

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 753X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION— 239960
IN HARLAN COUNTY, KY

VERIFIED NOTICE OF EXEMPTION



ENTERED
Office of Proceedings
January 29, 2016
Part of
Public Record

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500 Water Street
Jacksonville, FL 32202
(904) 359-1229

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(410) 296-2250
Lou@lgrailaw.com

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 29, 2016

FEE RECEIVED
JANUARY 29, 2016
SURFACE
TRANSPORTATION BOARD

FILED
JANUARY 29, 2016
SURFACE
TRANSPORTATION BOARD

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Docket No. AB-55 (Sub-No. 753X)

CSX TRANSPORTATION, INC.– DISCONTINUANCE OF SERVICE EXEMPTION–
IN HARLAN COUNTY, KY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 for CSXT to discontinue service over an approximately 1.6-mile rail line on its Southern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur from milepost 0MV 248.5 to milepost 0MV 250.1 in Harlan County, KY (the “Line”). No local rail traffic has moved over the Line during the past two years. Any overhead traffic on the Line can be and has been rerouted.

Based on information in the possession of CSXT, the Line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

1. Proposed consummation date. The proposed consummation date is March 21, 2016.
2. Certification required by 49 C.F.R. § 1152.50(b). *See* Exhibit A.
3. Information required by 49 C.F.R. § 1152.22(a)(1) through (4), (7), and (8), and (e)(4).

(a) General.

- (1) Exact name of applicant. CSX Transportation, Inc.



(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C.

Subtitle IV, Chapter 105. CSXT is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(3) Relief sought. CSXT seeks to use the class exemption at 49 C.F.R. § 1152.50 to discontinue service over an approximately 1.6-mile rail line on its Southern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur from milepost 0MV 248.5 to milepost 0MV 250.1 in Harlan County, KY. The Line includes the station of Creech (FSAC 43739/OPSL 20395) at milepost 0MV 250.

(4) Map. *See* Exhibit B.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent. Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (410) 296-2250, Lou@lgraillaw.com.

(8) List of all United States Postal Service ZIP Codes that the line proposed for discontinuance traverses. The Line traverses U.S. Postal ZIP Codes 40818.

(e) Rural and community impact.

(4) Statement of whether the properties proposed to be discontinued are appropriate for use for other public purposes, including roads and highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

CSXT is discontinuing service over the Line because no traffic has moved over the Line in more than two years. Once discontinuance of service is authorized, CSXT will close the five (5) road crossings. CSXT will leave the infrastructure in place to preserve the corridor in case the coal reserves become active. Since service on the Line is being discontinued and not abandoned and CSXT is retaining the Line for future reactivation if demand for rail service resumes, the Line is not available for public use purposes. *See, Central Illinois Railroad Company—Discontinuance of Service Exemption—in Cook County, Ill., Docket No. AB 1066 (Sub-No. 2X) slip op. at 3 (STB served November 16, 2010).*

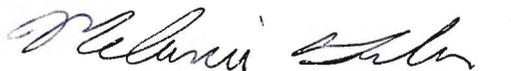
4. The level of labor protection. The interests of any railroad employees who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co. —Abandonment—Goshen*, 360 I.C.C. 91 (1979).

5. Certification. Certificates of compliance with the notice requirements of 49 C.F.R. §§ 1152.50(d)(1) and 1105.11 are attached as Exhibit C.

6. Environmental Report. CSXT is not salvaging the track and materials on the Line. Because the Line has not been used in several years, there will be no diversion of traffic from rail to truck. Therefore, CSXT does not have to prepare or file an Environmental Report. 49 C.F.R. §1105.6(c)(2).

7. Historic Report. CSXT is discontinuing service over the Line. It is not salvaging the track and materials on the Line. There will be no impact on historic properties. Therefore, CSXT does not have to prepare or file an Historic Report. 49 C.F.R. §1105.8(a).

Respectfully submitted,



Louis E. Gitomer, Esq.
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600 Baltimore Avenue, Suite 301
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Attorneys for: CSX TRANSPORTATION,
INC.

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

Dated: January 29, 2016

EXHIBIT A-VERIFICATION AND CERTIFICATION

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

I, Daniel Schwartz, state that I am Manager of Performance Analysis for CSX Transportation, Inc. ("CSXT"); that I am authorized to make this verification; and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information, and belief.

I hereby certify that no local freight traffic has moved over CSXT's 1.6 mile rail line on its Southern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division from Railroad Milepost 0MV 248.5 to 0MV 250.1 for two years prior to the date hereof. Since this is not a through line, no overhead traffic has operated; therefore, none needs to be rerouted over other lines. Further, no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period. The foregoing certification is made on behalf of CSXT by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

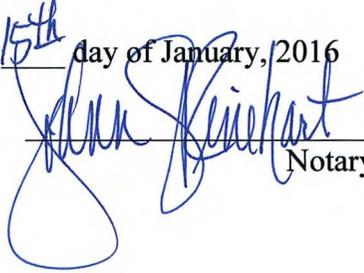


Daniel Schwartz

SUBSCRIBED AND SWORN TO before me this 15th day of January, 2016

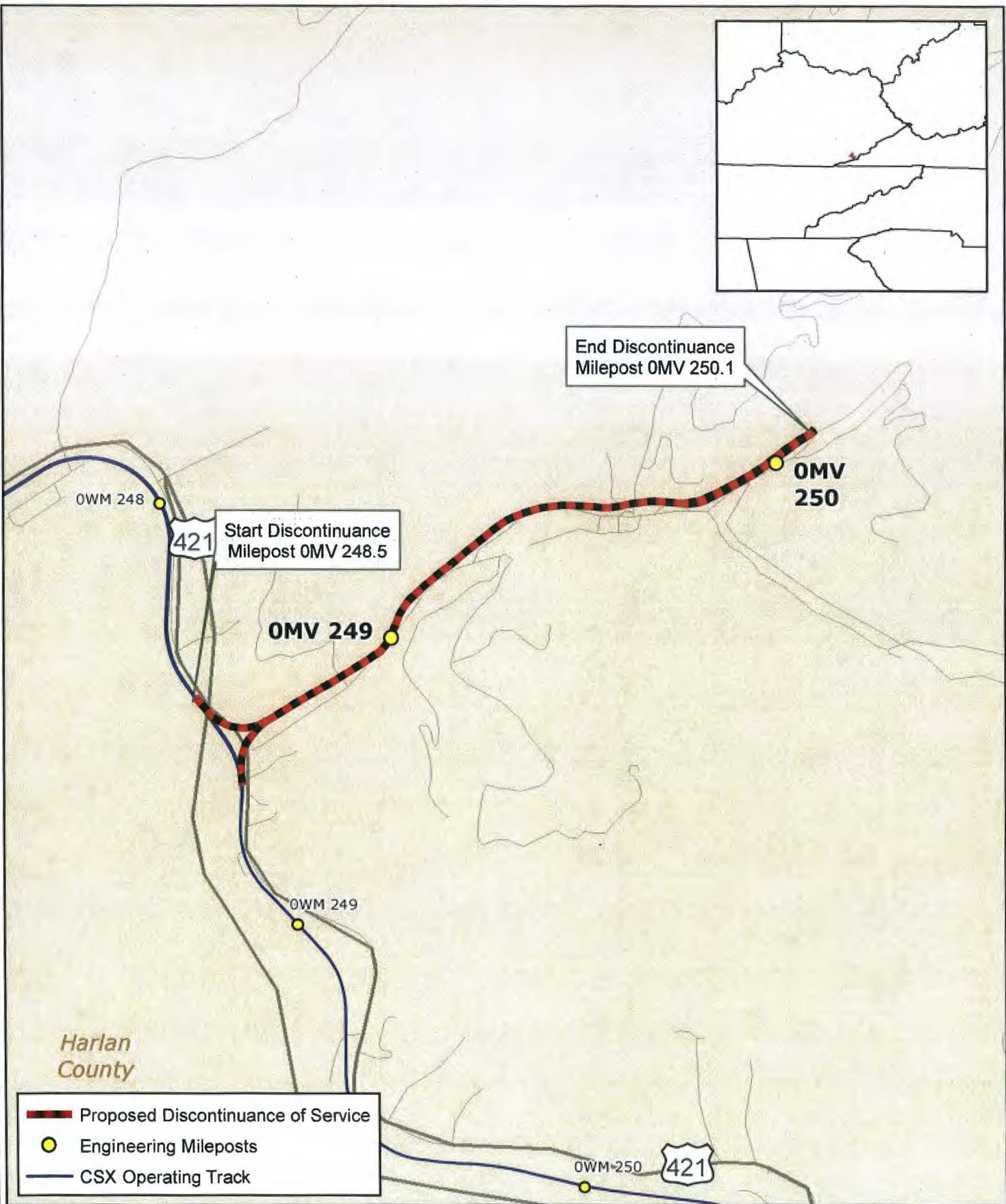
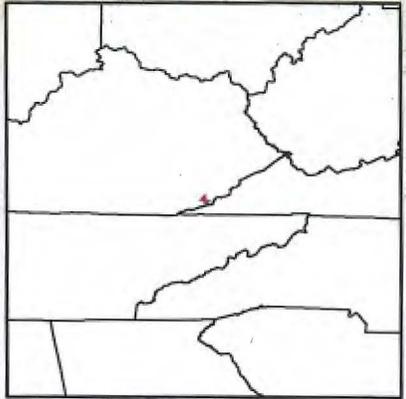
My Commission Expires 7/1/2019

 **JoAnn S. Rinehart**
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF246329
Expires 7/1/2019



Notary Public

EXHIBIT B-MAP



-  Proposed Discontinuance of Service
-  Engineering Mileposts
-  CSX Operating Track

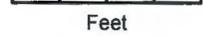


CSX Real Property, Inc.

CSX Transportation, Inc.
Proposed Discontinuance of Service
Harlan County, KY
Merna Spur

Milepost OMV 248.5 to OMV 250.1
Total Distance of approx. 1.6 Miles
Huntington Division - CV Subdivision
STB Docket No. AB 55 (Sub-No. 753X)

0 750 1,500



Feet



EXHIBIT C-CERTIFICATES OF SERVICE AND PUBLICATION

Pursuant to 49 C.F.R. § 1152.50 (d) (1), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-55 (Sub-No. 753X) was mailed via first class mail on January 19, 2016, to the following parties:

State Public Service Commission

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602-0615

Military Traffic Management Command

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

National Park Service

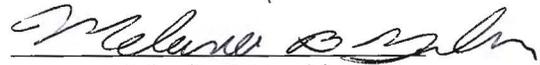
Mr. Rick Potts
Chief, Conservation and Outdoor Recreation Division
Rivers, Trails and Conservation Assistance Program National Park Service
1849 C Street, N.W. (Org Code 2220)
Washington, DC 20240

National Park Service

U.S. Department of Interior
National Park Service
Land Resources Division
1849 C Street, N.W.
Washington, DC 20240

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Avenue, S.W.
Washington, DC 20250-0003

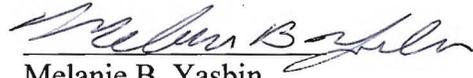


Melanie B. Yasbin

January 29, 2016

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-55 (Sub-No. 753X) in the following form was advertised on January 26, 2016 in The Harlan Daily Enterprise, a newspaper of general circulation in Harlan County, KY, as required by 49 C.F.R. § 1105.7(c) and .12.



Melanie B. Yasbin

January 29, 2016

Notice of Intent To Discontinue Service

CSX Transportation, Inc. (“CSXT”) gives notice that on or about January 29, 2016, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments permitting the discontinuance of service over an approximately 1.6-mile rail line known as the Merna Spur from milepost 0MV 248.5 to milepost 0MV 250.1, which traverses through United States Postal Service ZIP Code 40818, in Harlan County, KY. The proceeding will be docketed as No. AB-55 (Sub-No. 753X).

The Board’s Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the OEA, Surface Transportation Board, Washington, DC 20423 or by calling that office at (202) 245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board’s Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423–0001 [*See* 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant’s representative [*See* 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Copies of any comments or requests for conditions should be served on the applicant’s representative: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (410)296-2250, Lou@lgrailaw.com.

**EXHIBIT D- ENVIRONMENTAL REPORT
NONE REQUIRED**

**EXHIBIT E- HISTORIC REPORT
NONE REQUIRED**