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May 26, 2021

302414

VIA OVERNIGHT DELIVERY & ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
May 26, 2021
Part of
Public Record

RE: Docket No. AB-55 (Sub-No. 804X)
CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-
IN FREDERICK COUNTY, MD

Dear Chief Brown:

Please find attached for filing is the Town of Mount Airy, Maryland's Request for Notice of Interim Trail Use in the above captioned matter. I also supply an extra copy to be date stamped and returned using the enclosed self-addressed stamped envelope. Please note that there is a request for waiver of filing fee contained in the attached Request pursuant to 49 C.F.R. Section 1002.2(e)(1).

Thank you.

Very truly yours,

Thomas V. McCarron

TVM:lsm
Enclosure

cc: Steven C. Armbrust, Esq. (via overnight delivery)
Louis E. Gitomer, Esq. (via overnight delivery and email)
Melanie B. Yasbin, Esq. (via overnight delivery and email)

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 804X)

REGARDING:

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN FREDERICK COUNTY, MD

REQUEST FOR NOTICE OF INTERIM TRAIL USE
BY THE TOWN OF MOUNT AIRY, MARYLAND

Thomas V. McCarron, Esq.
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Attorney for the Town of Mount Airy, MD

Dated: May 26, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 804X)

REGARDING:

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN FREDERICK COUNTY, MD

REQUEST FOR NOTICE OF INTERIM TRAIL USE

Comes now, the Town of Mount Airy, Maryland (hereafter, “the Town”), a municipal corporation organized under the laws of the State of Maryland, in reference to the Notice of Exemption filed in the above-captioned matter pursuant to 49 C.F.R. § 1152.50 by CSX Transportation, Inc. (“CSXT”) before the Surface Transportation Board (“the Board”) on or about April 12, 2021 (hereafter “CSXT’s Request for Abandonment”), seeking exemption from prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad and associated corridor as more fully described below, respectfully submits this Request for Notice of Interim Trail Use (“NITU”), and for cause states and requests the following.

BACKGROUND

CSXT is the owner/operator/holder of a right-of-way of a railroad line and associated corridor that extends approximately 0.59 miles from Val. Sta. 1728+23 to Val. Sta. 1759+25 on the Old Main Line Subdivision of CSXT’s Baltimore Division, all within the limits of the Town

of Mount Airy, and all located within Frederick County, Maryland (hereafter, “the Corridor”).

The Corridor is depicted in Exhibit A and is more fully described in the Decision attached hereto as Exhibit B. CSXT and the Town have negotiated and entered into a Purchase and Sale Agreement for the Corridor (“the PSA”), which is in part conditioned upon the Board’s approval of CSXT’s Request for Abandonment, and the granting of the Town’s Request for NITU.

REQUEST FOR NOTICE OF INTERIM TRAIL USE

The Corridor is suitable for railbanking. In addition to the public use condition, the Town hereby requests the Board to issue a Notice of Interim Trail Use. The Town of Mount Airy acknowledges that use of the Corridor is subject to the sponsor continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the Corridor for rail service.

REQUEST FOR PUBLIC USE CONDITION

The Town requests that the Board find that the Corridor is suitable for other public use, specifically trail use, and to impose the following condition on the Corridor: an order prohibiting CSXT from disposing of the Corridor, other than the tracks, ties, and signal equipment, if applicable, and except as may be otherwise set forth in the PSA between CSXT and the Town for purchase of the Corridor, except for public use on reasonable terms. Justification for this condition is that the Corridor is along a scenic path, would connect to other portions of a larger trail acquired or being acquired by the Town that would provide for recreation and pedestrian connectivity among different areas of the Town. The Corridor would make an excellent recreational trail, and conversion of the Corridor to trail use is in accordance with local plans. In

addition, the Corridor may provide important wildlife habitat and open space, and its preservation as a recreational trail is consistent with those purposes.

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

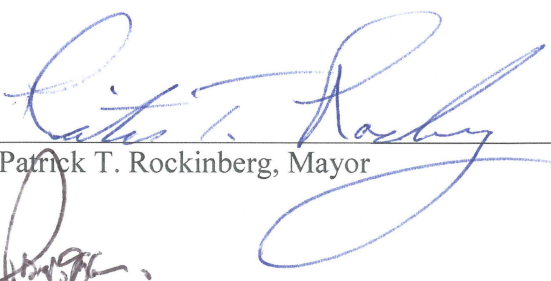
In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 CFR § 1152.29 with respect to the Corridor, the Town of Mount Airy, Maryland is willing to assume full responsibility for: (1) managing the right-of-way, (2) indemnifying the railroad against any potential liability for future use of the Corridor as a public recreational trail, and (3) the payment of any and all taxes that may be levied or assessed against the right of way, for which the Town is not exempt as a unit of local government.

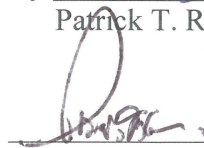
REQUEST FOR WAIVER OF FILING FEE

The Town of Mount Airy respectfully requests that the Board waive the filing fee for this Request for NITU because the Town is a local government entity as provided in 49 CFR § 1002.2(e)(1).

Respectfully submitted,

TOWN OF MOUNT AIRY, MD

By: 
Patrick T. Rockinberg, Mayor


Thomas V. McCarron
Town Attorney and Counsel for the Town of
Mount Airy, Maryland

FILING AND SERVICE

This Request for NITU is being efiled, and expressed overnight delivery to the Board on this 26th day of May, 2021 as follows:

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

In addition, copies of this Request for NITU are being served by electronic mail and/or expressed overnight delivery on CSXT, and its outside counsel, on the same date it is being served on the Board, this ~~26th~~ day of May, 2021 as follows:

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com



Thomas V. McCarron
Town Attorney and Counsel for the Town of
Mount Airy, Maryland

EXHIBIT A

GIS #
08391-002
08392-002

INTEL #
V17.2/17
V17.2/S17

PIN #
24021 0088
24021 0089



1" = 500'

0 125 250 500 750 1,000 Feet



CSX TRANSPORTATION, INC.

MT. AIRY TRAIL
SITE: MD-021-1064074
FREDERICK COUNTY, MD
MILEPOST: BAC 39.13 - 39.88

DIVISION: BALTIMORE
SUBDIVISION: OLD MAIN LINE
DATE: 02/21/2020
REVISED: 02/21/2020
DRAWN BY: o7525

-  The Track
-  Premises 8.22 ± Acres
-  CSX Real Estate

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

EXHIBIT B

50730
OEA

SERVICE DATE – MAY 7, 2021

SURFACE TRANSPORTATION BOARD WASHINGTON, DC 20423

DRAFT ENVIRONMENTAL ASSESSMENT

**Docket No. AB 55 (Sub-No. 804X)
CSX Transportation, Inc. – Abandonment Exemption –
in Frederick County, Md.**

BACKGROUND

In this proceeding, CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Frederick County, Maryland. The rail line proposed for abandonment extends approximately 0.59 miles from Val Sta. 1728+23 to Val Sta. 1759+25 on the Old Main Line Subdivision of CSXT's Baltimore Division (the Line). A map depicting the Line in relation to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to remove rail-related structures, to salvage track, ties and other railroad appurtenances, and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line is located in the town of Mount Airy, Maryland (Mt. Airy). It extends northward from a point north of Village Oak Drive between Winding Way and Rambling Sunset Circle and continues in a northwest direction to a point south of Prospect Road. The right-of-way of the Line is approximately 90 feet wide. There has been no rail freight service on the Line for at least two years and all overhead traffic has been rerouted.

ENVIRONMENTAL REVIEW

CSXT submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. CSXT served the E&H Report on a number of appropriate federal, state, and local agencies, as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the

¹ The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "55" "804" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on April 12, 2021.

National Environmental Policy Act (NEPA). The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to CSXT, no local traffic has moved over the Line during the last two years, and overhead traffic on the Line has been rerouted. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use, and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way.

If abandonment authority is granted in this proceeding, CSXT states that rail, crossties, and possibly the upper layer of ballast would be removed from the rail right-of-way. CSXT does not intend to disturb the underlying roadbed or any sub-grade structures. Salvage would be conducted using the existing rail right-of-way for access and CSXT does not intend to construct any new access roads. CSXT states that it intends to sell the Line to Mt. Airy through the interim trail use/rail banking process, pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. CSXT would not salvage any trail-related structures, such as bridges, trestles, culverts and tunnels.

Land Use

CSXT provided the E&H Report to Mt. Airy and Frederick County, Maryland (Frederick County) and requested comments regarding consistency of the proposed abandonment with existing local land use plans. To date, OEA has not received comments from Mt. Airy or Frederick County. CSXT states that CSXT considers the proposed abandonment of the Line to be consistent with existing land use plans and notes that the purpose of the proposed abandonment is to sell the Line to Mt. Airy for interim trail use under the Trails Act.

By letter dated April 12, 2021, the Land Restoration Program (LRP) of the Maryland Department of the Environment (MDE) submitted comments stating that LRP does not believe that the proposed abandonment would be consistent with local land use plans nor is the Line suitable for recreational trail use because of existing soil contamination.

LRP's comments indicate that composite soil sampling data from 2014 identified elevated concentrations of arsenic and hydrocarbons along the Line. LRP states that additional investigation would be needed to determine the areal extent of impacts on the Line. LRP adds that it has accepted the Line for participation in LRP's Voluntary Cleanup Program under an application submitted by Mt. Airy. LRP has also approved a work plan submitted on behalf of Mt. Airy for an assessment to determine the extent of contamination impacts on the Line. The results of the assessment would be used by Mt. Airy to draft a Response Action Plan and would allow LRP to determine whether there are any additional concerns about the extent of contamination, including potential for impacts outside of the rail right-of-way. LRP states that the Line would be suitable for recreational use if a Response Action Plan is submitted, approved, and implemented to the satisfaction of LRP.

Although LRP recommends additional investigation and remediation as part of interim trail use, as described above, LRP states that the proposed abandonment-related salvage activities would not impact LRP requirements and could proceed. Because abandonment-related salvage activities would be limited to the removal of rail, crossties, and possibly the upper layer of ballast, OEA agrees with LRP's comments and concludes that the proposed abandonment would not result in soil disturbances that would expose contaminated soils or affect the movement of soil contaminants in the environment.

CSXT requested comments from the Natural Resources Conservation Service (NRCS) regarding potential impacts of the proposed abandonment on agricultural land, but no response from NRCS has been received to date. Because salvage activities would be limited in scope and would take place within an existing rail right-of-way, OEA does not expect that the proposed abandonment would have any effect on prime or unique farmland. Accordingly, no mitigation related to agricultural land is necessary or recommended.

The National Geodetic Survey (NGS) submitted comments stating that no NGS geodetic survey markers would be impacted in the proposed abandonment area. However, NGS identified two geodetic survey markers in close proximity to the Line and requested that care be exercised to not disturb those markers. Because abandonment-related salvage activities would take place

within the rail right-of-way and because no geodetic survey markers are located within the rail right-of-way, OEA concludes that the proposed abandonment would not affect any geodetic survey markers and is not recommending further consultation with NGS.

Water Resources

CSXT states, and OEA review has confirmed, that the proposed abandonment would not take place within the boundaries of the Maryland Coastal Zone Management Program.² Therefore, a Federal Consistency Determination is not necessary, and OEA is not recommending any mitigation related to coastal zone management.

CSXT provided the E&H Report to the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers and requested comments from those agencies regarding potential impacts on water resources. To date, those agencies have not provided comments. Based on available satellite imagery and maps, the Line does not cross and is not immediately adjacent to any surface waters or wetlands.³ The proposed salvage activities would not involve any in-stream work, activities that could result in soil erosion or sedimentation, or dredging or the use of fill material. Therefore, OEA concludes that the proposed abandonment would not adversely affect water resources and is not recommending any mitigation related to water resources.

Biological Resources

CSXT notified the U.S. Fish and Wildlife Service (USFWS) of the proposed abandonment and requested assistance in determining whether the proposed abandonment would adversely affect endangered or threatened species or areas designated as critical habitat. CSXT also submitted a request for species information through USFWS' Information for Planning and Consultation (IPaC) system. In response to that request, USFWS provided a letter indicating that the threatened northern long-eared bat (*Myotis septentrionalis*) may be present in the vicinity of the Line. USFWS noted that the Line does not cross critical habitat for northern long-eared bat because no critical habitat has been designated for this species. USFWS' comments indicated that impacts on northern long-eared bat need to be considered for federal projects that would involve tree clearing of 15 acres or more. Because the proposed abandonment would not result

² Maryland Department of the Environment, Maryland Coastal Consistency Review, <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/CZM.aspx> (last accessed April 30, 2021).

³ U.S. Fish and Wildlife Service, National Wetlands Inventory, <https://www.fws.gov/wetlands/data/mapper.html> (last accessed April 22, 2021).

in any tree clearing, OEA concludes that the proposed abandonment would have *no effect* on northern long-eared bat or any other threatened or endangered species. Accordingly, formal consultation with USFWS under Section 7 of the Endangered Species Act (16 U.S.C. § 1531) is unnecessary and no mitigation related to threatened or endangered species is recommend.

Because salvage activities would be limited in scope and would take place within an existing rail right-of-way, OEA does not anticipate that the proposed abandonment would result in adverse impacts on fish, wildlife, or vegetation. Therefore, OEA is not recommending any mitigation related to biological resources.

Air Quality

OEA believes that any air emissions associated with abandonment-related salvage activities would be temporary and would not have a significant impact on air quality. Therefore, no mitigation related to air quality is recommended.

Noise

Any noise related to abandonment activities would be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Therefore, no mitigation related to noise impacts is recommended.

Summary

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to MDE for review and comment.

HISTORIC REVIEW

Historical Background

According to CSXT, the Line is a small part of CSXT's Old Main Line Subdivision ("OML"), which is the oldest commercial railroad route in the United States. It was constructed by the Baltimore & Ohio Railroad between 1828 and 1831 to provide a rail transportation route from markets in the Midwest to the Port of Baltimore, as an alternative to the Erie Canal in New York. There are no bridges or other structures on the Line.

Section 106 Review

CSXT served the E&H Report on the Maryland Historic Trust (the State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁴ The SHPO has submitted comments stating that no historic properties would be affected by the proposed abandonment. OEA has reviewed the available information and concurs with the SHPO's comments.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's E&H Report, all relevant correspondence, and this Draft EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at www.prod.stb.gov. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁵ The database indicated that the following federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment:

- Delaware Nation, Oklahoma;
- Seneca-Cayuga Nation; and
- Tuscarora Nation.

⁴ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overviewing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

⁵ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed April 22, 2021).

OEA is sending a copy of this Draft EA to these Tribes for review and comment.

CONDITIONS

OEA recommends that no conditions be imposed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way

⁶ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "55" "804" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

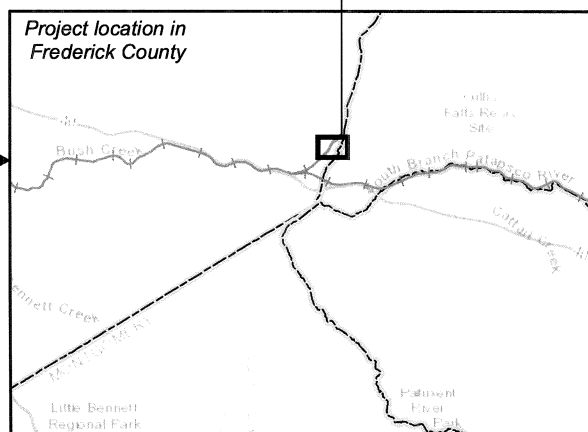
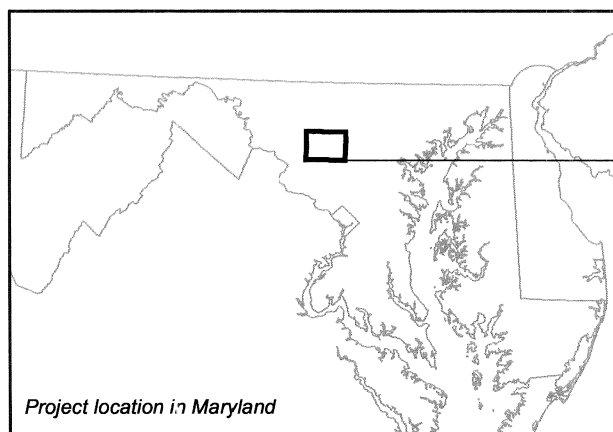
As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Joshua Wayland by email at joshua.wayland@stb.gov or by phone at 202-245-0330.

Date made available to the public: May 7, 2021.

Comment due date: May 24, 2021.

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.

⁷ Id.



Docket No. AB 55 (Sub-No. 804X)

CSX Transportation, Inc.
Abandonment Exemption
in Frederick County, Md.



- The Line
- Other rail lines
- County boundaries

Note: Maps produced by the Surface Transportation Board's Office of Environmental Analysis are based on information provided by the railroad applicant and are for general information purposes only.