

Appendix I – **Rail Trail White Papers**

Railroad Corridor Abandonment in New York State

The following generally describes railroad abandonments within New York State. With few exceptions all rail lines and the freight service they provide come under the jurisdiction of the Federal Surface Transportation Board (STB) and / or under the jurisdiction of the New York State Department of Transportation (NYSDOT). A detailed explanation of the STB process is contained in the publication “Overview: Abandonments and Alternatives to Abandonments” published by the STB’s Office of Public Services and dated April, 1997 (online at www.stb.dot.gov/stb/public/resources_railtrails.html).

Abandonment

A rail operator may apply to the STB for permission to discontinue freight service on a line. This is what is referred to as “abandonment.” Abandonment may or may not involve the sale of the corridor. The STB process is primarily in place to protect customers of the railroad from unfair practices. Abandonment cases are posted on the STB web site (www.stb.dot.gov/). For rail lines, the railroad publishes in their “system diagram map” any line for which it expects to file an abandonment application within three years and any line it considers to be a candidate for abandonment. The STB will not accept an application for abandonment unless it has been shown publicly on a map for at least 60 days. For an active rail line the railroad must publish (with a copy to NYSDOT) a notice of intent to abandon the line once a week for at least three consecutive weeks and provide notice at its stations and to its rail customers. The notice of intent must be completed 15-30 days prior to application. For a line on which no service (inactive) has been provided over the past two years and where no rail customers object, prior notice is not required and the carrier is exempt from many of the STB abandonment requirements (only required to provide 10 days notice to state.) These exempt applications are common. There are many inactive lines which are not yet abandoned. Until the railroad goes through the abandonment process it may not dispose of the rail line.

The STB gathers information and testimony on whether to allow the discontinuation of service. Another railroad could assume the operation of the line or a customer could offer financial assistance to keep the line in place. As a result of the process it can deny an application; allow the abandonment; and / or impose conditions upon the abandonment, the most notable of which is a certificate of “Interim Trail Use” or “Public Use.”

Rail Banking

“Interim Trail Use” or “Trail Use Conditions” is synonymous with “Rail Banking.” In 1983, Congress passed the National Trails Act which among its provisions allowed for the banking of the railroad right of way (ROW), including easements, through the interim use of the railroad corridor as a trail. Many railroads were established through the taking of an easement for rail purposes. With a non rail banked corridor this easement could be extinguished when the railroad no longer uses the corridor for rail purposes. Interim trail use makes the presumption that at some point in the future the railroad ROW will be needed once again for rail purposes. Trail use is “interim” to future railroad use.

The trail use request must include:

New York Statewide Trails Plan: Appendix I

- a map which clearly identifies the rail corridor (including mileposts) which is proposed for trail use,
- a statement of willingness to accept financial responsibility which indicates the proponent's willingness to manage the trail, pay property taxes on the trail and accept responsibility for any liability arising from the use of the rail corridor as a trail,

NYS OPRHP Page 1

- an acknowledgment that trail use is subject to the user's continuing to meet the above obligations, and the possibility of future reactivation of rail service on the corridor, and
- a "Certificate of Service" indicating that a copy of the trails use request has been served on the carrier seeking abandonment at its address of record.

The STB web site includes a copy of a sample letter requesting trail use. If the railroad agrees to participate, the STB will give the parties 180 days to come to terms. The railroad must *voluntarily* agree to participate. The STB will extend the time period to come to an agreement, if necessary.

Public Use

Requesting "public use" is somewhat different in process and function. When the STB approves or exempts an abandonment, it must determine whether the rail line is suitable for alternative public use, such as highways, other forms of mass transit, conservation, energy production or transmission, or recreation. The STB will only impose a public use condition when it has received a request to do so.

The public use request must:

- state the condition sought,
- explain the public importance of the condition,
- state the period of time for the condition (which cannot exceed 180 days) and provide justification for the requested period of time, and
- include a "Certificate of Service" indicating that a copy of the public use request has been served on the carrier seeking abandonment at its address of record.

A sample "Public Use" request letter is located on the STB web site. If a request is received in a timely fashion, the STB may prohibit the railroad from selling or otherwise disposing of the rail corridor for up to 180 days after the effective date of the decision or notice authorizing abandonment. During the 180 day period, interested persons may negotiate with the railroad to acquire the property for public use. This 180 day period is not extendable but at the same time it may be *involuntary* for the railroad. A public use acquisition does not ensure the integrity of the corridor being acquired; it also does not imply that it will ever be returned to railroad purposes. While the 180 days is provided as an opportunity to come to terms and acquire the corridor for public use, the railroad does not have to sell the property for public use.

It is not uncommon for an interested party to request both public use and interim trail use. These requests must be filed within 25 days of the notice in the Federal Register or 20 days for exempt abandonments. In either case it is a very short time frame. It is important to understand that the STB will accept an interim trail use agreement as long as trail use is agreed to by the parties and the matter has remained within the STB jurisdiction.

State Law

If the Federal Surface Transportation Board allows for the abandonment, the Railroad can then choose to sell off the corridor. Section 18 of the State Transportation Law (Chapter 827, 1971) provides that any sale of railroad property is subject to the State Department of Transportation's (DOT) jurisdiction. Section 18 provides for "preferential rights" in relation to the acquisition of a

New York Statewide Trails Plan: Appendix I

corridor by the state, local government or a utility. As such, the State DOT, or another state agency or local government, has the preferred right to acquire the corridor under terms acceptable to the railroad. DOT informs “all interested state agencies, transportation authorities and every county, city, town and village in which such property is located...” of the potential sale. The law provides 180 days for the parties to come to terms. The railroad is prohibited from disposing of their property during that period. NYS Office of Parks, Recreation and Historic Preservation holds several railroad corridors which were acquired through this process.

A practical guide to converting rails to trails.

At one time in New York's history over 12,000 miles of railroad connected communities throughout the state with each other. These rail lines were the life blood of many areas providing access to national markets and suppliers. With the expansion of the Federal Interstate system and increasing reliance on trucking, many rail lines lost their economic viability and were no longer operated. Over the past several decades many of these rail lines have been abandoned; a process that continues to this day.

An inventory conducted by the Office of Parks Recreation and Historic Preservation, suggests that over 5,500 miles of historic rail corridor are no longer used for rail road purposes. Portions of this rail corridor have been reclaimed by adjoining property owners, while others remain in the ownership of a railroad or a utility. While the loss of a particular rail line usually means economic loss to a community, it also provides an opportunity to develop a new community asset, a multi use trail.

This guide is intended to assist municipal officials and citizens in navigating the various issues which need to be weighed when considering developing a trail from an abandoned railroad in your community.

What is the value of converting a rail to trail for the community?

Throughout New York State nearly 1,500 miles of rail and historic corridors have been converted to multi use trail. These trails are found in urban, suburban and rural communities, many times connecting one community to the other. These trails are an attractive amenity to both residents and tourists alike. A survey of new homeowners conducted by the National Realtors Associations found that 36% of respondents saw the availability of walking/jogging / biking trails as seriously influencing their choice of where to buy a home. Various studies of the economic contribution of trails place per visit trail spending at between \$3 and \$30 dollars. The wide variability in spending is an indicator of who was using the trail; tourists or residents. Underlining their economic contribution, a few trails in New York are owned and operated by organizations typically associated with economic development rather than recreation.

What environmental benefits may come from converting a rail to trail?

With rising fuel prices and concern for global warming, trails offer an off highway alternative to traditional motor vehicle travel. In many communities the trail is used for a walk or bicycle commute to work, as well as for the run down to the local convenience store. Constructing a trail on a former rail bed tends to require a minimum of ground disturbance and minimal impacts to adjoining lands whether they are private land and/or sensitive habitat.

How do I know if a rail bed is available for a trail?

Many rail corridors have long ago been given up by the railroad. The best place to start is to check local tax records and see who is listed as the property owner. If the railroad is still the owner you may want to approach them regarding what their plans are for the corridor. They may be holding on to the corridor for a future use or they may have a desire to sell the corridor in a single transaction. In some areas of the state trail operators have purchased the old rail road bed from private landowners and in some areas they have been fortunate to have the landowner provide permission to use the bed without buying it. It never hurts to ask.

I read a notice in the local paper that the railroad has applied to the Surface Transportation Board for permission to abandon a rail line. What does that mean?

By and large every railroad which carries freight is regulated by the Surface Transportation Board, a unit within the Federal Department of Transportation. Railroads must receive the permission of the STB to abandon rail service along a line. The process is very detailed and is designed to ensure public notice and to protect railroad customers and the railroad from unwarranted financial losses. If you see an abandonment notice in the paper or hear that a railroad was considering abandoning a line, you should visit www.stb.dot.gov and carefully review the information that is on the site. All of the official documents regarding abandonment are posted on the web site including information for citizen participation.

I have heard that when converting a rail line to a trail, rail banking can be important. What is rail banking? When many rail lines were originally established, portions of the rail corridor were taken in the form of an easement. There is an implication that when the line ceases to be used for rail purposes the corridor reverts to the land from which it was taken. In 1983 Congress saw the value of these rail corridors for public uses and the stark reality that these corridors were national assets, which if broken up could never be reclaimed. Congress established, as a matter of federal law, that any rail corridor could be ensured by providing for the use of the corridor as a trail until the corridor is reactivated for rail use in the future. The rail rights are “banked” (held secure) while “interim trail use” is provided. If a property owner feels that they are damaged by the interim trail use, they can bring an action for compensation in federal court. If the case is decided in the adjoining land owner’s favor, the federal government pays compensation to the damaged party, not the trail operator or owner. Rail banking ensures that the corridor stays intact but it also ensures that if needed for rail purposes it will be available. If you are interested in rail banking you should spend time reviewing the information offered by the Rails to Trails Conservancy at www.railtrails.org.

Who can own a trail?

Almost anyone can have control of a trail. In New York State, there are examples of trails owned by the State, counties, cities, towns, villages, local and state public benefit corporations and not for profit organizations. In fact some trails are located on old rail bed that has returned to private landowners who have given permission for the use of the trail on their land.

Are there grants available to acquire and develop Rails to Trails projects?

There are many different sources of funding to support the acquisition and development of rail lines for use as trails. By far the largest source of funding is Federal Transportation funds. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the successor to the Federal Transportation Equity Act for the 21st Century (TEA-21) and the Intermodal Transportation Efficiency Act (ISTEA), has provided significant Surface Transportation Funds and Transportation Enhancement funds. These funds can support 80% of the cost of the acquisition and development of trails from former rail corridors. Information on this program is available by visiting <https://www.nysdot.gov/programs/tep>. State Parks administers other federal funds called Recreational Trail Grants. These grants also offer to pay up to 80% of the cost of acquisition and development of a trail. They can also support the acquisition of trail maintenance equipment. From in state sources, State Parks administers Environmental Protection Fund grants that pay for 50% of the cost of the acquisition of park and recreational facilities. Information on grants from State Parks can be accessed by visiting www.nysparks.com.

How much will it cost to acquire and develop our trail?

Land values vary greatly in New York. Generally government grants will not allow you to pay any more for the land than what a certified appraisal establishes as the fair market value. Many corridors have been acquired for far below market value. There are even examples in New York where a private owner allows a trail to be established on a rail bed which is on his land, without compensation. If you are acquiring from a railroad, some organizations suggest that you should be only paying for fee title and very little, if anything, for a corridor which is only an easement. The Rails to Trails Conservancy provides information on its web site on how to calculate the value of a corridor and some suggestions of how to negotiate for the best deal.

The cost of developing the trail varies widely depending on the types of trail use you want to encourage. Some trail operators have chosen to do few improvements to the trail after the rail is removed. (Most rail is removed by the railroad to be recycled on other sections of operating track.) These groups merely ensure that the brush is cleared from the trail and that the rail bed is secure. Other trail operators have decided to pave the trail so that it can support numerous types of recreation from walking to roller skating. Several trails have a mix of materials to support different activities in different areas. This choice is usually driven by available funding and public comment. You should plan on a few thousand dollars per mile for an unimproved surface to at least \$1 million a mile for asphalt. The good news is that once the corridor is secure, you can develop your trail as funding and resources become available.

Who is liable for the operations of the trail?

In New York State there is a provision of the State's General Obligations Law which is commonly known as the Recreational Use Statute. Section 9-103 provides in part that an owner, lessee or occupant of premises owes no duty to keep the premise safe for entry for certain enumerated recreational activities which include hiking and bicycle riding. There are exceptions to the law but it does make sustaining an action against a trail operator difficult. Groups that operate and maintain trails have found that the law enhances the liability insurance market making it both affordable and available. Some municipalities have found that the operation of a trail does not expose the municipality to any increased liability beyond their existing municipal property. Prior to acquiring a trail, this law and related issues are worth discussing with counsel since there are things you can do to further limit your exposure.

We are just getting organized to establish our trail. How do we get technical help?

Start by meeting with local government officials regarding your vision for a trail in your community. Without a modest level of local government support converting a rail to a trail is very difficult. Check to see if your trail complements or supports a local or regional trail plan. The state based not for profit organization, Parks and Trails New York, offers technical assistance to both citizen groups and local governments to help them with citizen participation in trail planning, acquisition, and development. The nationwide organization, Rails to Trails Conservancy, offers similar services through their Pennsylvania office. The National Parks Service through their Rivers and Trails Program holds an annual application round for assistance on trail projects.

Contact information:

Parks and Trails New York
29 Elk Street
Albany, NY 12207
(518) 434-1583
www.ptny.org

New York Statewide Trails Plan: Appendix I

Rails-to-Trails Conservancy (Northeast Regional Office)
2133 Market Street, Suite 222
Camp Hill, PA 17011
(717) 238-1717
www.railtrails.org

Karl Beard
National Park Service - Rivers & Trails Program
4097 Albany Post Rd
Hyde Park, NY 12538
(845) 229-9115 x34
www.nps.gov/rtca
karl_beard@nps.gov

NYS Office of Parks, Recreation and Historic Preservation
Office of Planning
Agency Building 1
Empire State Plaza
Albany, NY 12238
(518) 486-2909
www.nysparks.state.ny.us

Getting Started

Dear Friend:

New York is blessed with a rich railroad history. Since the first railroads in the 1830's over 10,000 miles of track have been built in the Empire State. Over time, many lines proved to be financially burdensome and were abandoned by their operators; a process which continues to this day.

An abandoned railroad line need not become a community eyesore. With an organized effort, these lines can once again become community assets in the form of a rail-trail. Over 650 miles of former railroad in urban, suburban and rural communities has been developed into rail-trails within New York State.

New York is also blessed with millions of acres of parks, open space and important conservation areas. Rail-trails can connect communities with these valuable environmental and recreational resources and connect these ecological communities to each other.

The Office of Parks, Recreation and Historic Preservation ("State Parks") wants to assist you in realizing your vision of converting an unused rail corridor to a multi-use trail to serve your community. This document is intended to provide some basic information and organizational contacts.

OPRHP Planning Bureau

Getting Started!

For most individuals and organizations starting a rails-to-trails project will seem like a daunting task. First, realize you are not alone. There are many organizations that may be willing to help with your trail project and there are probably many of your neighbors who share your vision for a trail. Parks and Trails New York and the Rails-to-Trails Conservancy are two not for profit private organizations focused on rail-trails that are equipped to provide you with technical advice and help organize your community. State Parks and the National Park Service each offer grants and technical assistance to help you realize your trail. The New York State Department of Transportation can provide information on the status of the rail line and also has a grant program that may assist you in developing your project. The last section of this document contains contact information for each of these organizations. In addition, many areas have Municipal Planning Organizations that may have developed regional trail plans. Your abandoned railroad may be part of a larger trail plan.

However no amount of outside help can substitute for strong community support for a trail. Share your idea with a few friends. Ideally you will form a core group of individuals who will act as trail leaders. Use each other to contact public officials at all levels to talk about the idea and eventually place "letters to the editor" in the local paper about the idea. Having the support of public officials for the trail project is very important.

What benefits will a trail provide?

While some will argue that a trail is a costly luxury, you should know that rail-trails can provide benefits to every type of community that they traverse. These trails tend to support a variety of recreational uses depending on community direction and trail surface. As gasoline prices go higher

New York Statewide Trails Plan: Appendix I

and concerns for greenhouse gas emissions grow, these trails can provide an alternative to traditional motor vehicle use for commuting and leisure. Trails also provide an opportunity to provide a resource that will contribute positively to the public health of your community by providing a safe facility for exercise and recreation.

Trails are proving to contribute positively to the economy of their host community. They not only contribute to the quality of life but also attract tourists, attract homebuyers and support local businesses. Studies have shown that trail users spend between \$5 and \$30 dollars each time they access a trail. A 2006 User Survey and Economic Impact Analysis of the 60 mile long Pine Creek Trail in rural Pennsylvania suggests that trail users spend more than \$3 million on services ranging from food at local restaurants to overnight accommodations. A 2002 survey by the National Realtor Association established that a significant number of new home buyers considered the proximity of trails important or very important to their decision to buy a particular home.

When to start?

No time is too soon but you should start as soon as you see an active rail line become inactive for a year or more. It could be a sign that the railroad is considering “abandoning” the rail line. Every operating freight line must apply to the National Surface Transportation Board before it officially discontinues service on an operating track. Congress recognized that once a rail line is abandoned and sold off, it marked the loss of a national asset that could not easily be reconstructed. Congress amended the abandonment law so that a railroad right of way can be preserved while in the interim a trail for public use could be created and operated. This process is what is known as “rail banking.” The process is detailed but it does address the fact that most railroad right of ways are composed of a diversity of titles ranging from a narrow easement for railroad purposes to full fee ownership. The Federal Surface Transportation Board web site (see back cover) provides very detailed information on this process. The site is very informative and contains most if not all of the written materials related to an abandonment.

It can be the case that the rail line you are considering for trail use was long ago abandoned by the railroad. In these circumstances creating a trail becomes a difficult but not impossible task. Some groups have had success re-acquiring the corridor from private interests. Some groups have even received permission from private landowners to use the rail bed as a trail. New York’s General Obligations Law “Recreational Use Statute” (Section 9-103) makes it very difficult to sustain a successful suit against a property owner who allows their land to be used for those recreational activities generally associated with a trail.

Can we afford the trail?

The cost of acquiring a trail can vary widely. Some rail corridors have been acquired for as little as \$1, while others have been purchased for substantial amounts. Before substantial funds are paid, the value of the corridor should be established through the preparation of a professional appraisal. The cost of developing a trail from rail can also vary greatly. In some instances, trails have been established simply by removing the rail (most times this is done by the railroad for reuse in other locations) and minor modification of the trail surface. To the other extreme, some trails have been paved, some have built new bridges and others installed culverts; each action a costly proposition. The good news is that there are many grant programs available including the Federal Transportation Enhancement Program, Recreational Trail Grants and State Environmental Protection Fund Park Grants which can assist communities with the acquisition and development of the trail. Obviously once a corridor is secured, you can develop the trail over time depending on the resources that are available.

New York Statewide Trails Plan: Appendix I

Acquiring and developing a rail-trail takes a great deal of time and information. For additional assistance contact:

Parks and Trails New York
29 Elk Street
Albany, New York 12207
(518)-434-1583
www.ptny.org

Rails-to-Trails Conservancy (National Office)
1100 17th Street, NW
10th Floor
Washington, DC 20036
(202)-331-9696
www.railtrails.org

Rails-to-Trails Conservancy (Northeast Regional Office)
2133 Market Street, Suite 222
Camp Hill, PA 17011
(717)-238-1717

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001
(202)-245-0230
www.stb.dot.org

Karl Beard
National Park Service - Rivers & Trails Program
4097 Albany Post Rd, Hyde Park, NY 12538
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karl_beard@nps.gov
www.nps.gov/rtca

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50 Wolf Road, POD 54
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(518)-486-2909
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