreement.

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1152.29 and the Board's April 27, 2021 decision in this proceeding, Blue Ridge Southern Railroad, L.L.C. ("BRS") and Ecusta Rails2Trails LLC ("ER2T") – collectively, the "Parties" – hereby file jointly in the interest of facilitating a trails use arrangement for the line segment that is the subject of this proceeding. Accordingly, the Parties' request the Surface Transportation Board (the "Board") promptly to issue a notice of interim trails use ("NITU") under 49 C.F.R. § 1152.29 covering the entire line that is the subject of the above-referenced proceeding. Additionally, the Parties advise that they have entered an interim trails use agreement (the "Agreement") under which ER2T would assume interim trails sponsorship for the entire line segment, subject to Board issuance of the applicable NITU pursuant to 49 C.F.R. § 1152.29(d). This joint filing thus satisfies both the NITU petition requirements at Section 1152.29(a), and the notice of agreement reached requirements at Section 1152.29(h) in keeping with agency precedent.¹

FILED
June 16, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 16, 2021
SURFACE
TRANSPORTATION BOARD

¹ *Chicago & North Western Transportation Company — Abandonment Exemption — between Norfolk and Merriman, NE, AB-1 (Sub-No. 249X) (ICC served Jun. 2, 1994), 4 ("CNW Abandonment")* (issuing NITU without requiring further filing where the railroad and trails sponsor simultaneously notified ICC of the existence of a trails use agreement between them).

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

June 15, 2021

Page 2

Good Cause for Late-Filed Request

Generally, requests under § 1152.29 are due within 10 days of the publication of the notice authorizing abandonment. 49 C.F.R. § 1152.29(b)(2). However, late-filed requests are permitted with a statement showing good cause. 49 C.F.R. § 1152.29(c). In this matter, the parties have expedited the negotiation process and have consolidated the filings in the interest of facilitating an overall swifter path to an interim trails use arrangement; this is good cause.

Requirements of Trails Use Sponsor Petition and Notification of Trails Use/Railbanking Agreement.

In accordance with 49 C.F.R. §§ 1152.29(a) and (h) the Parties have attached a map and description of the right-of-way to be used for trails use and rail banking (Exhibit A) and an ER2T-executed Statement of Willingness to Assume Financial Responsibility (Exhibit B) ("Statement of Willingness"). In accordance with the requirement of 49 C.F.R. § 1142.29(h), the parties certify that the Agreement they have reached (and are notifying the Board of) includes provisions requiring ER2T to fulfill the responsibilities described in the Statement of Willingness.

If you have any questions regarding this filing, please feel free to contact me at either bsmith@fletcher-sippel.com or (312) 252-1516. Thank you for your assistance on this matter. Kind regards.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

June 15, 2021

Page 3

Respectfully submitted,



Bradon J. Smith

**ATTORNEY FOR BLUE RIDGE
SOUTHERN RAILROAD, L.L.C.**



Kieran C. Roe

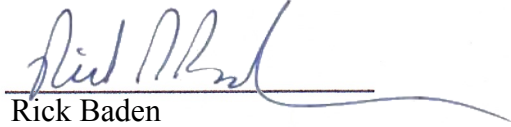
ECUSTA RAILS2TRAILS LLC

BJS:bs

Enclosures

CERTIFICATION

I certify that the agreement between BRS and ER2T requires ER2T to meet the obligations described in CC's Statement of Willingness.

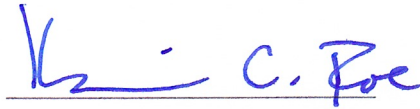
A handwritten signature in blue ink, appearing to read "Rick Baden", is written over a horizontal line.

Rick Baden

[AUTHORIZED SIGNATURE]

Executive Vice President and Chief Financial Officer

BLUE RIDGE SOUTHERN RAILROAD, L.L.C.

A handwritten signature in blue ink, appearing to read "Kieran C. Roe", is written over a horizontal line.

Kieran C. Roe

ECUSTA RAILS2TRAILS, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB 1306X
BLUE RIDGE SOUTHERN RAILROAD, L.L.C.
— ABANDONMENT EXEMPTION —
IN HENDERSON AND TRANSYLVANIA COUNTIES, NORTH CAROLINA

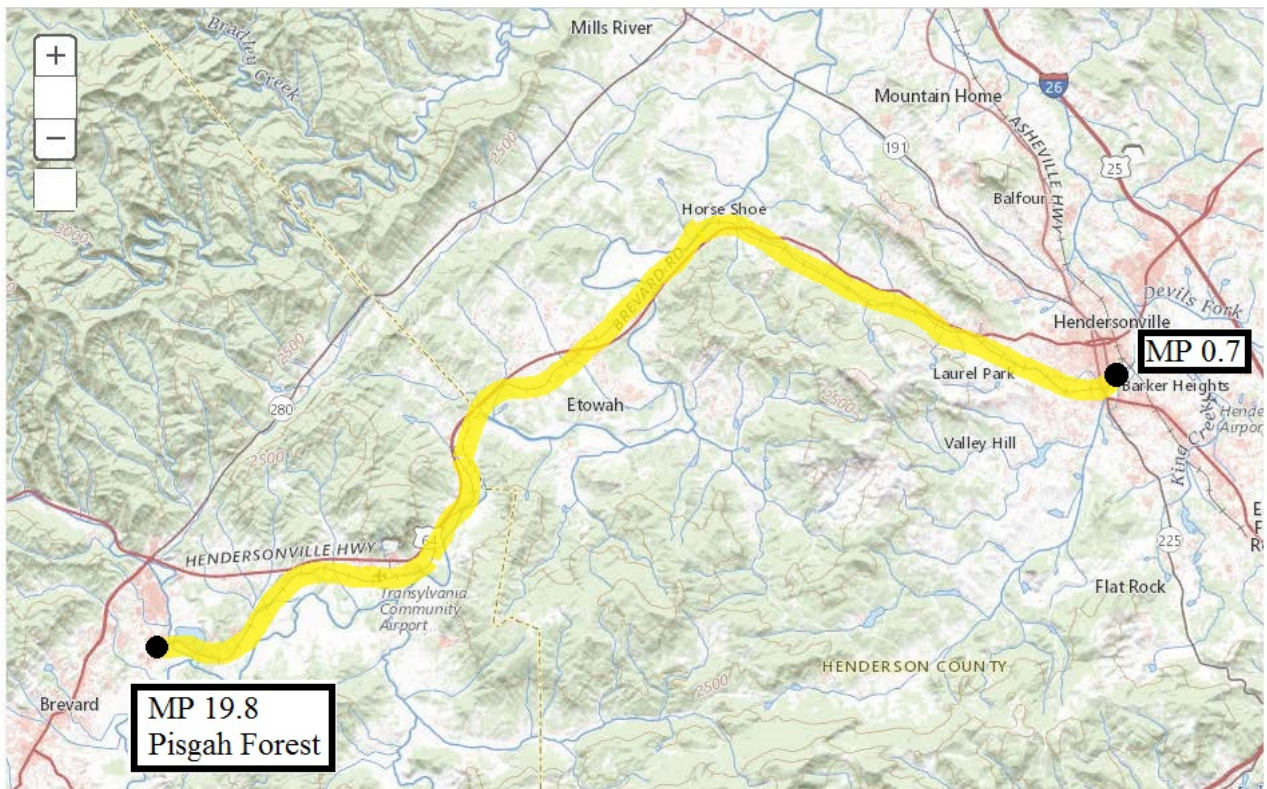
EXHIBIT A

MAP AND PROPERTY DESCRIPTION

PROPERTY DESCRIPTION

Approximately 19.1 miles of railroad situated between Milepost 0.7 (approximately 0.1 miles northeast of the Main Street Grade Crossing) at Hendersonville in Henderson County, and Milepost 19.8 (at the end of track approximately 0.2 miles west of Lamb Creek) at Pisgah Forest near Brevard in Transylvania County, all within North Carolina.

AB 1306X
Blue Ridge Southern Railroad, L.L.C.
-Abandonment Exemption-
In Henderson and Transylvania Counties, North Carolina



BEFORE THE
SURFACE TRANSPORTATION BOARD

AB 1306X
BLUE RIDGE SOUTHERN RAILROAD, L.L.C.
— ABANDONMENT EXEMPTION —
IN HENDERSON AND TRANSYLVANIA COUNTIES, NORTH CAROLINA

EXHIBIT B

EXECUTED STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

**ER2T Statement of Willingness to
Assume Financial Responsibility as Trail Sponsor**

In order to establish interim trail use and rail banking under 16 U.S.C. § 1647(d) and 49 C.F.R. § 1152.29 with respect to the right-of-way owned and operated by Blue Ridge Southern Railroad, L.L.C., ER2T ("ER2T") is willing to assume full responsibility for: (1) managing the right-of-way, (2) 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 (3) the payment of any and all taxes that may be levied or assessed against the right of way. The property, known as the former line of the Hendersonville & Brevard Railway, Telegraph, & Telephone Company, extends from railroad milepost 0.7 at Hendersonville to railroad milepost 19.8, near Brevard, a distance of approximately 19.1 miles in Henderson and Transylvania Counties, North Carolina. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB 1306X. A map of the property depicting the right-of-way is attached as Exhibit A to the Petition this statement supports.

ER2T acknowledges that use of the right-of-way is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.



Kieran C. Roe, Manager
ER2T