

RAILBANKING

What, Where, Why, When and How?

In 1983, concerned by the rapid contraction of America's rail network, the U.S. Congress amended the National Trails System Act to create the railbanking program. Railbanking is a method by which lines proposed for abandonment can be preserved through interim conversion to trail use.

If the title to an about-to-be-abandoned rail corridor is in question and there is any interest in trail use, the line should be preserved through railbanking. On the reverse side of this fact sheet is a 'boilerplate' letter that can be used to file railbanking and public use condition requests with the Surface Transportation Board (STB), formerly the Interstate Commerce Commission.

Some railroad rights-of-way contain easements that revert back to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.

Railbanking can be requested by either a public agency or a qualified private organization. The railbanking request must be sent to the STB in Washington, D.C., and must at the very minimum include a "Statement of Willingness To Assume Financial Responsibility" (see reverse side). Since the abandoning railroad company must agree to negotiate a railbanking agreement, a copy of the request for railbanking must be served on the railroad at the same time it is sent to the STB.

A Public Use Condition (PUC) request is a separate request that is complementary to a request for railbanking. If a PUC request is made to the STB, the STB will place a restriction on the abandonment that prevents the railroad company from selling off or otherwise disposing of any property or trail-related structures, such as bridges or culverts, for a period of 180 days after the abandonment is authorized. This public use condition gives the prospective trail manager some breathing room for preparing an offer to the railroad. (The public use condition is also a good backup device should the railroad not agree to railbanking since the STB will issue public use conditions regardless of whether the railroad agrees.)

There are several other important points regarding railbanking:

1. A railbanking request is not a contract and does not commit the interested party to acquire any property or to accept any liability. It invites negotiation with the railroad company under the umbrella of railbanking. A party filing a "Statement of Willingness To Assume Financial Responsibility" is not accepting any financial responsibility. It is merely expressing an interest in possibly doing so.
2. The tracks and ties on a railbanked line can be removed. However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way.
3. Under railbanking, there will likely still be an actual sale of the property, and the railroad will likely still want compensation. Railbanking is not generally a method for obtaining a free trail.
4. A railbanked line is subject to possible future restoration of rail service. Any railroad can apply to the STB to resume rail service on a railbanked corridor. However, if the STB restores rail service, the trail agency is entitled to fair market value for the corridor. The terms and conditions of a transfer back to rail service would be determined by the STB.
5. The attached letter can only be filed on a rail line that is still under the authority of the STB. Generally, the STB loses authority 30 days after the effective date of an abandonment. Even if you miss the deadline, you should file the letter anyway along with an explanation as to why you need additional time. The STB may be able to reassert jurisdiction over the abandonment.

A more thorough discussion of railbanking and other legal issues related to rails-to-trails conversions is available in ***Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails***, which is available from RTC for \$19.95 (\$16.95 for RTC members) plus \$4.50 for shipping and handling.

For text of "boilerplate" letter, see other side.



The following letter requests both a public use condition and railbanking. The items in italics are to be completed by the prospective trail agency or group.

[Date]

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St., NW, Rm 711
Washington, DC 20423

Re: [Name of Railroad Company]-Abandonment-[Name of County and State] AB-xx (Sub-no. yy)[STB Docket Number]

Dear Mr. Williams:

This comment should be treated as a protest or a petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of [Agency Name] which is a *[political subdivision or government agency interested in transportation and/or natural resources, private public interest organization interested in conservation and/or recreation, etc.]*, which is hereinafter referred to as 'Commenter'.

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between [endpoint a] and [endpoint b].

A. Public Use Condition

Commenter 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:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that ***[example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.]*** The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs this much time because ***[example: we have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.]***
2. An order barring 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 the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, [Agency Name] is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by [Name of Railroad Company] and operated by _____.

The property, known as the _____ extends from railroad milepost ____ near [endpoint a] to railroad milepost ____ near [endpoint b] a distance of ____ miles in _____ County, _____. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-xx (Sub-no. yy).

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

[Agency Name] 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 [Railroad Company and address], by U.S. Mail, postage prepaid, first class, this ____ day of 19____.

Respectfully submitted,

Name

on behalf of: _____