

May 29, 2019

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May 29, 2019  
Part of  
Public Record

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

Re: *Atlanta BeltLine, Inc. – Acquisition Exemption—Norfolk Southern Ry. Co.—in Fulton  
County, Georgia*, STB Docket No. FD 36286

Dear Ms. Brown:

I am attaching an original of the Atlanta BeltLine, Inc.'s verified notice of exemption in the above-captioned proceeding.

With respect to the filing fee, we have enclosed a check in the amount of \$2000. However, the Atlanta BeltLine, Inc. (ABI), a nonprofit corporation and instrumentality of the City of Atlanta, is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the Petition for Exemption on behalf of the general public. *See* 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by...a state or local government agency." ABI is a state government agency filing the request on behalf of the general public. Accordingly, ABI requests that the filing fee submitted with the Notice of Exemption be waived.

We are also submitting an electronic copy of this filing via e-mail.

Sincerely,



Allison I. Fultz  
Counsel for Atlanta BeltLine, Inc.

RECEIVED

May 29, 2019

SURFACE

TRANSPORTATION BOARD

Kaplan Kirsch & Rockwell LLP  
Attorneys at Law

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FILED  
May 29, 2019  
SURFACE

TRANSPORTATION BOARD

**CONTAINS COLOR MAPS**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. FD 36286**

**ATLANTA BELTLINE, INC.  
– ACQUISITION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY CO. – FULTON COUNTY, GA**

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**VERIFIED NOTICE OF EXEMPTION**

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Dated: May 29, 2019

Communications with respect to this  
document should be addressed to:

Charles A. Spitulnik  
Allison I. Fultz

Kaplan Kirsch & Rockwell LLP  
1634 I (Eye) Street, NW  
Suite 300  
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Counsel for Atlanta BeltLine, Inc.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. FD 36286**

**ATLANTA BELTLINE, INC.  
– ACQUISITION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY CO. – FULTON COUNTY, GA**

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**VERIFIED NOTICE OF EXEMPTION**

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Pursuant to 49 C.F.R. § 1150.31 *et seq.*, Atlanta BeltLine, Inc., a Georgia non-carrier, non-profit corporation implementation agent of the City of Atlanta (“ABI”), hereby files this Verified Notice of Exemption to acquire from the Norfolk Southern Railway Company, a Virginia corporation (“NSR”), NSR’s right to reactivate rail service on an approximately 1.0 mile of railbanked railroad line extending from milepost DF 632.10 to milepost DF 633.10, including the western leg of the wye, in Atlanta, Fulton County, Georgia (the “Line”). ABI also is acquiring NSR’s real property interest in the segment of the Line between milepost DF 632.10 and 632.42.<sup>1</sup> The Line includes both the eastern and western segments of the wye, known as the Armour Wye, depicted in the map attached hereto as **Exhibit A**. The Line is currently subject to interim trail use under a trail use agreement between ABI and NSR, properly executed and accepted pursuant to the Board’s abandonment and trail use procedures under the National Trails

<sup>1</sup> ABI acquired the real estate interests in the portion of the Line from milepost D.F. 632.42 to D.F. 633.10 in 2008 from a private entity which had purchased right-of-way from NSR in 2004. At the time of its 2004 transfer, NSR retained an exclusive freight easement over that portion of the Line as well over an additional 4.3 miles of the right of way that it had transferred. NSR consummated the abandonment of most of that line in 2010 (Notice of Consummation of Abandonment – *Norfolk Southern Ry. Co. – Abandonment – In Atlanta, Fulton County, GA*, STB Docket No. AB-290 (Sub-No. 210X) (Filed Oct. 22, 2010). This Board determined in *The Atlanta Development Authority d/b/a Invest Atlanta and Atlanta BeltLine, Inc. – Verified Petition for a Declaratory Order*, STB Docket No. FD 35991 (Service Date May 26, 2017), slip op. at 5-6, that, in accordance with the principles set out in *Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad*, 8 I.C.C.2d 835 (1991), the acquisition of the right-of-way between mileposts D.F. 632.84 and 633.10 by ABI’s predecessor, and subsequently by ABI, did not require Board authority.

System Act, 16 U.S.C. § 1247(d). *See Norfolk S. Ry. Co. – Abandonment Exemption – In Atlanta, GA*, STB Docket No. AB-290 (Sub-No. 388X) (Service Date Sept. 28, 2017).

In accordance with the requirements of 49 C.F.R. § 1150.33 governing the form of notice of exempt transactions, ABI submits the following information:

- (a) *The full name and address of the applicant*, 49 C.F.R. § 1150.33(a)

Atlanta BeltLine, Inc.  
100 Peachtree Street NW  
Suite 2300  
Atlanta, GA 30303

- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence*, 49 C.F.R. § 1150.33(b)

Charles A. Spitulnik  
Allison I. Fultz  
Kaplan Kirsch & Rockwell LLP  
1634 I (Eye) Street, NW  
Suite 300  
Washington, DC 20006  
(202) 955-5600

- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached*, 49 C.F.R. § 1150.33(c)

On March 2, 2017, ABI and NSR entered into a Purchase and Sale Agreement for the portion of the Line from milepost D.F. 632.10 to milepost D.F. 632.42 by quitclaim deed, subject to certain conditions, in anticipation of NSR's abandonment of the Line. On October 13, 2017, NSR executed the quitclaim deed to the Line.

Also on October 13, 2017, ABI and NSR entered into a trail use agreement, which sets out the terms and conditions for ABI's acquisition of NSR's freight reactivation rights. The transaction between ABI and NSR that is the subject of this proceeding, through which ABI is acquiring NSR's real property interests in the segment from milepost DF 632.10 to milepost DF 632.42, along with NSR's right to reactivate freight rail service over the entire Line, will complete the transfer of all of NSR's ownership rights and responsibilities in the Line to ABI.<sup>2</sup>

<sup>2</sup> ABI's acquisition of NSR's right to re-establish freight service is analogous to the acquisition of residual freight reactivation rights by King County, WA, in *King County, WA – Acquisition Exemption – BNSF Ry. Co.*, STB Finance Docket No. 35148 (Service Date Sept. 18, 2009), and by Greenville County, South Carolina in *County of Greenville, South Carolina – Acquisition Exemption – Greenville Economic Development Corporation*, STB Finance Docket No. 35396 (Service Date August 11, 2010), and *County of Greenville, South Carolina – Acquisition*

As described at section e(2) below, NSR and ABI have completed the transfer of real property interests in this segment, and ABI will acquire NSR's reactivation right upon the effective date of this Notice.

(d) *The operator of the property, 49 C.F.R. § 1150.33(d)*

The Line is currently railbanked under a trail use agreement between ABI, the interim trail sponsor, and NSR, the residual common carrier rights holder, and no freight operations are currently proposed. On August 3, 2017, the Board published a Verified Notice of Exemption filed by NSR to abandon the Line. *Norfolk S. Rwy. Co. – Abandonment Exemption – In Atlanta, GA*, STB Docket No. AB-290 (Sub-No. 388X) (Service Date Aug. 3, 2017). On September 1, 2017, ABI filed a request for issuance of a notice of interim trail use or abandonment ("NITU") to negotiate with NSR for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. 1152.29. ABI also filed a statement of willingness to assume financial responsibility for the Line. The Board granted ABI's request for the NITU in a decision served September 28, 2017. *See Norfolk S. Rwy. Co. – Abandonment Exemption – In Atlanta, GA*, STB Docket No. AB 290 (Sub-No. 388X)(Service Date Sept. 28, 2017). On October 17, 2017, ABI and NSR filed a Joint Notice of Consummation of Trail Use Agreement. *See* Docket No. AB-290 (Sub-No. 388X) (Filed Oct. 17, 2017).

(e) *A brief summary of the proposed transaction, 49 C.F.R. § 1150.33(e)*

(1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.33(e)(1)*

Norfolk Southern Railway Company  
1200 Peachtree Street NE (15th)  
Atlanta, GA 30309

(2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.33(e)(2)*

Following the STB's grant of abandonment authority and the NITU for the Line, ABI and NSR consummated the transfer to ABI of the real property interests associated with the portion of the Line from milepost DF 632.10 to milepost DF 632.42. As described above, ABI had previously acquired the segment of the Line from mileposts DF 632.42 to DF 633.10. ABI will acquire NSR's residual right to reactivate freight service upon the effective date of this Notice.

- (3) *The mile-posts of the subject property, including any branch lines, 49 C.F.R. § 1150.33(e)(3)*

The Line consists of approximately 1.0 mile of railroad line extending from milepost DF 632.10 to milepost DF 633.10 in Atlanta, Fulton County, Georgia, and is also sometimes referred to as the “Armour Wye”.

- (4) *The total route miles being acquired, 49 C.F.R. § 1150.33(e)(4)*

The total mileage of the Line is approximately 1.0 miles.

- (f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states*

See **Exhibit A**.

- (g) *A certificate that applicant’s projected revenues do not exceed those that would qualify it as a Class III carrier*

ABI will not conduct any freight operations and therefore the projected freight rail carrier revenues of ABI would not exceed those that would qualify ABI as a Class III rail carrier. See ABI’s Verification and Certification, attached hereto as **Exhibit B**.

- (h) *Transactions Imposing Interchange Commitments*

The proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

Pursuant to 49 C.F.R. § 1105.6(c)(2)(i), ABI’s proposed acquisition of the residual freight reactivation rights associated with the Line is exempt from environmental reporting requirements because it will not result in significant changes in freight carrier operations. Specifically, the proposed transaction will not result in changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Accordingly, this action will not significantly affect either the quality of the human environment or energy conservation.

Similarly, under 49 C.F.R. § 1105.8(b)(1), ABI’s proposed acquisition of the Line is exempt from historic preservation reporting requirements. The Line has previously been authorized for abandonment, during which it was subject to environmental and historic review

and subjected to certain conditions. The Board ordered NSR to: (a) consult with and notify the National Geodetic Survey at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and (b) prior to commencement of any salvage activities, consult with the U.S. Army Corps of Engineers regarding the potential impacts to waters of the United States, and comply with the reasonable requirements of any permits issued by the Corps. *See Norfolk S. Rwy. Co. – Abandonment Exemption – In Atlanta, GA*, STB Docket No. AB-290 (Sub-No. 388X), slip op. at 2-3 (Service Date September 1, 2017). NSR complied with both conditions, prior to salvaging the Line, which has already been completed. As such, the acquisition of NSR's reactivation rights will not have any effect on properties subject to Board jurisdiction that are fifty years old or older.

A proposed caption summary for publication in the Federal Register is attached hereto as **Exhibit C.**

Respectfully submitted,



Charles A. Spitulnik  
Allison I. Fultz  
Kaplan Kirsch & Rockwell LLP  
1634 I (Eye) Street NW  
Suite 300  
Washington, DC 20006  
Tel: (202) 955-5600  
Emails: [cspitulnik@kaplankirsch.com](mailto:cspitulnik@kaplankirsch.com)  
[afultz@kaplankirsch.com](mailto:afultz@kaplankirsch.com)

Counsel for Atlanta BeltLine, Inc.

Dated: May 29, 2019

**Exhibit A**

**Map of the Line**

**[attached hereto]**

**Milepost DF 632.1 - DF 633.1**  
**Atlanta, GA**  
**Docket No. FD 36286**



**Exhibit B**

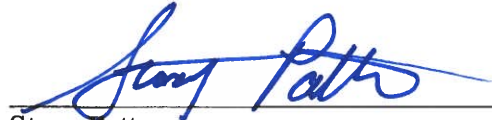
**Verification and Certification Statement**

**[attached hereto]**

## VERIFICATION AND CERTIFICATION

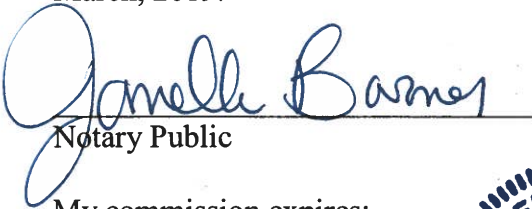
I, Stacy Patton, Director of Real Estate and Asset Management of Atlanta BeltLine, Inc., verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.33(g) that, because Atlanta BeltLine, Inc. will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not exceed those of a Class III carrier.

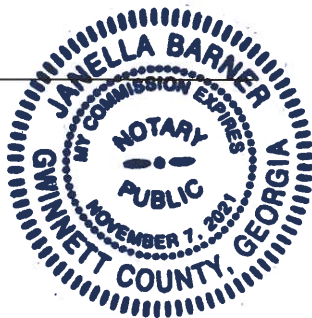


Stacy Patton  
Director of Real Estate and Asset  
Management  
Atlanta BeltLine, Inc.

Subscribed and sworn to  
before me this 22nd day of  
March, 2019.

  
Notary Public

My commission expires: \_\_\_\_\_



**Exhibit C**

**Proposed Caption Summary**

**[attached hereto]**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. FD 36286**

**ATLANTA BELTLINE, INC.  
– ACQUISITION EXEMPTION –  
FULTON COUNTY, GA**

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**CAPTION SUMMARY**

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Atlanta BeltLine, Inc. (“ABI”) has filed a Verified Notice of Exemption to acquire from the Norfolk Southern Railway Company (“NSR”) the right to reactivate common carrier freight service on a line of railroad known as the Armour Wye, from milepost DF 632.10 to milepost DF 633.10 in Atlanta, including the western leg of the wye, Fulton County, Georgia (the “Line”), and to acquire the real property interests underlying the Line from milepost DF 632.10 to milepost DF 632.42. The Line is currently subject to interim trail use in accordance with the National Trails System Act, 16 U.S.C. § 1247(d).

ABI does not intend to operate the Line, and therefore its annual rail operating revenues relating to this transaction will not exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable. Comments must be filed with the Board and served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, DC 20036, (202) 955-5600.

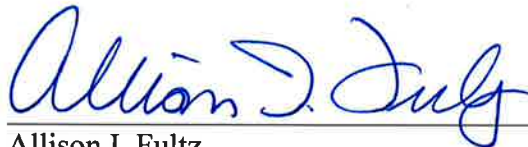
The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

## Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exempt Acquisition by Atlanta BeltLine, Inc. to be served by first class mail, properly addressed and with postage prepaid, upon the following persons:

William A. Mullins  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave, NW  
Suite 300  
Washington, DC 20037  
(202) 663-7820  
[wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

Counsel for Norfolk Southern Railway Company

  
Allison I. Fultz

Dated: May 29, 2019