

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 400 (Sub-No. 6X)

SEMINOLE GULF RAILWAY, L.P.—ABANDONMENT EXEMPTION—
IN SARASOTA COUNTY, FLA.

Decided: December 5, 2017

Seminole Gulf Railway, L.P. (SGLR) filed a verified notice of exemption under 49 C.F.R. § pt. 1152 subpart F—Exempt Abandonments to abandon a 1.71-mile segment of its line of railroad known as the Venice Branch, between milepost SW 890.29 and milepost SW 892.00 outside of the City of Sarasota, in Sarasota County, Fla. (the Line).¹ SGLR will also be abandoning a connecting industrial spur. Notice of the exemption was served and published in the Federal Register on November 6, 2017 (82 Fed. Reg. 51,467). The exemption is scheduled to become effective on December 6, 2017.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) recommending that a historic preservation condition and an environmental condition be imposed on any decision granting abandonment authority. In the EA, OEA stated that SGLR served a historic report on the Florida State Historic Preservation Office (SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA also stated that the SHPO has submitted comments stating that additional information is needed to complete its review of the proposed abandonment. Therefore, OEA recommended that SGLR be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, has been completed. OEA also recommended that SGLR be required to report back to OEA regarding any consultations with the SHPO, appropriate federally recognized tribes, and the public and that SGLR be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

¹ This Line connects to a former line of railroad for which SGLR received abandonment authority in 2004, subject to environmental, public use, trail use, and standard employee protective conditions. See Seminole Gulf Ry.—Aban. Exemption—in Sarasota Cty., Fla., AB 400 (Sub-No. 3X) (STB served Apr. 2, 2004.) That line was subsequently transferred to Sarasota County for interim trail use and rail banking and developed into a trail.

In the EA, OEA also stated that Florida scrub jays (*aphelocoma coerulescens*) and eastern indigo snakes (*drymarchon corais couperi*) may be present within the project area, and that, therefore, OEA has determined that there may be potential impacts to individuals of either species. OEA recommends that, prior to commencement of any salvage activities, SGLR be required to consult with the U.S. Fish and Wildlife Service (USFWS) to address potential impacts to Florida scrub jays or eastern indigo snakes that may be present in the rail right-of-way. OEA also recommends that, during salvage activities, SGLR be required to follow the reasonable recommendations of the USFWS to prevent impacts to members of those species.

OEA issued its final EA on December 1, 2017. The final EA notes that comments to the EA were received from the SHPO and USFWS by the November 24, 2017 due date. OEA concludes that no changes to the initially recommended conditions are required to address the comments received and therefore recommends that the historic preservation condition and the environmental condition previously recommended in the EA be imposed. Accordingly, based on OEA's recommendation, the historic preservation condition and the environmental condition recommended in the EA and final EA will be imposed.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On November 7, 2017, Sarasota County (the County) filed a request for issuance of a notice of interim trail use or abandonment (NITU) to negotiate with SGLR for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the County has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged 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. In a response filed on November 15, 2017, SGLR notified the Board that it is willing to negotiate an agreement for interim trail use with the County.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29 and SGLR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day 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. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, SGLR may fully abandon the Line. 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.

The County also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The County asks that SGLR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The County also asks that SGLR be prohibited from removing or destroying potential trail-related structures such as bridges, trestle, and tunnels. The justification for its request is that these

structures have considerable value for public purposes and that the 180-day period is needed to consummate a trail use agreement with SGLR.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the County has satisfied these requirements, a 180-day public use condition will be imposed, requiring SGLR to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor, other than tracks, ties, and signal equipment, commencing from December 6, 2017, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on June 4, 2018, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until June 3, 2018. If a trail use agreement is reached for a portion of the right-of-way prior to June 3, 2018, SGLR must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, SGLR is not required to deal exclusively with the County but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on November 6, 2017, 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 the

County to negotiate with SGLR for trail use for Line for a period of 180 days from the service date of this decision and notice, until June 3, 2018, and to permit public use negotiations as set forth below for Line for a period of 180 days commencing from the effective date of the exemption, until June 4, 2018. The abandonment is also subject to the conditions that SGLR shall: (1)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA has been completed, (b) report back to OEA regarding any consultations with the SHPO, appropriate federally recognized tribes, and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition; and (2)(a) prior to commencement of any salvage activities, consult with the USFWS to address potential impacts to Florida scrub jays (*aphelocoma coerulescens*) or eastern indigo snakes (*drymarchon corais couperi*) that may be present in the rail right-of-way, and (b) during salvage activities, follow the reasonable recommendations of the USFWS to prevent impacts to members of those species.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, SGLR may discontinue service. SGLR shall keep intact the right-of-way for the Line including potential trail-related structures on the Line such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until June 4, 2018, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

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 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) and (h).

7. 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.

8. If an agreement for interim trail use/rail banking is reached by June 3, 2018, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, SGLR may fully abandon the Line, subject to any outstanding conditions.

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

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