

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_railstrails.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:

- 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,

- 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 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.