

# Additional Sources of Information

*Getting Started: A Guide to Planning Trails in New York State.* Parks & Trails New York and the Hudson River Valley Greenway. 2004. [www.ptny.org](http://www.ptny.org).

NYS Department of Transportation. [www.nysdot.gov](http://www.nysdot.gov). Start by searching “trails” or clicking on the bicycle and pedestrian icons at the top of the home page.

*Rails with Trails: Case Studies from Across America.* American Trails. [www.americantrails.org/resources/railtrails/RWTcasestudies.html](http://www.americantrails.org/resources/railtrails/RWTcasestudies.html)

*Trail-building Toolbox.* Rails-to-Trails Conservancy. [www.railstotrails.org/whatwedo/trailbuilding/technicalassistance/toolbox/toolbox\\_index.html](http://www.railstotrails.org/whatwedo/trailbuilding/technicalassistance/toolbox/toolbox_index.html). Fact sheets on corridor research, types of corridors, railbanking and more.

American Short Line and Regional Railroad Association. [www.aslrra.org](http://www.aslrra.org). List of member railroads with links.

*Railroads of New York.* [www.railroadsofny.com/index.htm](http://www.railroadsofny.com/index.htm). List of member railroads with links.

*OVERVIEW: Abandonments and Alternatives to Abandonments,* Surface Transportation Board. [www.stb.dot.gov](http://www.stb.dot.gov). This site also has notices of abandonment filings and decisions and information on railbanking.

*Directory of Regional and County Planning Agencies and Metropolitan Planning Organizations in New York State.* NYS Department of State. <http://www.dos.state.ny.us/lists/rgcoplan.html>.

# Appendix A

## Requesting Support for Corridor Purchase

### Sample Letter to County Officials Requesting Support for Corridor Purchase

Dear \_\_\_\_\_:

As you know, it has been just about two years since any train traffic has moved over the New York Susquehanna & Western Railroad's line through the towns of Sherburne, North Norwich, Norwich, Oxford and Greene in Chenango County. As I understand it, once a line has been without service for two years, the owner can seek an exemption from the federal government for an expedited abandonment process. We know that repairs to the damage from flooding in 2006 have not been made. This raises the question, then, of whether the NYS&W may decide to abandon this line.

In my view, abandonment would present county residents with a great opportunity to utilize the rail bed as a multi-use trail for non-motorized transportation and recreation, linking communities along its route and providing a convenient way for people within communities to travel by bicycle or foot between residences, workplaces, shopping, schools, parks, and other destinations. With high fuel prices and concerns about the health impacts of physical inactivity and global climate change, using this corridor as a trail seems right for the times.

In addition, such multi-use trails elsewhere have become magnets for tourists interested in opportunities for bicycling. Already, thousands of people come to the state each year to enjoy the trail along the Erie Canal. The existence of a long distance trail between multiple communities, combined with the scenic and historic qualities of Chenango County, undoubtedly will attract new visitors to the region, thus boosting our economy.

Therefore, I am writing to urge that the county be alert for possible abandonment of this rail line and begin preparing to seek its acquisition, in collaboration with the state and local communities, for use as a trail if abandonment occurs.

Thank you.

# Appendix B

## Federal Surface Transportation Board

### Abandonment & Railbanking Procedures

From the late 1970s through the mid-1990s, against a background of railroad bankruptcies due to changing economic environments within which railroads operate, Congress approved legislation giving railroads more flexibility to adjust service and prices to enhance competitiveness. In 1995, through the ICC Termination Act, it established the Surface Transportation Board (STB) to replace the Interstate Commerce Commission and, among other tasks, handle rail corridor abandonments. The explicit goal was to make it easier for freight railroads to shed unprofitable rail lines so as to improve their competitiveness elsewhere within their service areas. The law established strict procedural requirements for abandonment applications, and the STB has adopted regulations to implement those requirements.

This appendix provides a more detailed summary of these procedures and associated timelines/deadlines to help trail advocates better understand the abandonment process. For a more complete discussion of STB requirements, visit the STB website ([www.stb.dot.gov](http://www.stb.dot.gov)) and read *OVERVIEW: Abandonments & Alternatives to Abandonments*.

Keep in mind, however, that New York State has its own abandonment procedures and, as noted earlier (see “Preparing for Abandonment & Railbanking,” p. 7), very often the most important communications and decisions occur before an abandonment filing with the STB takes place.

Federal law requires each railroad to maintain a system diagram map (or narrative description for Class III railroads) identifying (1) any line for which it expects to file an abandonment application within the next three years (called “category one” lines) and (2) any line that it considers a potential candidate for abandonment. By developing communications with a railroad, trail advocates may have access to this document and thus gain earlier knowledge about likely abandonments. Furthermore, a railroad must publish its system diagram map or narrative in a general circulation newspaper in

each county containing a category one line, and similarly publish any changes to the map.

STB regulations provide for more than one avenue for seeking corridor abandonment, and each has its own required steps. These regulations fall into two broad categories: (1) those that apply when the rail line in question is currently active or has carried traffic within the past two years, and (2) those that cover lines over which no traffic has moved in at least two years.

#### Abandonment steps for recently active corridors

When a railroad wishes to abandon a corridor that has been active within the last two years, it can follow one of two courses of action: submit an application for abandonment to the STB, or file a request for an individual exemption with the STB.

#### Application for abandonment

In an application to the STB for abandonment of a corridor, a railroad must show that all segments proposed for abandonment have been included on its published system diagram map for at least 60 days. If it does not do so, the STB will reject the application. Thus, all interested parties, including trail advocates, will have at least 60 days notice to consider alternatives to abandonment.

A railroad also must publish a “Notice of Intent” to abandon a line weekly for three consecutive weeks in a general circulation newspaper in each affected county, and must send this notice to all significant shippers on the line(s) and to the NYSDOT at least 15 days before filing its application.

An abandonment application usually contains extensive financial data intended to justify the request on economic grounds. In essence, the

*Keep in mind, however, that New York State has its own abandonment procedures.*

railroad must show that it is incurring a loss or economic burden from the line. (For the most part, this information is of little importance to trail advocates.)

When an application for abandonment is filed with the STB, it is given a docket number and a notice is posted on the STB website (see above) under “Filings” on the “E-Library” tab. Docket numbers related to abandonment begin with “AB.” Notices can be viewed in order by date or docket number. Typically, five to fifteen notices of all kinds are posted daily.

Once an application is filed, parties who wish to oppose abandonment – usually shippers or communities that would be affected – have 45 days to submit protests. In addition, other companies can submit “Offers of Financial Assistance” (OFA) to purchase all or parts of the corridor or subsidize continued operation, which the STB then evaluates. The STB may then authorize negotiations for purchase or subsidy.

Of more interest to trail advocates, however, is that federal law and STB regulations also provide an opportunity at this point in the process for negotiating voluntary agreements to use for recreational or other public uses, such as commuter lines, roads or trails, railroad corridors that otherwise would be abandoned and sold. The purpose of this provision is to create an alternative to abandonment – known as “railbanking” – to keep corridors intact for possible future railroad use while allowing an interim use such as a trail. We will discuss the specific required steps for railbanking later. For now, it is important to note that any OFA and successful negotiation to subsidize or purchase a corridor to keep it in service as a rail line will take precedence in STB procedures. Possible use as a trail is considered only if there is no OFA.

### **Request for individual exemption**

When it set up the STB, Congress’ goal was to make it easier for railroads to abandon unprofitable lines. Consequently, it provided for exemptions to the regular application process described above, and these exemptions are liberally used (see also the class exemption for inactive corridors described below). In fact,

the STB is required to approve exemption requests unless it determines that closer scrutiny through the regular application process is necessary to support national transportation policy or to protect shippers.

When requesting an individual exemption, a railroad tries to persuade the STB that maintaining a particular corridor places an economic burden on it and that the impact of abandonment on shippers will be minimal. The data included usually are less extensive than for an application for abandonment. More important, there is no requirement to publish a system diagram map or Notice of Intent. The only advance notification required is to file an environmental report with the NYS Department of Environmental Conservation (DEC).

Once it receives a request for exemption, the STB must publish a notice of the proposed exemption in the Federal Register within 20 days. Parties who wish to oppose an exemption must file a petition to stay the decision with the STB within 20 days after the Federal Register notice. In such cases, the burden is on the petitioner to show why a stay is warranted. Again, there is an opportunity for other companies to make OFAs. The specifics of all of this are of minor interest to trail advocates except as they relate to railbanking, a topic to which we will return below.

### **Abandonment steps for corridors inactive for at least two years**

The STB has established a class exemption for rail corridors that have been out of service for two years or more. When that is the case, a railroad can submit a request for a class exemption to the STB. In such a request, the railroad must certify that the corridor meets the two-year requirement and that no formal complaint about lack of service has been filed. No published Notice of Intent or system diagram map is required, but the railroad must notify the NYS Public Service Commission at least ten days prior to filing the exemption request with the STB, and must also file an environmental report with DEC as described above.

Currently, a request for a class exemption probably is the most frequent type of abandonment filing with the STB, and therefore it is of greatest interest to trail advocates.

As with the individual exemption, the STB must publish a

notice of the proposed exemption in the Federal Register within 20 days of receiving the request. The exemption becomes effective, and the railroad may abandon the corridor, 30 days after the Federal Register notice unless the STB stays the exemption. Stay requests and OFAs must be filed within that time (exact deadlines depend on the basis for the request). Petitions to reject the exemption must be filed with 20 days of the Federal Register notice,

but the STB typically will reject a class exemption only in extraordinary cases (e.g., evidence that the line has not actually been inactive for two years).

As with the previously-described

types of abandonment filings, the STB procedures provide an opportunity for trail advocates and others to propose alternatives to abandonment (railbanking).

*Railbanking may be especially useful when deeds or easements contain reversion clauses that could result in fragmented ownership of an abandoned corridor.*

## Alternatives to abandonment and railbanking

Federal law and STB regulations allow interested parties (called “public use proponents”) to seek voluntary agreements with railroads to use corridors for other public uses, including recreation, as an alternative to abandonment in order to preserve the corridors intact. This approach to preserving corridors is known as railbanking. Railbanking may be especially useful when deeds or easements contain reversion clauses that could result in fragmented ownership of an abandoned corridor, making future railroad or public use much more difficult.

There are two steps available to parties seeking alternative uses of railroad corridors proposed for abandonment: a Public Use Condition (PUC) request and an Interim Trail Use (ITU) request. The rules for filing each of these are different, each has different benefits, and they are not necessarily mutually exclusive.

In practice, trail advocates often file both simultaneously to obtain the advantages of both. (Table A1 summarizes the deadlines for filing each; Table A2 summarizes selected characteristics of PUCs and ITU requests; Appendix C is a sample combined PUC/ITU request.) In addition, fil-

**TABLE A1**

**Deadlines for Public Use Condition (PUC) and Interim Trail Use (ITU) Requests**

(from Federal Register notice unless otherwise indicated)

FILING TYPE	DEADLINE	
	PUC	ITU
Application for abandonment	45 days from filing	45 days from filing
Individual exemption request	20 days	20 days
Class exemption request	20 days	10 days

**TABLE A2**

**Selected Characteristics of Public Use Condition (PUC) and Interim Trail Use (ITU) Requests**

ITEM	PUC	ITU
Who can request	Proponent (state/local gov't agency, trail group)	Proponent (state/local gov't agency, trail group)
Railroad consent needed	No	Yes
Length	up to 180 days	up to 180 days
Extension possible	No	Yes
Filing fee*	Yes**	Yes**

\* When filing PUC and ITU requests simultaneously, only one fee is paid.

\*\* Government agencies are exempt and 501(c)(3) organizations can request a fee waiver (see Appendix D).

ing both requests at once allows trail advocates to pay a single filing fee rather than two separate fees. (In 2008, the filing fee was \$200.) Government agencies are exempt from paying filing fees, and 501(c)(3) not-for-profit organizations can request waiver of the filing fee at the time of payment. If the waiver is granted by the STB, the fee is then returned to the filer. (See *Appendix D* for a sample filing fee waiver request.)

### Public Use Condition request

By law, when the STB approves an application for abandonment or request for exemption, it must consider whether the corridor is suitable for an alternative public use, including recreation (trail). If the STB determines that it is suitable, it can then impose a Public Use Condition (PUC), which prohibits the railroad from disposing of the corridor for up to 180 days. However, the STB will impose a PUC only if a proponent (local or state agency, trail organization, etc.) requests that it do so. A PUC request must contain the following information (see *Appendix C*):

- ▶ statement of the condition desired.
- ▶ explanation of the public value of the condition.
- ▶ desired time period for the condition (almost always this is the 180-day maximum allowed) and justification for it.
- ▶ “Certificate of Service” showing that a copy of the request has been delivered to the railroad.

If a PUC request is being submitted in connection with an application for abandonment, the public use proponent must file it with the STB within 45 days of that application filing. Because the STB has 20 days to publish a notice in the Federal Register, this deadline may be just 25 days from that publication. If the PUC request relates to an exemption request (individual or class), however, the proponent must file it within 20 days after the Federal Register notice appears.

If the STB imposes a PUC, which it usually will if no OFA is forthcoming, the proponent(s) and the railroad have the 180-day period to negotiate an agreement for sale/purchase, donation, and/or railbanking of the corridor. The STB cannot extend the length of a PUC.

### Interim Trail Use request

An Interim Trail Use request (also called a Trail Use Condition request) is similar to a PUC request, but more specif-

ic in terms of the public use sought. It has some different requirements, however, and shorter timelines for filing.

An ITU request must contain (see *Appendix C*):

- ▶ a map identifying the corridor proposed for trail use, including mileposts
- ▶ a statement of willingness to accept financial responsibility for managing the trail and any property taxes and to accept liability arising from the use of the corridor as a trail
- ▶ an acknowledgement that trail use is subject to continuing to meet the above obligations as well as the possibility of future reactivation of rail service within that corridor
- ▶ a Certificate of Service as described above for a PUC request

The statement of willingness to accept financial responsibility does not obligate or commit the proponent to any course of action; it is just an indication of willingness if an acceptable agreement is reached. In contrast to a PUC request, the STB will grant a Trail Use Condition only if the railroad consents to its doing so. This is one reason that proponents often file PUC and ITU requests simultaneously. If the railroad consents, the STB then will impose a Trail Use Condition prohibiting the railroad from disposing of the corridor for 180 days while the parties negotiate an agreement for sale, donation and/or railbanking of the corridor. The STB can extend this condition beyond 180 days if agreement seems possible.

*It is important that trail advocates be aware of potential abandonments before STB filings occur.*

If the ITU request is in response to an abandonment application or a request for an individual exemption, the same deadline applies as for a PUC (45 days after the application is filed; 20 days after notice in the Federal Register for an exemption). If, as is more likely, the ITU request relates to a request for a class exemption, it

must be filed within 10 days of the Federal Register notice. If a proponent is filing a combined PUC/ITU request, it must meet the more stringent deadline. In either case, the railroad then has 15 days to notify the STB whether it consents to negotiating with the proponent. Note: If more than one proponent files a request, the railroad can choose the one (if any) with which it will negotiate. It is more likely to select a government agency (local or state) in such cases.

Because a high percentage of abandonment filings are requests for class exemptions, and in view of the additional requirements for an ITU request (e.g., a map of the

corridor), it is important, as emphasized previously, that trail advocates be aware of potential abandonments before STB filings occur. Fortunately, in NYS there are additional required steps that allow proactive trail advocates to learn about approaching abandonments and to prepare responses.

### **Public use condition vs. interim trail use requests**

Each of these approaches to seeking preservation of a railroad corridor has its advantages, and for that reason trail advocates often file both simultaneously. The advantage of a PUC request is that the STB can impose the condition without the consent of the railroad. The advantage of an ITU request is that the STB does not consider imposing the 180-day trail use condition until after it has decided to permit abandonment. By that time it will be clear whether there

*Railbanking can assure that the corridor remains intact and protect the acquiring agency/organization from the costs of resolving ownership questions.*

are any OFAs from other companies that could keep the railroad operating. If not, the railroad may be more motivated to negotiate with trail advocates, especially if that means dealing with one purchaser rather than several. In addition, at that time (assuming the railroad consents to such a condition), the trail proponent will be the only party with which the railroad is negotiating. During a PUC, there may be several interested parties. A combined PUC/ITU request thus effectively allows two opportunities for trail use of a corridor to be considered.

### **To railbank or not**

While the STB's PUC and ITU procedures are built around the goal of preserving railroad corridors intact for future use through railbanking, participation in those procedures does not commit or limit trail advocates to seeking a railbanked corridor as the only possible outcome. In fact, there is good reason to consider alternatives.

By definition, and under the federal law that established the railbanking option, a railbanked corridor is being preserved specifically for possible future use as a railroad if changes in economic, technological or other factors permit. That is why the word "interim" appears in the term "interim trail use." Thus, a trail on a railbanked corridor may be lost (with compensation, usually fair market value of the property and any improvements) in the future if a railroad becomes economically viable again. This already

has happened, and communities and trail users must recognize the possibility.

If a railroad is willing to sell a corridor and can assure clear title to the land, and if a mutually acceptable price is agreed upon and funding is available, acquisition in fee simple without railbanking offers assurance that a trail will remain as long as the new owner wishes. Often, this may be the preferred way to proceed. If an agreement is reached with the railroad, the STB does not review that agreement.

Railbanking may make sense in some situations, most importantly when the railroad does not have clear title to the land. If the railroad agrees to railbanking, it can legally transfer all forms of ownership, including easements, to the trail managing agency/organization, thus protecting against loss of any sections subject to reversion clauses or where documentation of how the railroad originally acquired the property (e.g., a deed) is lacking. Thus, railbanking can assure that the corridor remains intact and protect the acquiring agency/organization and the railroad from the costs of resolving ownership questions, including possible litigation. The railroad is allowed to remove all equipment of value except for bridges, tunnels and culverts, and it retains the right to reestablish rail service at any time (with appropriate compensation to the current owner).

*Acquisition in fee simple without railbanking offers assurance that a trail will remain as long as the new owner wishes.*

Combined with the opportunity for a quick sale and lower transaction costs from transferring the entire corridor to a single buyer, these considerations may result in a lower price for the purchasing agency/organization.

An understanding of the potential benefits and drawbacks of railbanking is important to trail advocates in New York State because there is no comparable provision in state law. It can only be pursued through the STB proceedings.

*The railbanked corridor is being preserved specifically for possible future use as a railroad if changes in economic, technological or other factors permit.*

# Appendix C

## Sample Combined Public Use Condition and Interim Trail Use Request

Mr. Vernon A Williams. Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

RE: Norfolk Southern Rail Road - Abandonment Exemption - Wyoming and Genesee Counties, NY, Docket No. AB-290 (Sub-No. 271-X)

Dear Mr. Williams:

This request is filed on behalf of the New York State Office of Parks, Recreation and Historic Preservation (Proponent) which is a government agency interested in natural resources, recreation, historic preservation and the conservation of open space. While not taking a position on the merits of this abandonment, Proponent requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment of the rail line known as the Groveland Industrial Track extending 4.5 miles between milepost UG 360 20 in the Village of Alexander, Town of Alexander, Genesee County, and milepost 364 70 in the Village of Attica, Town of Attica, Wyoming County, New York.

A. Request for public use condition - Proponent requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

- ▶ An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. The justification for this condition is that the rail corridor in question would make an excellent recreational trail and conversion of the property to trail use is in accordance with a regional trail plan prepared by the Genesee Transportation Council and consistent with the policies within the State-wide Comprehensive Outdoor Recreation Plan (SCORP). The Genesee Transportation Council is responsible for transportation planning in a nine county area that includes Genesee and Wyoming Counties. OPRHP is aware that snowmobile clubs that maintain portions of trail that are located on formally abandoned rail corridors at either end of this proposed abandonment and Parks and Trails New York also support use of this corridor as a trail. The time period sought is 180 days from the effective date of abandonment authorization. Proponent requires this much time to fully evaluate the rail corridor and to commence negotiations with the carrier.
- ▶ An order banning removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of abandonment authorization for the same reasons as listed above.

B. Request for interim trail use - The railroad right-of-way in this proceeding is suitable for rail banking. In addition to the public use conditions sought above, Proponent also makes the Statement of Willingness shown to the right.

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 USC §1247 (d), and 49 CFR §1152.29, the New York State Office of Parks, Recreation and Historic Preservation is willing, to the extent permitted by law, to assume full responsibility for management of, for any 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 and operated by Norfolk Southern Railway Company. The property known as the Groveland Industrial Track extends for a distance of approximately 4.5 miles between milepost UG 360 20 in the Village of Alexander, Town of Alexander, Genesee County and milepost UG 364 70 in the Village of Attica, Town of Attica, Wyoming County, New York. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No AB-290 (Sub No 271-X). A map depicting the right-of-way is attached.

The NYS Office of Parks, Recreation and Historic Preservation 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.

By my signature below, I certify service upon Norfolk Southern Railway Company, <person's name>, Senior General Attorney, Three Commercial Place, Norfolk, Virginia 23510, by U.S. Mail, postage prepaid, first class, on January 3, 2008.

Respectfully submitted,

# Appendix D

## Requesting Waiver of PUC/ITU Filing Fee

### Sample Letter to STB Requesting Waiver of PUC/ITU Filing Fee

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: Finger Lakes Railway Corp.-Abandonment-Yates County, New York STB Docket Number AB-1005-0-X

Dear Mr. Williams:

[Parks & Trails New York] requests a waiver of the \$200 filing fee that we submitted June 4, 2007, with our Interim Trail Use and Public Use Condition requests for the Finger Lakes Railway Corp. Corridor between mileposts Milepost 41.35 and Milepost 46.3 in Yates County, New York. [Parks & Trails New York] is a private, non-profit organization working with communities throughout New York State to preserve former rail corridors for public recreational trail use.

Respectfully submitted,  
[name]

(send with Interim Trail Use request and fee payment; fee will be returned if waiver is granted)

## About Parks & Trails New York

Parks & Trails New York is the only organization working to expand, protect and promote a network of parks, trails and open space throughout New York State for all to enjoy. Since its founding in 1985, Parks & Trails New York has grown from a small group of advocates to over 5,000 members and supporters from every region of the state. The work of Parks & Trails New York includes advocacy, outreach, technical assistance to communities, and bicycle tours such as Cycling the Erie Canal. Published resources, most of which are available at [www.ptny.org/publications](http://www.ptny.org/publications), include:



- ▶ *GreenSpace*, a regular newsletter for members, supporters and friends
- ▶ *Parks & Trails E-News*, a FREE bi-monthly electronic newsletter of information about parks and trails; sign up at [www.ptny.org/e-news](http://www.ptny.org/e-news)
- ▶ *Getting Started: A Guide to Planning Trails in New York State*
- ▶ *Getting Involved: A Community Trail Handbook for Landowners*
- ▶ *Greenways & Trails: Bringing Economic Benefits to New York*
- ▶ *Cycling the Erie Canal*, a guide to the Erie Canalway Trail
- ▶ *Ten Terrific Rail & Canal Trails*

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