

Rail Corridor to Recreational Trail under Federal Law

Purpose: To establish interim trail use under 16 USC 1247(d) and 49 CFR 1152.29.

This process 'banks' a corridor for possible future rail use. The Surface Transportation Board assigns interim use of the corridor to a qualified public or private agency if that agency agrees to manage the trail and cover all associated expenses including taxes and liability.

This process can take up to 5 years:

DOT monitors abandonment proceedings at the Federal level. Upon the initiation of abandonment, DOT notifies DNR.

When the actual Federal procedure begins and DNR does have interest:

- Railroad company (corridor owner) files a petition seeking authority to abandon their responsibility to operate a railroad line with the Surface Transportation Board (STB) in Washington D.C. The STB has developed different abandonment procedures that a railroad must follow depending on the nature of rail service on the particular line the railroad wants to abandon. If the line has not been used in two or more years, or if the STB finds there is no vital interest in continuing rail service on that line, the railroad may follow a less stringent "exemption" procedure. (Formal abandonment of a line that does serve some customers is a much more lengthy procedure not detailed in this document.)
- Department of Transportation (DOT) has the first right to acquire the grade for present or future use by state law (s. 85.09 stats). DOT considers whether to keep the corridor for transportation or whether to offer it for interim use as a recreational corridor to the DNR. First dibs on a line proposed for abandonment always goes to another entity that wishes to continue rail operation on the line.
- Meanwhile, the DNR internally determines if we are willing to accept responsibility to manage the corridor as a trail pursuant to 49 CFR 1152.29. If the railroad segment is listed as part of the State Trails Network Plan, meets with newly defined goals, or if it makes connections with existing trail, it is a corridor that the DNR will want. If not, then staff weigh other factors to determine if the DNR wants to corridor.
- Regional staff work to determine if there is an entity (County) willing to develop, operate, manage and maintain the corridor as a trail. If there is not, the DNR must determine is the corridor attractive enough as a recreational opportunity for the DNR to take on development, operation, management and maintenance responsibility given current resources of the department.
- After the railroad company files for abandonment with the STB, a notice of the proposed abandonment is published in Federal Register. There is a public comment period of 30 days.

- If it is determined that the DNR does want to buy the corridor, then a **Statement of Willingness to Accept Responsibility** is signed by the DNR Secretary and sent to DOT, who files the document on DNR's behalf with the STB within the 30 day comment period. This document merely indicates that the department is capable of assuming financial responsibility should the DNR and the railroad reach mutually agreeable terms for the transfer of the corridor. The terms of 16 USC 1247(d) would continue with the transfer. This is not a contract, and the DNR is under no obligation to acquire the corridor.
- Upon receiving the Statement of Willingness, STB interrupts the abandonment process and establishes a 180-day negotiation period between DNR and railroad company. This period is frequently extended by written notice. STB publishes a **Notice of Interim Trail Use** in the Federal Register. This stops the abandonment process and the corridor **remains an active rail line**.
- Appraisals of the corridor are requested by DNR real estate.
- Meanwhile, DNR regional staff work on assessment of the corridor to confirm communities, counties and local units of government are interested and to **evaluate potential issues via a checklist process (trail inspection checklist), and to fulfill the obligations of the MOU between the DNR and the cooperator**¹. If it is determined that the trail will be cooperative then MOU with counties needs to be signed. If the corridor is in the State Trails Network Plan then there is no need for NRB action at this time. If it is not in the Network Plan, then NRB approval is needed to establish a new project boundary.
- DNR makes offer to the railroad company.
- If the offer is accepted or negotiated successfully, and is for more than \$150,000, the purchase goes to Natural Resources Board for approval. If the offer is less than \$150,000, the purchase goes directly from the DNR to the Governor.
- If it is to be a cooperative trail, once the acquisition closes, the DNR works with the County to ease the property to them, after the DNR has completed required trail inspection checklist.
- Trail is added to the list of designated State Trails in NR 51.73, if it is not an extension of an existing designated State Trail.

➤ ¹ Under the terms of section IV. of the MOU, the DNR has the following obligation:

The Department agrees to complete the environmental review process of the property pursuant to s. 1.11, Stats., and Chapter NR 150, Wis. Adm. Code, and the Department represents that it has made reasonable inquiry and has no reason to believe that hazardous waste, noxious waste, or any other condition of the land subject to this MOU exists that would inhibit the ability of the County to possess and improve the property as contemplated by this MOU. If, however, such prohibitive conditions are discovered, either the Department shall take all steps reasonably necessary to remove such conditions or the intent of this MOU being frustrated, the MOU shall terminate.

- Once the trail purchase has closed (if DNR operated), or closed and eased to the cooperator (if cooperative), trail development can begin. However, it is best if the plan for the property (trail plan under the terms of the MOU and easement if cooperative, or master plan under NR 44 is DNR-operated) is completed prior to opening the property to any use. If the trail is to be operated by the DNR, manual code 2105.2 would apply. The trail plan for the cooperative State Trail does not need to be approved by the Natural Resources Board, but may be presented as an informational item.