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SERVICE DATE – MAY 14, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 400 (Sub-No. 7X)

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

Decided: May 13, 2019

By filings dated March 8, 2019, and March 26, 2019, 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 an approximately 7.68-mile segment of its rail line known as the Venice Branch. The segment to be abandoned extends between milepost SW 890.29 on the north side of Ashton Road and milepost SW 884.70, and between milepost AZA 930.30 and milepost AZA 928.21 on the north side of State Highway 780 (Fruitville Road), partly lying within the City of Sarasota, Sarasota County, Fla., with the remainder lying within unincorporated Sarasota County (the Line). Notice of the exemption was served and published in the Federal Register on April 15, 2019 (84 Fed. Reg. 15,278). The exemption is scheduled to become effective on May 15, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on April 19, 2019, recommending that two conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the Florida State Historic Preservation Office (SHPO), by letter dated April 16, 2019, informed OEA that the proposed abandonment is unlikely to affect historic properties but recommended adding to any decision granting abandonment authority a condition requiring SGLR to immediately stop salvaging the rail line if unanticipated discoveries of prehistoric and historic artifacts or human remains that could be associated with Native American, early European, or American settlement are encountered during salvage activities.

Considering information provided by SGLR and the SHPO, OEA determined that no historic properties would be affected by the proposed abandonment, but found the SHPO's recommended condition appropriate and reasonable. Accordingly, OEA recommended a condition providing that, if prehistoric or historic artifacts (such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement) or unmarked human remains are encountered at any time within the project site area, SGLR shall cease all activities involving subsurface disturbance in the vicinity of the discovery, contact both OEA and the Florida Department of State, Division of Historical Resources, Compliance Review Section, and resume salvage activities within the vicinity of the discovery when it receives appropriate authorization.

OEA also stated that the National Geodetic Survey (NGS) identified 11 geodetic station markers that may be located within the area of the proposed abandonment. Accordingly, OEA recommended that SGLR be required to consult with the NGS and notify NGS at least 90 days prior to beginning any salvage activities that will disturb or destroy any geodetic station marker.

OEA issued its Final EA on May 10, 2019, noting that no comments to the EA were received and recommending again that the two conditions recommended in the EA be imposed. Accordingly, based on OEA's recommendation, the conditions proposed in the 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 April 22, 2019, the Sarasota County Board of County Commissioners (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 for a public use condition under 49 U.S.C. § 10905. In a response filed on April 26, 2019, SGLR notified the Board that it is willing to negotiate an agreement for interim trail use with the County and takes no position on the request for a public use condition.

With respect to its request for issuance of a NITU, pursuant to 49 C.F.R. § 1152.29, the County submitted a statement of willingness to assume financial responsibility for the right-of-way and 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. 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 interim trail use/rail banking 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, subject to any outstanding conditions. 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.

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. Here, 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 states that the right-of-way would make an excellent recreational trail and that

conversion to a trail would be consistent with local plans and would extend an existing regional trail network. The County also asks that SGLR be prohibited from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels, because these structures have considerable value for public purposes. The County states that a 180-day period is needed to allow time to consummate a trail use agreement with SGLR.

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 May 15, 2019, 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 November 11, 2019, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until November 10, 2019. If a trail use agreement is reached for a portion of the right-of-way prior to November 10, 2019, 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 April 15, 2019, 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 the Line for a period of 180 days from the service date of this decision and notice, until November 10, 2019, and to permit public use negotiations as set forth below for the Line for a period of 180 days commencing from the effective date of the exemption, until November 11, 2019. The abandonment is also subject to

the conditions that: (a) if prehistoric or historic artifacts (such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement) or unmarked human remains are encountered at any time within the project site area, SGLR shall (i) cease all activities involving subsurface disturbance in the vicinity of the discovery, (ii) contact both OEA and the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850) 245-6333, and (iii) resume salvage activities within the vicinity of the discovery when it receives appropriate authorization; and (b) SGLR shall consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

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 from the effective date of the exemption, until November 11, 2019, 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 November 10, 2019, 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, Allison C. Davis, Acting Director, Office of Proceedings.