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Crystal M. Zorbaugh

ENTERED  
Office of Proceedings  
February 26, 2020  
Part of  
Public Record

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E-Mail: czorbaugh@bakerandmiller.com

February 26, 2020

**VIA E-FILING**

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: The Alabama Great Southern Railroad Company – Abandonment Exemption – In Gadsden, Etowah County, Alabama, AB-290 (Sub-No. 335X); and Tennessee, Alabama and Georgia Railway Company– Abandonment Exemption – In Gadsden, Etowah County, Alabama, AB-290 (Sub-No. 340X)

**Trails Use Agreement Reached**

Dear Ms. Brown:

Pursuant to 49 CFR 1152.29(h), please find enclosed a jointly-filed notice that a trails use agreement has been reached for the rail line proposed for abandonment in the AB-290 (Sub-No. 335X) proceeding. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com, or if I am unavailable you may contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



Crystal M. Zorbaugh  
Attorney for The Alabama Great Southern Railroad  
Company

**Enclosures**

cc: Greg Summy, Garrett Urban, Laura Hoag, Scott Plum (AGS)  
Nick Hall, City of Gadsden

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 335X)**

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**THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN GADSDEN, ETOWAH COUNTY, ALABAMA**

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**AB-290 (Sub-No. 340X)**

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**TENNESSEE, ALABAMA AND GEORGIA RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN GADSDEN, ETOWAH COUNTY, ALABAMA**

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**JOINT VERIFIED NOTICE OF EXEMPT ABANDONMENT**

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**NOTICE OF CONSUMMATION OF  
TRAIL USE AGREEMENT**

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Tel: (202) 663-7820  
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**Attorneys for The Alabama Great Southern  
Railroad Company**

Dated: February 26, 2020

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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The Alabama Great Southern Railroad Company (“AGS”) and the City of Gadsden, Alabama (“City”), hereby submit this jointly-filed notice pursuant to 49 CFR § 1152.29(h) confirming that the parties have reached an agreement for interim trail use and railbanking as of today, February 26, 2020, for the approximately 3.1-mile rail line, which extends between milepost 2.40 AG (near Cabot Ave) and milepost 5.50 AG (near the intersection of River and Coosa Streets) (“AGS Line”) proposed for abandonment in AB-290 (Sub-No. 335X).

The Board originally established a Notice of Interim Trail Use (“NITU”) for the AGS Line and an approximately 1.15 mile connecting Tennessee, Alabama, and Georgia Railway

Company ("TAG") rail line ("TAG Line") in a decision served April 3, 2013.<sup>1</sup> After several years of negotiations,<sup>2</sup> on January 27, 2020, the City submitted a Request to Modify and Partially Vacate the Notice of Interim Trail Use Issued April 3, 2013 to exclude the TAG Line after the City and AGS reached an agreement for the City to purchase the AGS Line only. AGS supports the City's request to modify and partially vacate the existing NITU and asks the Board to issue a replacement NITU for only the AGS Line,<sup>3</sup> which is the subject of this Trails Use Agreement. The NITU covering the AGS Line is supported by the City's statement of willingness to assume financial responsibility entered in the above-captioned docket on March 20, 2013.

As required by 49 CFR § 1152.29(a)(2), I hereby certify on behalf of AGS and the City that the City has assumed full responsibility for: (i) managing the Premises; (ii) any legal liability arising out of the transfer or use of the Premises; and (iii) the payment of any and all taxes that may be levied or assessed against the Premises with respect to the AGS Line.

The agreement covers the entirety of the AGS Line proposed for abandonment in AB-290 (Sub-No. 335X). Per the requirements of 49 C.F.R. § 152.29(h), a map of the AGS Line is

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<sup>1</sup> The April 3, 2013 NITU decision is included as Exhibit A to this filing.

<sup>2</sup> Since the original NITU was established, the Board has granted the parties multiple extensions to continue to negotiate trails use. The most recent extension expires on February 27, 2020.

<sup>3</sup> As stated in AGS and TAG's February 19, 2020 letter to the Board in the above captioned dockets, effective, February 28, 2020 (upon expiration of the existing NITU), TAG will be exercising discontinuance authority (rather than abandonment authority) for the TAG Line. The Board has held that if a railroad wishes to discontinue service over a portion of a rail line that has been authorized for abandonment, it may prior to consummating its abandonment authority opt to exercise the lesser included authorization of discontinuance authority rather than abandonment authority for the rail line segment. See T&P Ry.--Aban.--Shawnee, Jefferson, & Atchison Count., KS, 2 S.T.B. 36, 40 (1997). See also The Alabama Great Southern Railroad Company – Discontinuance Exemption – In Saint Bernard Parish, LA, STB Docket No. AB-290 (Sub-No. 323X) (STB served December 17, 2013). See also Almono LP–Abandonment Exemption–In Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004).

attached as Exhibit B. The filing of this joint notice has been authorized by the City. If you have any questions, please do not hesitate to contact me.

**Respectfully submitted,**



**William A. Mullins**

**Crystal M. Zorbaugh**

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**2401 Pennsylvania Ave, NW**

**Suite 300**

**Washington, DC 20037**

**(202) 663-7820**

**czorbaugh@bakerandmiller.com**

Dated: February 26, 2020

cc: Parties of Record

**Counsel for Alabama Great Southern  
Railroad Company**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 335X)**

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**THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
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**JOINT VERIFIED NOTICE OF EXEMPT ABANDONMENT**

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**NOTICE OF CONSUMMATION OF  
TRAIL USE AGREEMENT**

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**Exhibit A – April 3, 2013 NITU Decision**

43018  
DO

SERVICE DATE – LATE RELEASE APRIL 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 335X)

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY—  
ABANDONMENT EXEMPTION—IN GADSDEN, ETOWAH COUNTY, ALA.

Docket No. AB 290 (Sub-No. 340X)

TENNESSEE, ALABAMA, AND GEORGIA RAILWAY COMPANY—  
ABANDONMENT EXEMPTION—IN GADSDEN, ETOWAH COUNTY, ALA.

Decided: April 3, 2013

The Alabama Great Southern Railroad Company (AGS) and Tennessee, Alabama, and Georgia Railway Company (TAG) (collectively, applicants)<sup>1</sup> jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for AGS and TAG to abandon service over approximately 4.25 miles of interconnected rail line in Gadsden, Etowah County, Ala. Specifically, AGS proposes to abandon 3.10 miles of rail line (the AGS Segment) between milepost 2.40 AG (near Cabot Ave.) and milepost 5.50 AG (near the intersection of River and Coosa Streets); and TAG proposes to abandon approximately 1.15 miles of rail line (the TAG Segment) between milepost TA 90.30 (located between the north end of Brookside Drive and Owls Hollow Road) and milepost TA 91.45 (at TAG Segment's connection with the AGS Segment west of N 5th Street) (the Line). Notice of the exemption was served and published in the Federal Register on March 5, 2013 (78 Fed. Reg. 14,414). The exemption is scheduled to become effective on April 4, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on March 8, 2013, recommending that two environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the U.S. Environmental Protection Agency (EPA), Region 4, had provided comments requesting that the applicants consult with appropriate state and local agencies to ensure that the proposed abandonment is in compliance with applicable federal, state, and local water management regulations. OEA pointed out that, specifically, EPA had noted that there were a number of waterways in and around the area of the proposed abandonment that might be regulated under the Federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) stormwater program that is administered by the Alabama Department of

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<sup>1</sup> Both applicants are wholly owned subsidiaries of the Norfolk Southern Railway Company.

Environmental Management (ADEM). EPA recommended that applicants consult with ADEM and the City of Gadsden, Ala. (the City) to determine if any NPDES permits were needed.

According to OEA, applicants subsequently provided certain information to ADEM regarding its proposed salvage procedure for the Line. OEA, however, was unable to determine if the salvage procedure outlined by the applicants would require permits under the NPDES program because applicants indicated that there would be no instream work or soil disturbance during the salvage process, despite the possible removal of four bridges. Therefore, OEA recommended that, prior to commencement of any salvage activities, applicants be required to consult with ADEM and the City regarding their stormwater requirements and comply with their reasonable requirements.

OEA also stated that the applicants served an historic report on the Alabama Historical Commission (State Historic Preservation Office or SHPO) pursuant to 49 C.F.R. § 1105.8(c). The report indicated that there were four bridges located on the AGS Segment of the Line proposed for abandonment. In a letter dated December 6, 2012, the SHPO stated that it would need more information to continue its review to determine if the Line, and in particular, the bridges, might be eligible for listing in the National Register of Historic Places (National Register). Therefore, OEA recommended that applicants be required to 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 listed in the National Register until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA). OEA also recommended that applicants be required to report back to OEA regarding any consultations with the SHPO and the public, and that applicants be prohibited 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.

A comment in response to the EA was received from the U.S. Department of Commerce, National Geodetic Survey (NGS), by the March 25, 2013 due date. OEA states in its final EA that the NGS has identified one geodetic marker that may be affected by the proposed abandonment. Therefore, OEA recommends that applicants be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers. Accordingly, the two conditions recommended by OEA in the EA and the new condition recommended in the final EA, will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 20, 2013, the City filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with applicants for acquisition of their portions of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the City has also submitted a statement of willingness to assume financial responsibility for the right-of-way, and has 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. In a response filed on March 28, 2013, applicants have indicated their willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and applicants are willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an 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 with 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, applicants may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The City asks that applicants be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that applicants 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 abandonment authorization. The City's justification for its request is that these structures have considerable value for recreational trail purposes. The City states that the 180-day period is needed to assemble and review title information, complete a trail plan, and begin negotiations with the applicants.

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.

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 City has satisfied these requirements, a 180-day public use condition will be imposed, requiring the applicants 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 the April 4, 2013 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, 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 October 1, 2013, while the trail use negotiating period will run 180 days from the service date of this decision and notice until October 1, 2013. If a trail use agreement is reached on a portion of the right-of-way prior to October 1, 2013, applicants 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, applicants are not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, this action 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 March 5, 2013, 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 City to negotiate with applicants for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until October 1, 2013, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the April 4, 2013 effective date of the exemption, until October 1, 2013. The abandonment is also subject to the conditions that applicants shall: (1) prior to commencement of any salvage activities, consult with ADEM and the City regarding their stormwater requirements and comply with their reasonable requirements; (2) (a) retain their 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 listed in the National Register until completion of the Section 106 process of the NHPA, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) be prohibited 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; and (3) consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.
3. The request for a NITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is granted.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, applicants may discontinue service and salvage track and related materials. Applicants shall otherwise keep intact the right-of-way underlying the tracks, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days 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 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.

5. 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.

6. 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 financial responsibilities for the right-of-way.

7. 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).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by October 1, 2013 for the right-of-way, interim trail use may be implemented. If no agreement is reached, the applicants may fully abandon the Line.

10. This decision and notice is effective on its service date.

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

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 335X)**

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**THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
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**NOTICE OF CONSUMMATION OF  
TRAIL USE AGREEMENT**

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**Exhibit B - Map**

## EXHIBIT B

### EXHIBIT B

#### Trails Use Agreement Map

#### The Alabama Great Southern Railroad Company

#### Milepost 2.40 AG – Milepost 5.50 AG

#### AB 290 (Sub. No. 335X)

#### Gadsden, AL

