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June 20, 2024

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings
June 20, 2024
Part of
Public Record

RE: **STB Docket AB-1073 (Sub-No. 1X), *Alabama & Florida Railway Co., Inc.—
Abandonment Exemption—in Geneva, Coffee, and Covington Counties, AL***

Dear Ms. Brown:

The Georgetown and High Line Railway Company, LLC (“GHL”) and the City of Andalusia (“Andalusia”) jointly request a substitution of trail user per 49 CFR 1152.29(f). Both parties request that Andalusia be substituted for GHL as the trail user under the current Notice of Interim Trail Use approved by the Surface Transportation Board (“Board”) on March 24, 2022.¹ Both parties request the transfer of the right-of-way responsibility be made no later than December 15, 2024.

Enclosed is a Statement of Willingness to Assume Financial Responsibility by Andalusia. Also enclosed is a copy of the extant NITU served on March 24, 2022. GHL and Andalusia acknowledge that interim trail use is subject to possible reconstruction and reactivation of the right-of-way for rail service.

Andalusia and GHL request the Board to reopen the abandonment exemption proceeding, vacate the existing NITU, and issue an appropriate replacement NITU to Andalusia. CSXT consents to the transfer of the NITU from GHL to Andalusia.

I certify that a copy of this letter has been served on all parties of record.

¹ GHL and CSX Transportation, Inc. (“CSXT”), notified the Board on December 15, 2022, that they had entered a Purchase and Sale Agreement for the rail banking/interim trail use of the approximately 42.9-mile portion of the right-of-way between milepost 581.3 at Andalusia, AL and milepost 624.2 at the Geneva, AL in Geneva, Coffee, and Covington Counties, AL.

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June 20, 2024
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The filing of this letter has been authorized by GHL and Andalusia. This letter is being efiled. Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer

Attorney for CSX Transportation, Inc. and Georgetown and
High Line Railway Company, LLC

Attachments

**CAPITAL IMPROVEMENT COOPERATIVE DISTRICT
OF
THE CITY OF ANDALUSIA**

*Earl V. Johnson, Director
Terry Powell, Director
John M. Thompson, Director*

June 12, 2024

RE: Statement of Willingness to Assume Financial Responsibility

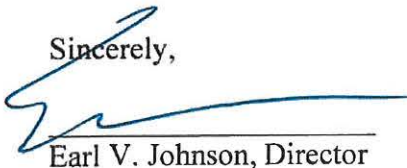
To Whom it May Concern

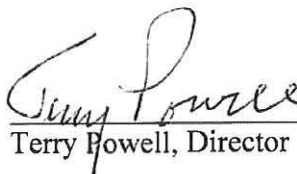
In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by CSX Transportation, Inc. ("CSXT") and operated by the Alabama & Florida Railway Co., Inc., the City of Andalusia, AL is willing to assume full responsibility for:

- (1) Managing the right-of-way;
 - (2) any legal liability arising out of the transfer or use of the right-of-way (unless the City of Andalusia 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 extends from railroad milepost 581.3 near Andalusia, AL, to railroad milepost 624.2, near Geneva, AL, a distance of 42.9 miles in Geneva, Coffee, and Covington Counties, AL. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB 1073 (Sub-No. 1X). A map of the property depicting the right-of-way is attached.

The City of Andalusia 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 railroads on the same date it is being served on the Board.

Sincerely,

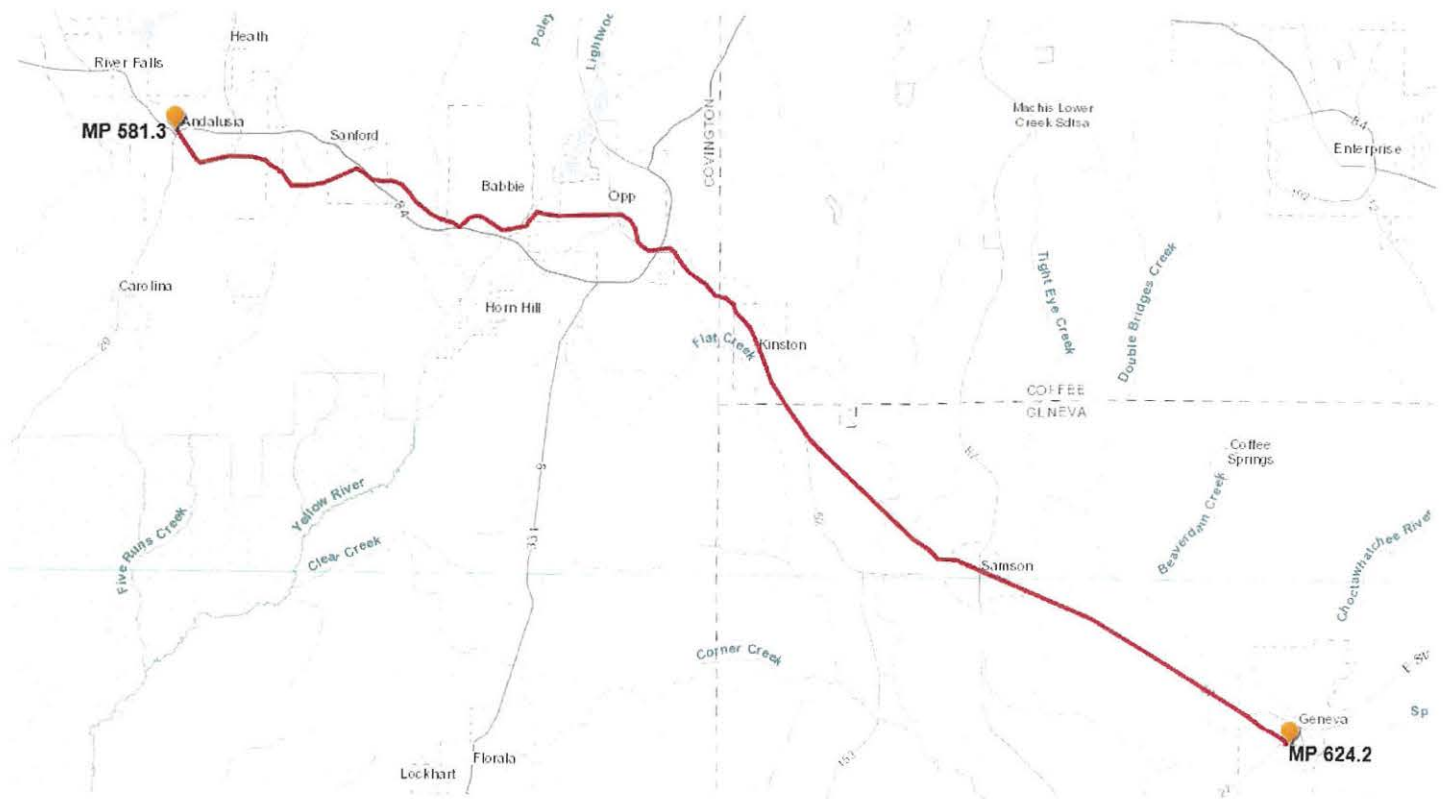

Earl V. Johnson, Director


Terry Powell, Director


John M. Thompson, Director

P.O. Box 429 * 505 East Three Notch Street Andalusia, Alabama 36420

Telephone (334) 222.3312 – 222.3313 – Fax (334) 222.5114



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DO

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 refile 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 GHL 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.