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Office of Proceedings
March 10, 2022
Part of
Public Record

March 10, 2022

BY E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: **Canonie Atlantic Co. - Abandonment Exemption – Hallwood to Cape Charles, VA**
Docket No. AB-1266X
Substitution of Interim Trail Sponsor (color images included)

Dear Ms. Brown:

This letter is being filed jointly on behalf of Dahlgren Railroad Heritage Trail Association, Inc. ("DRHTA"), the existing trail sponsor, and Eastern Shore Rail Trail Foundation ("ESRTF"), the proposed future trail sponsor, in accordance with the requirements of 49 C.F.R. §1152.29(f).

By decision served January 7, 2020, the Board issued a notice of interim trail use ("NITU") in favor of the DRHTA as trail sponsor with respect to the approximately 49.1-mile rail line 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 (the "Rail Line") that is the subject of this abandonment proceeding. The Board authorized successive extensions to the negotiating period by decisions of the Office of Proceedings served July 1, 2020 and June 14, 2021. The current negotiation period expires July 6, 2022.

DRHTA hereby notifies the Board that it intends to terminate its trail use, and that ESRTF intends to become the trail sponsor with respect to the entire Rail Line by assuming financial responsibility for the Rail Line.

In accordance with 49 C.F.R. §1152.29(f), DRHTA and ESRTF hereby jointly notify the Board as follows:

- (1) Copies of the initial NITU decision served January 8, 2020, and the extension decisions of July 1, 2020 and June 14, 2021, are enclosed as Exhibit A.
- (2) A Statement of Willingness to Assume Financial Responsibility of ESRTF is enclosed as Exhibit B.

- (3) ESRTF acknowledges that interim trail use is subject to reconstruction and reactivation of the right-of-way of the Rail Line for rail service.
- (4) DRHTA and ESRTF intend that the transfer of responsibility for the right-of-way of the Rail Line to be effective on the date the Board issues a replacement NITU.

Based on the foregoing, DRHTA and ESRTF request that the Board reopen the abandonment exemption, vacate the existing NITU and issue an appropriate replacement NITU to ESRTF as the new trail sponsor.

Please let us know if there are any questions regarding this filing.

By my signature below, I certify service by e-mail of a copy of this request on counsel for DRHTA and on CAC and on the other parties of record shown below.

Very truly yours,



Charles V. McPhillips

CVM/jnt
Enclosures
20328826.v2

cc: Thomas L. Bowden, Attorney for Dahlgren Railroad Heritage Trail Association, Inc.
Eric M. Hocky, Attorney for Canonic Atlantic Co.
Thomas J. Litwiler, Attorney for Delmarva Central Railroad Company
Roger Malik, New York, Philadelphia & Norfolk Railroad Resurrection, Ltd.
Champe Burnley, Virginia Bicycling Federation

EXHIBIT A

50067
DO

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.

CLARK HILL

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June 19, 2020

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VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
June 19, 2020
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Public Record

Re: Canonie Atlantic Co. – Abandonment Exemption –
Hallwood to Cape Charles, VA
STB Docket No. ~~FD-1266X~~ AB 1266X
Request for Extension of NITU - Updated

 GRANTED Office of Proceedings	DECISION ID NO.: 50319
	DECIDED DATE: 6/30/2020
	SERVED DATE: 7/1/2020
	APPROVED: <i>ain e dni</i> Director
	☒ Extended to 7/6/2021.

Dear Ms. Brown:

By decision served January 8, 2020 the Board modified its exemption of the abandonment of the Line to the extent necessary to allow Canonie Atlantic Co. ("CAC"), as the owner of the Line, and Dahlgren Railroad Heritage Association, Inc. ("DHRTA"), as the proposed trail sponsor, to negotiate interim trail use and rail banking. The negotiating period is set to expire on July 6, 2020, unless extended.

CAC and DHRT have not finalized their negotiations for interim trail use, and both parties desire to continue the negotiations. The parties jointly request that the Board extend the negotiating period for a one-year period until July 6, 2021, to allow the parties the necessary time to reach agreement.

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June 19, 2020
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June 19, 2020
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Cynthia T. Brown
June 19, 2020
Page 2

The filing fee of \$550.00 was paid using Pay.gov.

This request has been updated to indicate that all parties of record have been served with a copy of this request.

Thank you for your assistance. Please let me know if there are any questions regarding this request.

Respectfully,

CLARK HILL PLC

/s/ Eric M. Hocky

ERIC M. HOCKY

EMH:e

Cc (by email):

Thomas L. Bowden, Sr., Counsel for DHRTA (tom@timelesscounsel.com)

Thomas J. Litwiler (tlitwiler@fletcher-sippel.com)

Roger Malik (cc.nypn.rr@gmail.com)

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June 3, 2021
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Public Record

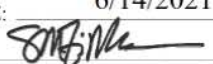
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June 3, 2021

BY E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

 GRANTED Office of Proceedings	DECISION ID NO.: 50815
	DECIDED DATE: 6/14/2021
	SERVED DATE: 6/14/2021
	APPROVED:  Acting Director
☒ Extended until July 6, 2022	

Re: Canonie Atlantic Co. - Abandonment Exemption -
Hallwood to Cape Charles, VA
STB Docket No. AB 1266X
Joint Request for Extension of NITU

Dear Ms. Brown:

By decision served January 8, 2020, the Board modified its exemption of the abandonment of the Line to the extent necessary to allow Canonie Atlantic Co. ("CAC"), as the owner of the Line, and Dahlgren Railroad Heritage Trail Association, Inc. ("DRHTA"), as the proposed trail sponsor, to negotiate interim trail use and rail banking. The negotiating period was extended until July 6, 2021, by decision of the Office of Proceedings served July 1, 2020.

CAC and DRHTA have not finalized their negotiations for interim trail use, and both parties desire to continue the negotiations. The parties jointly request that the Board extend the negotiating period for a one-year period until July 6, 2022, to allow the parties the necessary time to reach agreement.

The filing fee of \$550.00 was paid using Pay.gov.

I hereby certify that, as shown below, all parties of record have been served by email with a copy of this request.

FEE RECEIVED
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June 3, 2021
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Cynthia T. Brown
June 3, 2021
Page 2

Thank you for your assistance. Please let me know if there are any questions regarding this request.

Respectfully,

CLARK HILL PLC

/s/ Eric M. Hocky

Eric M. Hocky

Counsel for Canonie Atlantic Co.

EMH:e

cc (by email):

Thomas L. Bowden, Sr., Counsel for DRHTA (tom@timelesscounsel.com)

Thomas J. Litwiler (tlitwiler@fletcher-sippel.com)

Roger Malik (cc.nypn.rr@gmail.com)

EXHIBIT B

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

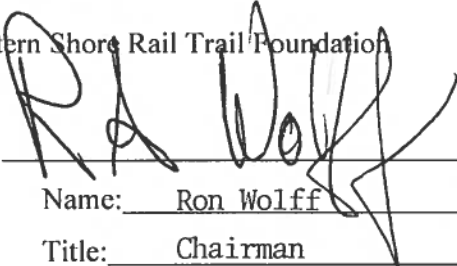
In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the Rail Line (as defined below) owned by Canonic Atlantic Co. ("CAC"), Eastern Shore Rail Trail Foundation ("ESRTF"), a Virginia non-stock corporation organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, is willing to assume full responsibility for: (1) managing the right-of-way, (2) 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 (3) the payment of any and all taxes that may be levied or assessed against the right of way.

The Rail Line extends between milepost 45.7 at Taylor Street in Hallwood, VA., and the end of the line at milepost 94.8 at Cape Charles, VA, a distance of 49.1 miles. The right-of-way is the line of railroad proposed for abandonment in Docket No. STB Docket No. AB 1266X.

A map of the property depicting the right-of-way is attached.

ESRTF acknowledges that use of the right-of-way is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being provided along with a joint notice of the substitution of trail sponsors, and served on CAC on the same date the joint notice is being served on the Board.

Eastern Shore Rail Trail Foundation

By: 
Name: Ron Wolff
Title: Chairman

Dated: March 1, 2022

