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April 16, 2024

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April 16, 2024

VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: ***Alabama Railroad, LCC – Abandonment Exemption – In
Escambia, Conecuh, and Monroe Counties, Ala.,
AB-1324X***

Request for Interim Trails Use/Rail Banking

Dear Ms. Brown:

ALR Trail Co., LLC (“A-Trail”) hereby petitions the Board for issuance of a Notice of Interim Trail Use (“NITU”) applicable to the entire railroad line (the “Line”) that is the subject of the above-referenced abandonment petition for exemption proceeding. In satisfaction of the requirements of 49 C.F.R. § 1152.29(a), A-Trail supplies herein its Statement of Willingness to Assume Financial Responsibility for the Line. For the reasons detailed below, Alabama Railroad, LLC (“ARL”) joins in support of this petition.

In order to establish interim trail use and rail banking for the Line under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 CFR § 1152.29, A-Trail hereby states that it is willing (and able) to assume full responsibility for: (1) managing the Line’s right-of-way; (2) any legal liability arising out of the transfer or use of the Line’s right-of-way, and (3) the payment of any and all taxes that may be levied or assessed against the Line’s right-of-way.

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ARL owns the Line – the entirety of which is the subject of the above-referenced docket – extending between milepost 607.73 at Flomaton, Alabama, and milepost 655.2 near Tunnel Springs, Alabama, including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, Alabama. A map depicting the Line’s right-of-way is attached.

A-Trail acknowledges that its proposed use of the right-of-way is subject to A-Trail continuing to meet its responsibilities described above, and that its trails use arrangements, if completed, would be subject to ARL’s possible future reconstruction upon, and reactivation of, the Line’s right-of-way for rail service.

In the interest of full disclosure, A-Trail was recently formed as an ARL subsidiary established to assume trail sponsorship. As indicated in the record, ARL has sought to enter into an interim trails use arrangement with a willing trails sponsor for some time. ARL has been in discussions with interested parties about an arrangement under which ARL would donate the corridor to a willing trail sponsor, and ARL remains intent on such a corridor donation to an entity unrelated to ARL.

But, despite third-party interest in the corridor, potential trails sponsors are exceedingly reluctant to assume the risk of trails sponsorship (even under terms where ARL would donate corridor) in the presence of clearly ill-informed state legal precedent under *Monroe County Commission v. Nettles*, 288 So. 3d 452 (Ala. 2019) (“*Nettles*”). That state law, were it to be invoked successfully here, could result in dispossessing a trail sponsor of its interests in the corridor, thereby undoing any efforts associated with conversion of the corridor to recreational purposes (and the costs of such trails improvements), and undermining efforts to preserve this corridor and others in Alabama for potential service restoration in the future. In the interest of advancing trails use objectives in the face of *Nettles*’ evident chilling effect, ARL has resolved to move ahead under a subsidiary (A-Trail), with the expectation that A-Trail’s trails sponsorship tenure will be temporary, until another organization is willing to step in to assume trails sponsorship in A-Trail’s place, once the cloud of *Nettles* has passed.

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ARL, as A-Trail's corporate parent, joins in this petition, and hereby advises the Board that it has not filed notice of abandonment consummation (see the Director's Order served in this proceeding on October 24, 2023), and that it is willing to negotiate an interim trails use arrangement with A-Trail. ARL and A-Trail submit that good cause exists for the Board to accept A-Trail's late-filed petition under 49 C.F.R. §§ 1152.29(b)(3) and (e)(1), given the circumstances surrounding interim trails use efforts here and widely-criticized Alabama jurisprudence addressing the scope of Board jurisdiction in abandonment (and related interim trails use) proceedings. ARL hereby joins with A-Trail to request Board issuance of an NITU, thereby facilitating trails use negotiations between ARL and A-Trail for a period of up to one year pursuant to 49 C.F.R. § 1152.29(d).

All parties of record in this proceeding will be served with a copy of this request on the same date that it is being served on the Board.

Because A-Trail is a private entity, it has arranged separately to pay the applicable filing fee of \$350 (see 49 C.F.R. § 1002.2(f)(27)(i)) via pay.gov.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Counsel for ALR Trail Co, LLC, and
Alabama Railroad, LLC

RAW:ah

Enclosure

cc: All parties of record

**Docket No. AB 1324X Alabama Railroad, LLC -
Abandonment Exemption - In Escambia, Conecuh,
and Monroe Counties, Alabama**

