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September 16, 2011

Mr. Greg Rhinehart
State of Alabama
Alabama Historical Commission
468 South Perry Street
Montgomery, Alabama 36130-0900

Re: *Alabama & Florida Railway Co., Inc. – Abandonment Exemption – In Geneva,
Coffee and Covington, Counties, AL*
STB Docket No. AB-1073X

Reference # AHC 11-0823

Dear Mr. Rhinehart:

On September 14, 2011, this law firm received a copy of Alabama Historical Commission's ("AHC") July 18, 2011 letter addressed to Robert Wimbish. The AHC letter responds to the Environmental and Historic Report ("E&HR") sent out by the Alabama & Florida Railway Co., Inc. ("A&F") on June 23, 2011, concerning the proposed abandonment of approximately 42.9 miles of A&F rail line in Geneva, Coffee and Covington, Counties, AL. Your agency's letter states that this rail line may be "potentially eligible for the National Register of Historic Places (NRHP)," and requests A&F to undertake a cultural assessment to evaluate the line for NRHP eligibility. The AHC letter also states that the proposed salvage activities would not affect any archaeological resources, as long as the salvage activities remained within the right-of-way and on previously disturbed land.

As noted in the E&HR, A&F does not intend to dismantle or remove any bridges along the subject rail line.¹ In fact, when A&F acquired the subject rail line, CSX Transportation, Inc. ("CSX") retained ownership of all of the line's bridges and structures and A&F only acquired title to the track, ties, switches, signals, and other track materials. As is also set forth in the E&HR, A&F does not own any depots or other such structures on or along the right-of-way. As a result, A&F does not own, and does not have the legal authority to remove, any permanent

¹ See attached pages from the E&HR (Section 3, Page 8 and Section 5, Page 9).

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structures on or along the right-of-way, including bridges, old depots, buildings, or stations. Rather, A&F only has the right to salvage the tracks, ties, and other track material. Accordingly, A&F's proposed rail line abandonment would not have any historic impact, and no historically significant resources would be affected by A&F's track salvage.

Because the Surface Transportation Board ("STB" or "Board") had not heard from AHC by the time it issued its September 7 decision in this proceeding (also attached), the STB imposed a condition preventing A&F from effecting abandonment, including removal of tracks and ties, until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, was completed. A&F believes that AHC needs no further information to complete the Section 106 process, as A&F does not own, and has no legal right to remove, any properties that may be eligible for inclusion in the NRHP. Nonetheless, A&F stands willing and able to cooperate in any manner necessary for AHC to complete its review.

As A&F was unaware of the AHC's concerns until yesterday, A&F had previously selected a salvage company to remove the line's tracks and ties as soon as the September 7 decision was issued. Now, however, A&F's contractor cannot move forward with the salvage due to the Board's September 7 decision regarding the Section 106 process; such decision being based on the absence of AHC input. Because salvage will occur within the existing right-of-way and on previously disturbed land, and because A&F has no legal right to remove any bridges or structures, A&F respectfully requests that AHC promptly notify the STB in writing that it considers the Section 106 process complete and that the Section 106 condition can be removed. At a minimum, A&F would request that AHC inform the Board that it does not object to the salvage of the tracks and ties pending completion of the Section 106 process for any structures of interest to AHC.

If you have any questions concerning this matter, please contact me. A&F hopes to proceed expeditiously with track salvage while cooperating in full with AHC to facilitate completion of the Section 106 process.

Sincerely,



William A. Mullins

cc: J. Michael Carr
Victoria Rutson, STB-SEA

HISTORIC REPORT

49 CFR 1105.8(d):

- (1) **A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;**

U.S.G.S. topographic maps depicting the location of the proposed abandonment and the approximate location of structures that are 50 years old or older and that are located along the Line are attached as Exhibit 3. These maps are being supplied to the Alabama Historical Commission ("ALHC"), along with a digital version of railroad valuation maps in A&F's possession as part of a complete copy of this report. A&F understands that there are seven railroad structures on the Line that are believed to be 50 years old or older, each of them a bridge.

- (2) **A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;**

According to A&F data and valuation maps, the 42.9 miles of right-of-way is primarily 100 feet in width, but extends to approximately 200 feet near where the Line crosses the Pea River, and where the Line passes through the town of Samson, AL. The aforementioned right-of-way is located in Geneva, Coffee and Covington Counties, AL. The Line runs adjacent to lands of varying uses, ranging from forested open land and rural farmland to commercial and residential areas. The topography is generally flat, with some rolling hills.

- (3) **Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;**

A&F does not anticipate removing or dismantling any of the structures along the Line (described below) that are 50 years old or older.

A&F has determined that there are seven structures along the Line – all of them trestles or bridges – that may be 50 years old or older, and the location of each such structure is shown on the U.S.G.S. maps attached as Exhibit 3. A&F has photographed and documented each of these seven structures, and has supplied photographs of each such structure to ALHC for evaluation. A&F has also supplied railroad valuation maps to ALHC, which may provide further documentation potentially relevant to historical analysis of the structures in question. (The aforementioned photographs and valuation maps are attached to the copy of this report sent to ALHC as Exhibit 4.) Aside from the materials included in Exhibit 4, A&F does not have any additional information in its possession (such as engineering diagrams or other records) that it believes would be of usefulness in aiding in any historical structures analysis.

- (4) **The date(s) of construction of the structure(s), and the date(s) and extent of any**

major alterations, to the extent such information is known;

According to the limited information in A&F's possession, the seven bridges along the Line are believed to have been built or substantially rebuilt at least 50 years ago. Many of these structures probably have been improved over time, although A&F has not undertaken any major improvements to these bridges during the time that A&F has owned the Line.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

A&F has no historical records of its own relating to the Line. Based on research, however, A&F understands that the Line may have been constructed in 1901, as part of a through route that extended from Georgiana, AL, to Graceville, FL. A&F believes that the Line was operated by the Louisville & Nashville Railroad, which in 1983 became part of the Seaboard System. In 1986, Alabama & Florida Railroad Co. ("AFR"), a short line carrier not affiliated with A&F and/or Pioneer, acquired the Line from Seaboard System as part of a larger transaction. See Alabama & Florida Railroad Co. – Acquisition and Operation – Exemption, 51 FR 22869 (Jun. 23, 1986). A&F, in turn, acquired the Line from a corporate successor of AFR as part of a larger transaction in 1992. See Alabama & Florida Railway Co. – Purchase and Operation Exemption – Alabama and Florida, Inc., 57 FR 56591 (Nov. 30, 1992); and Pioneer Railcorp – Continuance in Control Exemption – Alabama & Florida Railway, 57 FR 56591 (Nov. 30, 1992).

A&F intends, upon the effectiveness of the exemption, to terminate its rail common carrier obligation over, and to abandon, the Line, which would result in the abandonment of the entire A&F system. A&F would salvage the rail and track material that possesses positive net salvage value. A&F does not intend to dismantle or remove any bridges along the Line.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

As indicated above, the Line appears to have been built in the early 1900s, but A&F is one of many subsequent owners of these rail assets. A&F was not supplied with, and does not have, engineering drawings of the structures discussed above. In fact, the only relevant documents in A&F's possession have been included in Exhibit 4.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

As indicated above, A&F's records indicate that there are seven structures (bridges) on or adjacent to the Line that are believed to be 50 years old or older. In A&F's opinion, these structures would not meet the criteria for listing on the National Register of Historic Places. As the photographs supplied to ALHC would suggest, none of the subject structures appears to have unique or otherwise significant design characteristics. Moreover, none of these structures is

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SERVICE DATE – LATE RELEASE SEPTEMBER 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

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

Decided: September 7, 2011

This decision reopens the proceeding to impose an environmental condition, deny a request for issuance of a notice of interim trail use/rail banking (NITU), and grant a request for imposition of a public use condition.

Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad (which constitutes A&F's entire rail system) between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala., a distance of 42.9 miles, in Geneva, Coffee and Covington Counties, Ala. (the line). Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941-42). The exemption is scheduled to become effective on September 8, 2011.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on August 12, 2011. In the EA, OEA indicated that A&F served a copy of the historic report on the Alabama Historical Commission (State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA stated that it had not heard from the SHPO and therefore had not been able to consider the SHPO's opinion before determining if the line may be eligible for listing in the National Register of Historic Places (National Register). According to OEA, A&F has determined that there are 7 structures along the line, all of which are trestles or bridges, that may be 50 years old or older. Accordingly, OEA recommended that a condition be imposed requiring that A&F (1) 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 are listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), has been completed, (2) report back to OEA regarding any consultations with the SHPO and any other Section 106 consulting parties, and (3) refrain 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.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database (Database) at <http://home.nps.gov/nacd/> to identify Federally recognized

tribes that may have ancestral connections to the project area. According to OEA, the Database indicated that the Eastern Band of Cherokee Indians of North Carolina and the Muscogee (Creek) Nation, Oklahoma, may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment. Accordingly, OEA sent a copy of the EA to these tribes for their review and comment.

Comments to the EA were due by August 26, 2011. OEA received 1 comment from the U.S. Fish and Wildlife Service (USFWS), indicating that the rail line proposed for abandonment crosses the Pea River near Samson, Ala., which is designated as Critical Habitat for the threatened Gulf sturgeon. USFWS recommends that, if A&F plans to remove the bridge and in-stream work would occur, A&F contact USFWS to determine whether formal consultation under Section 7 of the Endangered Species Act of 1973 would be needed because removal of the bridge could impact the Gulf Sturgeon or its habitat. However, if the bridge is left in place, USFWS states that consultation would not be necessary. A&F responded stating that it does not intend to dismantle or remove any bridge along the rail line, including the Pea River bridge. Therefore, OEA states that no mitigation measure regarding the bridge is recommended. Accordingly, none will be imposed.

In addition, OEA states that, upon further independent review, it recommends that the Section 106 condition recommended in the EA be modified to include consultation with “the public” in addition to consultation with the SHPO and other Section 106 consulting parties. Accordingly, the condition recommended by OEA in the EA will be imposed, as modified to include “the public.”

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On August 17, 2011, the Alabama Trails Commission (ATC), a government agency interested in the development of recreational trails, filed a request for the issuance of a NITU to permit negotiation for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. By letter filed on August 25, 2011, and corrected on August 26, 2011, A&F stated that it was not interested at this time in negotiating with ATC for interim trail use. On August 26, 2011, CSXT filed a letter stating that it agrees to negotiate with ATC for interim trail use/rail banking.

ATC’s request will not be granted. A&F, the carrier seeking abandonment authority, is the appropriate party to conduct negotiations for interim trail use/rail banking. See Union Pac. R.R.—Aban. Exemption—in Comanche Cnty, Okla., AB 33 (Sub-No. 267X), slip op. at 1 (STB served May 20, 2009) (finding that Union Pacific Railroad Company was the appropriate party to negotiate for interim trail use/rail banking regarding a line UP leased from the State of Oklahoma). A&F, however, has indicated that it is not willing to negotiate with ATC for interim trail use. Under the Trails Act, only voluntary interim trail use is permitted between the railroad and the trail user. The Board’s authority to impose trail use conditions is limited because the

Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and the trail use program is voluntary and consensual between the railroad and the trail user, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because A&F does not consent to interim trail use/rail banking negotiations, the Board cannot issue a NITU in this proceeding.¹

ATC also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the line. ATC requests that A&F be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that A&F be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the exemption. ATC's justification for its request is that the rail corridor would make an excellent recreational trail and that conversion of the property to trail use is in accordance with state and local plans. ATC states that the 180-day period is needed to complete a detailed trail plan and to begin negotiations with A&F.

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 Aban.—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. See 49 C.F.R. § 1152.28(a)(2). Because ATC has satisfied these requirements, a 180-day public use condition will be imposed, requiring A&F to keep intact the right-of-way (including bridges, trestles, culverts and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the September 8, 2011 effective date of the exemption. 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, A&F is not required to deal exclusively with ATC, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ Once A&F consummates its abandonment, CSXT can, if appropriate, choose to negotiate with ATC or any other entity for use of the right-of-way as a trail outside the provisions of the Trails Act.

It is ordered:

1. This proceeding is reopened.
2. ATC's request for issuance of a notice of interim trail use is denied.

3. ATC's request for imposition of a public use condition is granted. Consistent with the public use condition imposed in this decision, A&F may discontinue service and salvage track and related materials. A&F shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days commencing from the September 8, 2011 effective date of the exemption (until March 6, 2012), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

4. A&F's exemption is also subject to the condition that A&F shall (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 that are eligible for listing or are 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, any other Section 106 consulting parties, and the public, and (c) refrain 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.

5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.