

SERVICE DATE – DECEMBER 17, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 70 (Sub-No. 6X)

FLORIDA EAST COAST RAILWAY, L.L.C.–ABANDONMENT
EXEMPTION–IN MIAMI-DADE COUNTY, FLA.

Decided: December 14, 2018

Florida East Coast Railway, L.L.C. (FEC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.21-mile rail line on its South Little River Branch Line, between mileposts LR 11+3989 and LR 13+0000, in Miami-Dade County, Fla. (the Line). Notice of the exemption was served and published in the Federal Register on February 10, 2016 (81 Fed. Reg. 7,185). The exemption became effective on March 11, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on February 16, 2016, solicited comments, and issued a Final EA. By decision served March 10, 2016, the Board imposed two conditions recommended in the Final EA: a historic preservation condition pursuant to Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and a condition requiring FEC to consult with the South Florida Water Management District prior to conducting salvage activities over the Tamiami Canal.

By decision and notice of interim trail use or abandonment (NITU) served on November 21, 2016, the proceeding was reopened and was modified to implement interim trail use/rail banking under the National Trails System Act (Trails Act), 16 U.S.C § 1247(d), and 49 C.F.R. § 1152.29. The NITU authorized a 180-day period for Florida East Coast Industries, LLC (FECI) to negotiate with FEC for interim trail use on the Line. On July 18, 2017, FEC and FECI notified the Board that they had entered into an interim trail use/rail banking agreement.

Upon petition by FECI and FECI LT1 LLC (LT1), the Board served a decision on May 8, 2018, that: (1) vacated the NITU served on November 21, 2016; (2) issued a replacement NITU that (a) substitutes LT1 for FECI as the trail sponsor and (b) covers the portion of the Line between mileposts LR 11+3989 and LR 12+4502.52; and (3) reinstated FEC's exemption authority to abandon the remainder of the Line, between mileposts LR 12+4502.52 and LR 13+0000, subject to satisfaction of the outstanding Section 106 condition.¹ On August 6, 2018, FEC and LT1 notified the Board by letter that they had reached an interim trail use/rail banking agreement for the portion of the Line covered by the replacement NITU.

¹ The Section 106 condition was removed in a decision served on November 13, 2018.

Thereafter, on November 21, 2018, LT1 and Miami-Dade County (the County) jointly requested that the Board vacate the NITU served on May 8, 2018, and issue a replacement NITU that substitutes the County for LT1 as the trail sponsor. FEC separately filed a statement indicating that it does not object to the request.

As required by 49 C.F.R. § 1152.29, the County submitted a statement indicating its willingness to assume 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; and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way. The County acknowledges that the use of right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Accordingly, the request will be granted and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on May 8, 2018, is vacated.
3. A replacement NITU applicable to the County as interim trail sponsor with respect to the portion of the Line between mileposts LR 11+3989 and LR 12+4502.52 is issued, effective on the service date of this decision and notice.
4. 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 financial obligations for the right-of-way.
5. 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.
6. This decision and notice is effective on its service date.

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