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SERVICE DATE – AUGUST 22, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1073 (Sub-No. 1X)

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

Decided: August 22, 2024

Alabama & Florida Railway Co., Inc. (A&F), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 42.9 miles of rail line between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on December 20, 2021 (86 Fed. Reg. 72,025). The exemption became effective on January 19, 2022.

On January 19, 2022, the Georgetown and High Line Railway Company, LLC (GHL), late-filed a request for a notice of interim trail use (NITU) to negotiate with A&F to establish interim trail use and railbanking on the Line under the Nation Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. In response to GHL's request, CSX Transportation, Inc. (CSXT), the owner of the real estate underlying right-of-way, explained that it had entered into an agreement with A&F that allows CSXT to negotiate for interim trail use on behalf of both A&F and CSXT. By decision served March 24, 2022, GHL's late-filed request for a NITU was granted, and by letter filed on December 15, 2022, CSXT and GHL notified the Board that they had entered into a purchase sale agreement for the Line.

On February 9, 2022, the City of Andalusia, Ala. (the City), filed a letter also asking the Board to accept a late-filed request for a NITU. However, because the City's request lacked the statement of willingness and acknowledgments required under 49 C.F.R. § 1152.29, the request did not comply with the Board's regulatory requirements and therefore was denied without prejudice.

On June 20, 2024, GHL and the City jointly requested that the Board substitute the City for GHL as the trail sponsor. The parties represent that CSXT consents to the transfer of the NITU from GHL to the City. The request includes a copy of the extant NITU and a statement of the City's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. The City has also acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service.

Because the request complies with the requirements of 49 C.F.R. § 1152.29(f) and the record indicates CSXT's consent to the substitution of the trail sponsor, this proceeding will be reopened, the NITU issued to GHM will be vacated, and a replacement NITU will be issued to the City.

It is ordered:

1. This proceeding is reopened.
2. The NITU issued on March 24, 2022, is vacated.
3. A replacement NITU applicable to the City as interim trail sponsor is issued, effective on the service date of this decision and notice.
4. The new trail sponsor is required to assume, for the term of the agreement, full responsibility for (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user 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 the future restoration of rail service and to the new trail sponsor's continuing to meet the obligations in ordering paragraph 4, above.
6. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision is effective on its service date.

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