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SERVICE DATE — MARCH 24, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073 (Sub-No. 1X)

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—
IN GENEVA, COFFEE, AND COVINGTON COUNTIES, ALA.

Decided: March 23, 2022

Alabama & Florida Railway Co., Inc. (A&F), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 42.9 miles of rail line between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on December 20, 2021 (86 Fed. Reg. 72,025). The exemption became effective on January 19, 2022. The notice specified that the deadline for a request for a notice of interim trail use (NITU) was December 30, 2021.

On January 19, 2022, the Georgetown and High Line Railway Company, LLC (GHL), late-filed a request for a NITU to negotiate with A&F to establish interim trail use and railbanking on the Line under the Nation Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. GHL has submitted a statement of willingness to assume full responsibility for the management of the right-of-way, any legal liability arising out of its transfer or use, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 U.S.C. § 1152.29. GHL has also acknowledged that use of the right-of-way for trail purposes is subject to GHL's continuing to meet its responsibilities to manage the right-of-way and is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required by 49 U.S.C. § 1152.29(a).

In a response to GHL's request, CSX Transportation, Inc. (CSXT), the owner of the real estate underlying right-of-way, explains that it has entered into an agreement with A&F that allows CSXT to negotiate for interim trail use on behalf of both A&F and CSXT. Specifically, CSXT states that:

CSXT and A&F entered an Amendment to Conditional Lease dated as of February 16, 2012 that provided for CSXT to “conduct all interim trail use/railbanking negotiations, enter all agreements in its name and [A&F's] name, if necessary, and receive proceeds, if any, of all successful negotiations for any and all of the right-of-way leased pursuant to the Lease, as amended, including the [Line].”

(CSXT Reply 1, Feb. 16, 2022.). CSXT further states that it is willing to negotiate interim trails use with GHL. (Id.)¹

Because CSXT agrees to GHL's request for a NITU and GHL's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued.² The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use 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). If no agreement is reached within one year, A&F may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). 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.

On February 9, 2022, the City of Andalusia, Ala. (the City), filed a letter also asking the Board to accept a late-filed request for a NITU. On March 21, 2022, CSXT filed a letter stating that it agrees to negotiate interim trail use/rail banking on the Line with the City as well. However, the City's request lacks the statement of willingness and acknowledgments required under 49 C.F.R. § 1152.29. Because the City's request does not comply with the Board's regulatory requirements, it will be denied, but without prejudice to refiling should the City choose to do so.

It is ordered:

1. This proceeding is reopened.
2. GHL's late-filed request for a NITU is granted.
3. The City's late-filed request for a NITU is denied without prejudice, as discussed above.

¹ In a prior exemption proceeding to abandon the Line, A&F similarly noted that it had entered into an agreement with CSXT, granting CSXT the right to negotiate for interim trail use on behalf of both A&F and CSXT. A&F Reply 1, Mar. 20, 2012, Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee & Covington Cntys., Ala., AB 1073X. In that proceeding, after the NITU negotiating period had been extended several times, A&F, CSXT, and a previous trail sponsor failed to reach agreement, and A&F failed to consummate the abandonment before its authority to do so expired on December 13, 2018. See Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee & Covington Cntys., Ala., AB 1073X, slip op. at 1, 2 (STB served Apr. 18, 2019).

² The Board routinely grants late-filed requests for the issuance of a notice of interim trail use if the abandonment has not been consummated and the railroad indicates a willingness to negotiate. See, e.g., BNSF Ry. Co.—Aban. Exemption—in Cook Cnty., Ill., AB 6 (Sub-No. 493X), slip. op. 2 (Nov. 23, 2016).

4. Upon reconsideration, the notice served and published in the Federal Register on December 20, 2021, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit GHF to negotiate for trail use for the rail line, for a period of one year from the service date of this decision and notice, until March 24, 2023.

5. 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.

6. 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 5 above.

7. If an interim trail use agreement is reached (and thus, interim trail use 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).

8. If interim trail use 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 agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by March 24, 2023, for the right-of-way, interim trail use may be implemented. If no agreement is reached, A&F may fully abandon the Line, subject to any outstanding conditions.

10. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.