

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32609



CHESAPEAKE RAILROAD COMPANY – CERTIFICATE OF INTERIM TRAIL USE
AND TERMINATION OF MODIFIED RAIL CERTIFICATE

MOTION OF THE
MARYLAND TRANSIT ADMINISTRATION
FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF
TRAIL USE AGREEMENT

Communications with respect to this pleading
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Office of Proceedings

MAR 1 - 2013

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Public Record

 GRANTED Office of Proceedings	DECISION ID NO.: <u>42987</u>
	DECIDED DATE: <u>3/15/13</u>
	SERVICE DATE: <u>3/15/13</u>
	APPROVED: <u>Rachel Campbell</u> Director
	<input checked="" type="checkbox"/> <u>CIU extended to</u> <u>9/11/13</u>

Dated: March 1, 2013

FILED

MAR 1 - 2013

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

MAR 1 - 2013

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TRANSPORTATION BOARD

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**CHESAPEAKE RAILROAD COMPANY – CERTIFICATE OF INTERIM TRAIL USE
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**MOTION OF THE
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The Maryland Transit Administration (“MTA”), pursuant to 49 C.F.R. § 1104.7(b), hereby submits this Motion for a further extension of the time period afforded under 49 C.F.R. § 1152.29(c)(1) for negotiation of a trail use agreement in this proceeding. In a Decision served on September 19, 2011 (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Sept. 19, 2013)) (the “September 19, 2011, Decision”), this Board extended the time for MTA to negotiate a trail use agreement from August 23, 2011, until 60 days after the conclusion of the proceedings then pending before the United States Court of Appeals for the Fourth Circuit in Case No. 11-1412, as described below. Those proceedings concluded on January 14, 2013 and the current negotiating period will therefore end on March 15, 2013. MTA seeks a 180 day extension from March 15, 2013 until September 11, 2013, in order to finalize a trail use agreement with the Maryland Department of Transportation (“MDOT”).

The Board’s existing Certificate of Interim Trail Use (“CITU”) is based on MDOT’s previously filed statement of willingness to assume financial responsibility (“SWAFR”) (*see Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified*

Rail Certificate, Finance Docket No. 32609 (Filed Jun. 28, 2006), Exhibit 1). Negotiations with MDOT were placed on hold while MTA sought the approval of substitute SWAFRS first from the Board (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Feb. 24, 2011)) (the “February 24, 2011, Decision”) and then from the Fourth Circuit. Following the conclusion of the litigation, MTA was unable to secure acceptable SWAFRs from the proposed substitute sponsors and now seeks additional time to negotiate a final trail use agreement with MDOT based on the 2006 CITU. In an abundance of caution, MTA is submitting a current SWAFR from MDOT in support of this Motion to extend the CITU and the trail use negotiation period. MDOT’s renewed SWAFR is attached hereto as **Exhibit A**.

BACKGROUND

The Board issued a CITU in this proceeding to permit MTA to establish interim trail use on the Clayton-Easton Line, which extends from MP 00.0 in Clayton, DE, to MP 45.3 in Easton, MD, and on a segment in Maryland, the Denton Spur, from MP 00.0 in Queen Anne, MD, to MP 8.8 in Denton, MD. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Jan. 9, 2006).¹ On June 28, 2006, MTA submitted a SWAFR under 49 C.F.R. § 1152.29(a)(3) from MDOT (MTA – Supplemental Motion of the Maryland Transit Administration for Extension of Period for Negotiation of Trail Use Agreement, Exhibit 1, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Jun. 28, 2006)), and the Board accepted MDOT’s SWAFR in a Decision issued

¹ On July 5, 2007, the Board issued a Decision granting MTA’s request to remove an approximately 5.514 acre segment of spur track known as the “Easton Spur” from the CITU, and to partially vacate the CITU as to the Easton Spur. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date July 5, 2007).

on July 10, 2006 (*Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date July 10, 2006)).

Following issuance of the CITU, MTA continued to negotiate with MDOT and other prospective trail sponsors, and the Board granted several requests to extend the time to negotiate a trail use agreement. Prior to the end of the negotiating period that expired on September 27, 2008, MTA submitted a Notice of Consummation of Trail Use Agreements confirming that MTA had entered into trail use agreements with (a) Delaware Department of Natural Resources and Environmental Control (“DNREC”) for interim trail use on the Delaware portion of the line and (b) Maryland Department of Natural Resources (“MDNR”) for the remainder of the line, which is located entirely in Maryland. MTA – Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Sept. 26, 2008) (“Notice of Consummation”). MTA attached copies of the SWAFR provided by DNREC and the Lease Agreement between MTA and MDNR, which included MDNR’s SWAFR, to its Notice of Consummation. On May 22, 2009, MTA submitted a request to amend the Notice of Consummation in order to substitute a License Agreement between MTA and DNREC, which included DNREC’s SWAFR, for the SWAFR MTA had submitted as an attachment to the original Notice of Consummation. MTA – Request to Amend Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed May 22, 2009). The Board’s Acting Secretary then issued a Decision rejecting the SWAFRs of MDNR and DNREC as not fully complying with the requirements of 49 C.F.R. § 1152.29(a)(3). *Chesapeake*

Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate, Finance Docket No. 32609 (Service Date Aug. 21, 2009). MTA appealed this Decision to the full Board, and the Board issued the February 24, 2011, Decision denying MTA’s appeal. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Feb. 24, 2011).

In light of the February 24, 2011, Decision, MTA requested, and the Board granted, an extension of time through August 23, 2011, to continue to negotiate trail use agreements with prospective trail users. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609, slip op. at 3 (Service Date Apr. 22, 2011). Subsequently, on May 3, 2011, MTA filed a Petition for Review of the February 24, 2011, Decision in the United States Court of Appeals for the Fourth Circuit, Case No. 11-1412.

After briefing and oral argument, the Fourth Circuit issued its decision on November 21, 2012, affirming the Board’s decision to deny MTA’s Petition for Review. *Maryland Transit Administration v. Surface Transportation Board*, No. 11-1412 (4th Cir. Nov. 21, 2012). The Fourth Circuit’s Judgment was effective January 14, 2013. *Maryland Transit Administration v. Surface Transportation Board*, No. 11-1412 (4th Cir. Jan. 14, 2013)). Thus, the Board’s September 19, 2011, extension of the period for negotiating a trail use agreement expires on March 15, 2013, 60 days after the effective date of the Fourth’s Circuit’s Judgment.

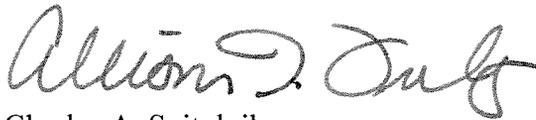
DISCUSSION

Pursuant to 49 C.F.R. § 1104.7(b), the Board has the authority to grant extensions of time to allow parties to complete negotiations with prospective trail users. There is no limit on the

duration of any such extension. As indicated above, MDOT previously provided a SWAFR in 2006, which the Board accepted as the basis of the existing CITU. Because the Board rejected the SWAFRs that MTA filed for MDNR and DNREC in substitution of the MDOT SWAFR, MTA respectfully submits that the proceedings have returned to the posture in which they stood before MTA proposed the substitute SWAFRs. However, in an abundance of caution, MTA is attaching a new SWAFR from MDOT in order to ensure continuation of the CITU and support MTA's request for an extension of the trail use negotiation period in order to resume previously truncated but now re-enlivened negotiations towards a final trail use agreement with MDOT.

WHEREFORE, and in view of the foregoing, MTA respectfully requests the Board to extend the time for negotiation of trail use in this matter until September 11, 2013, 180 days after the expiration of the current extension on March 15, 2013.

Respectfully submitted,



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Washington, DC 20036
(202) 955-5600

Counsel for the Maryland Transit Administration

Dated: March 1, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION OF THE MARYLAND TRANSIT ADMINISTRATION FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF TRAIL USE AGREEMENT, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

General Counsel
American Short Line and Regional Railroad Association
50 F Street, N.W., Suite 7020
Washington, DC 20001

Edward G. Banks, Jr.
Maryland Delaware Railroad
106 Railroad Avenue
Federalsburg, MD 21632-1499

Linda A. Janey
Maryland Office of Planning
301 West Preston Street
Baltimore, MD 21201-2365



Allison I. Fultz

Dated: March 1, 2013

EXHIBIT A

MDOT SWAFR

[attached hereto]

Statement of Willingness To Assume Financial Responsibility

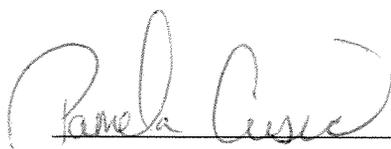
In order to establish interim trail use and rail banking under 16 U.S.C. §1247(d) and 49 CFR 1152.29, the Maryland Department of Transportation (“MDOT”) (Interim Trail User) is willing to assume full responsibility for management of, and to indemnify the Maryland Transit Administration (“MTA”) for any potential legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the MTA and formerly operated by the Maryland and Delaware Railroad. The property, known as Clayton-Easton line, extends from railroad milepost 00.0 at Clayton, DE, and milepost 45.3 at Easton, MD, and a connecting branch line between milepost 00.0 at Queen Anne, MD, and milepost 8.8 at Denton, MD a distance of 54.1 miles. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. 32609 and STB Docket No. 29830.

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

MDOT acknowledges that use of the right-of-way is subject to the user'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 served on the railroad(s) on the same date it is being served on the Board.

Submitted this 26 day of February, 2013

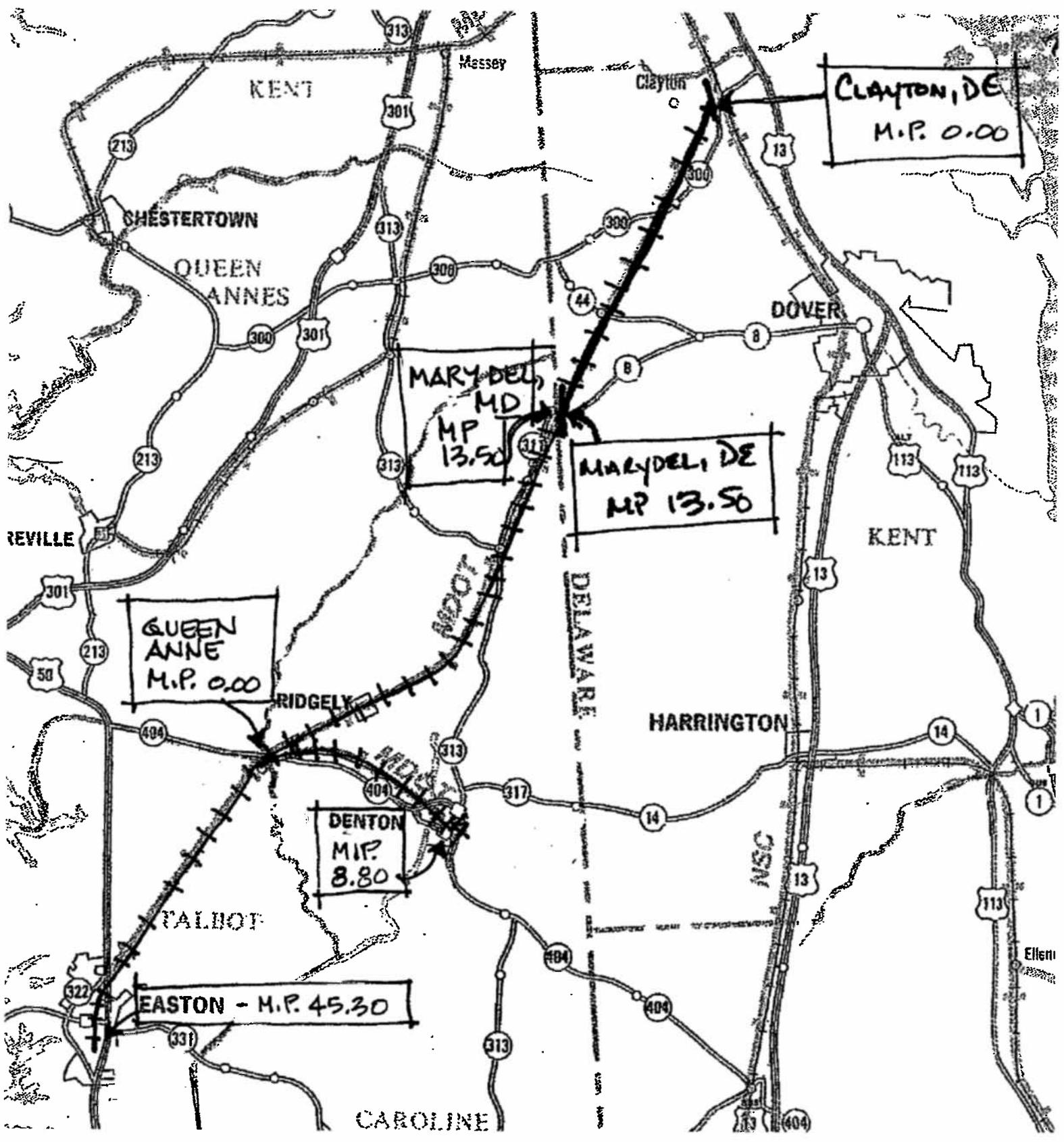
Witness:



Maryland Department of Transportation

By: 

Leif Dormsjo
Acting Deputy Secretary



CLAYTON, DE
M.P. 0.00

MARYDEL, MD
M.P. 13.50

MARYDEL, DE
M.P. 13.50

QUEEN ANNE
M.P. 0.00

DENTON
M.P. 8.80

EASTON - M.P. 45.30