

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1266X

CANONIE ATLANTIC CO.—ABANDONMENT EXEMPTION—HALLWOOD TO CAPE CHARLES, VA.

Decided: July 1, 2022

On July 15, 2019, Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), the Eastern Shore Railroad, Inc. (ESRR), and Canonie Atlantic Co. (CAC) filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 for BCR and ESRR to discontinue their lease operations over, and for CAC to abandon, approximately 49.1 miles of rail line in Accomack and Northampton Counties, Va. (the Line). The Line is located between milepost 45.7 at Taylor Street in Hallwood, Va., and the end of the line at milepost 94.8 at Cape Charles, Va., together with the car float operation from Cape Charles to Little Creek, Va. Notice of the petition was served and published in the Federal Register on August 2, 2019 (84 Fed. Reg. 37,943). By decision served November 1, 2019, the Board granted the petition, subject to environmental, historic preservation, and employee protection conditions. The exemption became effective on December 1, 2019.

By decision and notice of interim trail use or abandonment (NITU) served on January 8, 2020, this proceeding was reopened and a 180-day period was authorized for the Dahlgren Railroad Heritage Trail Association (DRHTA) to negotiate an interim trail use/rail banking agreement with CAC for the Line, pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). By decisions served on July 1, 2020, and July 6, 2021, the negotiating period was extended until July 6, 2022.

On March 10, 2022, DRHTA and Eastern Shore Rail Trail Foundation (ESRTF), jointly filed a letter indicating that DRHTA intends to terminate its trail use and ESRTF intends to become the trail sponsor for the Line. Pursuant to § 1152.29, ESRTF submitted with that letter a statement of its 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 letter filed on May 31, 2022, CAC indicated its willingness to negotiate with ESRTF for interim trail use and requested that the Board reopen the abandonment exemption to vacate the existing NITU and issue a replacement NITU to allow ESRTF as substitute trail sponsor.

The interim trail use program is voluntary and consensual between the railroad and the trail sponsor. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because ESRTF's request complies with the requirements of 49 C.F.R. § 1152.29 and CAC is willing to negotiate for interim trail use, a NITU applicable to ESRTF will be issued. The parties may negotiate an agreement for the right-of-way during the one-year 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 within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within one year, CAC may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). 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.

Accordingly, this proceeding will be reopened and a replacement NITU will be issued for the Line.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on January 8, 2020, is vacated.
3. A replacement NITU applicable to ESRTF as interim trail sponsor for the Line is issued, effective on the service date of this decision and notice, to permit ESRTF to negotiate with CAC for trail use for the Line, for a period of one year from the service date of this decision, until July 1, 2023.
4. 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 trail 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.
5. 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 responsibilities for the right-of-way described in paragraph 4 above.
6. 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. See 49 C.F.R. §§ 1152.29(d)(2) and (h).
7. 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.
8. If an agreement for interim trail use/rail banking is reached by July 1, 2023, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CAC may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Mai T. Dinh, Director, Office of Proceedings.