

SERVICE DATE – JANUARY 8, 2020

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: January 7, 2020

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 with the Board 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., and 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 on November 1, 2019, the Board granted the petition, subject to environmental, historic preservation, and employee protective conditions. The exemption became effective on December 1, 2019.

On November 29, 2019, the Dahlgren Railroad Heritage Trail Association, Inc. (DRHTA), sought permission to late-file a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) and 49 C.F.R. § 1152.29, and for imposition of a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28.¹

Interim Trail Use. DRHTA has submitted a statement of willingness to assume full responsibility for managing the right-of-way, any legal liability arising out of the transfer or use of the right-of-way, and payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a letter filed on December 3, 2019, CAC stated that it is willing to negotiate with DRHTA for interim trail use.

Because DRHTA's request complies with the requirements of 49 C.F.R. § 1152.29 and CAC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an

¹ DRHTA filed its request in Docket Nos. AB 1266X, AB 1267X, and AB 1276X. Docket No. 1266X, the abandonment docket, is the appropriate docket for DRHTA's request; accordingly, this decision is being issued in Docket No. AB 1266X only.

agreement during the 180-day period prescribed below.² If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CAC may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Public Use. DRHTA asks that CAC be prohibited from disposing of the corridor because the corridor would connect with existing trail networks, as well as tourist destinations and amenities on or adjacent to the corridor, thereby facilitating non-motorized transportation and recreational travel. DRHTA also asks that CAC be prohibited from destroying or removing potentially trail-related structures such as bridges, trestles, culverts, and tunnels for a 180-day period from the effective date of the abandonment authorization, because these structures have considerable value for recreational trail purposes. According to DRHTA, the 180-day period is needed to complete a trail plan and commence negotiations with CAC.

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 DRHTA has satisfied these requirements, a 180-day public use condition will be imposed, requiring CAC 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, commencing from December 1, 2019, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, 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 May 29, 2020 (180 days from the effective date of the abandonment exemption), while the trail use negotiating period will run 180 days from the service date of this decision and notice, until July 6, 2020. If a trail use agreement is reached for a portion of the right-of-way prior to July 6, 2020, CAC must keep the remaining right-of-way intact for the remainder, if any, 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

² Effective February 2, 2020, the Board has modified its rules regarding the number and duration of, and standard for granting, extensions of the NITU negotiating period (as well as the duration of the initial NITU negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

to the public use condition, CAC is not required to deal exclusively with DRHTA but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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. DRHTA's request for a NITU under 16 U.S.C. § 1247(d) and a public use condition under 49 U.S.C. § 10905 is accepted and granted.
3. Upon reconsideration, the November 1, 2019 decision 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 DRHTA to negotiate with CAC for trail use for the Line, for a period of 180 days from the service date of this decision and notice, until July 6, 2020, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until May 29, 2020.
4. CAC shall keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effect date of the exemption, until May 29, 2020, 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 public use condition 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 responsibilities for the right-of-way described in paragraph 5 above.
7. In 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).
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 July 6, 2020, 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.

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

By the Board, Allison C. Davis, Director, Office of Proceedings.