

Appendix F



Reference Documents

Overview

The purpose of this appendix is to provide further information on the Recreational Use Statute for the State of North Carolina, railbanking as defined by North Carolina Rail-Trails, and the North Carolina Department of Transportation's Rail Corridor Preservation Policy.

NC Recreational Use Statute

All states have recreational use statutes enacted to encourage land owners to make their properties available for public use for recreational purposes. The NC Recreational Use Statute protects the land owner from legal liability for any accidents that may happen when the user is on the property for recreational purposes. The only exceptions are for intentional harms and for gross negligence. For the purpose of the Ecusta Rail Trail, recreational use shall include all allowable, non-motorized activities on multi-use trails.

Use Condition Request Sample

A sample request for both a Public Use Condition and a Trail Use Condition is provided. Such a request should be sent to the STB and the railroad simultaneously.

NCDOT Rail Corridor Preservation Policy

The NCDOT Rail Division could be a potential partner for the acquisition of the Ecusta rail corridor. The Rail Corridor Preservation Act, passed by the General Assembly in 1988, gave the NCDOT authority to purchase railroads and preserve rail corridors for "future rail use and interim compatible uses." The following document provides additional information on this policy.

Contents:

Overview

North Carolina Recreational Use Statute

STB Request Sample

NCDOT Rail Corridor Preservation Policy

ARTICLE 6.

North Carolina Trails System.

§113A-83. Short title.

This Article shall be known and may be cited as the "North Carolina Trails System Act." (1973, c. 670, s. 1.)

§ 113A-84. Declaration of policy and purpose.

(a) In order to provide for the ever-increasing outdoor recreation needs of an expanded population and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of the State, trails should be established in natural, scenic areas of the State, and in and near urban areas.

(b) The purpose of this Article is to provide the means for attaining these objectives by instituting a State system of scenic and recreation trails, coordinated with and complemented by existing and future local trail segments or systems, and by prescribing the methods by which, and standards according to which, components may be added to the State trails system. (1973, c. 670, s. 1; 1993, c. 184, s. 1.)

§ 113A-85. Definitions.

Except as otherwise required by context, the following terms when used in this Article shall be construed respectively to mean:

(1) "Department" means the North Carolina Department of Environment and Natural Resources.

(2) "Political subdivision" means any county, any incorporated city or town, or other political subdivision.

(3) "Scenic easement" means a perpetual easement in land which

- a. Is held for the benefit of the people of North Carolina,
- b. Is specifically enforceable by its holder or beneficiary, and
- c. Limits or obligates the holder of the servient estate, his heirs,

and assigns with respect to their use and management of land and activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of areas affected by it.

(4) "Secretary" means the Secretary of Environment and Natural Resources, except as otherwise specified in this Article.

(5) "State trails system" means the trails system established in this Article or pursuant to the State Parks Act, Article 2C of Chapter 113 of the General Statutes, and including all trails and trail segments, together with their rights-of-way, added by any of the procedures described in this Article or Article 2C of Chapter 113 of the General Statutes.

(6) "Trail" means:

a. Park trail. -- A trail designated and managed as a unit of the North Carolina State Parks System under Article 2C of Chapter 113 of the General Statutes.

b. Designated trail. -- A trail designated by the Secretary pursuant to this Article as a component of the State trails system and that is managed by another governmental agency or by a corporation listed with the Secretary of State.

c. A State scenic trail, State recreation trail, or State connecting trail under G.S. 113A-86 when the intended primary use of the trail is to serve as a park trail or designated trail.

d. Any other trail that is open to the public and that the owner, lessee, occupant, or person otherwise in control of the land on which the trail is located allows to be used as a trail without compensation, including a trail that is not designated by the Secretary as a component of the State trails system. (1973, c. 670, s. 1; 1977, c. 771, s. 4; 1989, c. 727, s. 218(63); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1993, c. 184, s. 2; 1997-443, s. 11A.119(a).)

§ 113A-86. Composition of State trails system.

The State trails system shall be composed of designated:

(1) State scenic trails, which are defined as extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails may pass.

(2) State recreation trails, which are defined as trails planned principally for recreational value and may include trails for foot travel, horseback, nonmotorized bicycles, nonmotorized water vehicles, and two-wheel- and four-wheel-drive motorized vehicles. More than one of the aforesaid types of travel may be permitted on a single trail in the discretion of the Secretary.

(3) Connecting or side trails, which will provide additional points of public access to State recreation or State scenic trails or which will provide connections between such trails. (1973, c. 670, s. 1; 1993, c. 184, s. 3.)

§ 113A-87. Authority to designate trails.

The Department may establish and designate trails on:

(1) Lands administered by the Department,

(2) Lands under the jurisdiction of a State department, political subdivision, or federal agency, or

(3) Private lands provided, fee-simple title, lesser estates, scenic easements, easements of surface ingress and egress running with the land, leases, or other written agreements are obtained from landowners through which a State trail may pass. (1973, c. 670, s. 1; 1979, c. 6, s. 1; 1991, c. 115; 1993, c. 184, s. 4.)

§ 113A-88. North Carolina Trails Committee; composition; meetings and functions.

(a) Repealed by Session Laws 1973, c. 1262, s. 82.

(b) The Committee shall meet in various sections of the State not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of this Article.

(c) The Committee shall coordinate trail development among local governments, and shall assist local governments in the formation of their trail plans and advise the Department quarterly of its findings.

(d) The Secretary, with advice of the Committee, shall study trail needs and potentials, and make additions to the State Trails System as needed. He shall submit an annual report to the Governor and General Assembly on trail activities by the Department, including rights-of-way that have been established and on the program for implementing this Article. Each report shall include a short statement on the significance of the various trails to the System. The Secretary shall make such rules as to trail development, management, and use that are necessary for the proper implementation of this Article. (1973, c. 670, s. 1; c. 1262, s. 82; 1987, c. 827, s. 132.)

§ 113A-89. Location of trails.

The process of locating routes of designated trails to be added to the system shall be as follows:

For State scenic trails, the Secretary or a designee, after consulting with the Committee, shall recommend a route. For State recreation trails and for connecting or side trails, the Secretary or a designee, after consulting with the Committee, shall select the route. The Secretary may provide technical assistance to political subdivisions or private, nonprofit organizations that develop, construct, or maintain designated trails or other public trails that complement the State trails system. When a route shall traverse land within the jurisdiction of a governmental unit or political subdivision, the Department shall consult with such unit or such subdivision prior to its final determination of the location of the route. The selected route shall be compatible with preservation or enhancement of the environment it traverses. Reasonable effort shall be made to minimize any adverse effects upon adjacent landowners and users. Notice of the selected route shall be published by the Department in a newspaper of general circulation in the area in which the trail is located, together with appropriate maps and descriptions to be conspicuously posted at the appropriate courthouse. Such publication shall be prior to the designation of the trail by the Secretary. (1973, c. 670, s. 1; 1993, c. 184, s. 5.)

§ 113A-90. Scenic easements within right-of-way.

Within the boundaries of the right-of-way, the Secretary of the North Carolina Department of Administration may acquire, on behalf of the State of North Carolina, lands in fee title, or interest in land in the form of scenic easements, cooperative agreements, easements of surface ingress and egress running with the land, leases, or less than fee estates. Acquisition of land or of interest therein may be by gift, purchased with donated funds or funds appropriated by the governmental agencies for this purpose, proceeds from the sale of bonds or exchange. Any change in value of land resulting from

the grant of an easement shall be taken into consideration in the assessment of the land for tax purposes. (1973, c. 670, s. 1.)

§113A-91. Trails within parks; conflict of laws.

Any component of the System that is or shall become a part of any State park, recreation area, wildlife management area, or similar area shall be subject to the provisions of this Article as well as any other laws under which the other areas are administered, and in the case of conflict between the provisions the more restrictive provisions shall apply. (1973, c. 670, s. 1.)

§113A-92. Uniform trail markers.

The Department, in consultation with the Committee, shall establish a uniform marker for trails contained in the System. An additional appropriate symbol characterizing specific trails may be included on the marker. The markers shall be placed at all access points, together with signs indicating the modes of locomotion that are prohibited for the trail, provided that where the trail constitutes a portion of a national scenic trail, use of the national scenic trail uniform marker shall be considered sufficient. The route of the trail and the boundaries of the right-of-way shall be adequately marked. (1973, c. 670, s. 1.)

§ 113A-92.1. Adopt-A-Trail Program.

The Department shall establish an Adopt-A-Trail Program to coordinate with the Trails Committee and local groups or persons on trail development and maintenance. Local involvement shall be encouraged, and interested groups are authorized to "adopt-a-trail" for such purposes as placing trail markers, trail building, trail blazing, litter control, resource protection, and any other activities related to the policies and purposes of this Article. (1987, c. 738, s. 153.)

§113A-93. Administrative policy.

The North Carolina Trails System shall be administered by the Department according to the policies and criteria set forth in this Article. The Department shall, in addition, have or designate the responsibility for maintaining the trails, building bridges, campsites, shelters, and related public-use facilities where required. (1973, c. 670, s. 1.)

§113A-94. Incorporation in National Trails System.

Nothing in this Article shall preclude a component of the State Trails System from becoming a part of the National Trails System. The Secretary shall coordinate the State Trails System with the National Trails System and is directed to encourage and assist any federal studies for inclusion of North Carolina trails in the National Trails System. The Department may enter into written cooperative agreements for joint federal-State administration of a North Carolina component of the National Trails System, provided

such agreements for administration of land uses are not less restrictive than those set forth in this Article. (1973, c. 670, s. 1.)

§ 113A-95. Trail use liability.

(a) Any person, as an owner, lessee, occupant, or otherwise in control of land, who allows without compensation another person to use the land for designated trail or other public trail purposes or to construct, maintain, or cause to be constructed or maintained a designated trail or other public trail owes the person the same duty of care he owes a trespasser.

(b) Any person who without compensation has constructed, maintained, or caused to be constructed or maintained a designated trail or other public trail pursuant to a written agreement with any person who is an owner, lessee, occupant, or otherwise in control of land on which a trail is located shall owe a person using the trail the same duty of care owed a trespasser.

(c) Repealed by Session Laws 1993, c. 184, s. 6. (1987, c. 498; 1991, c. 38; 1993, c. 184, s. 6.)

APPENDIX III

1. Sample Public Use Condition and Trail Use Request

Below is a sample of a request for both a Public Use Condition and a Trail Use Condition. The blank spaces and items in italics are to be completed by the prospective trail agency or group to reflect the specific circumstances. Remember that the requests should be mailed to both the STB and the railroad simultaneously.

[Date]

Secretary

Surface Transportation Board

Washington, DC 20423-0001

Re: [*Name of Railroad Company*] Abandonment in [*Name of County and State*], [*STB Docket Number*]

Dear Secretary:

This request 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.*], hereinafter referred to as "proponent."

Proponent requests issuance of a Public Use Condition as well as an Interim Trail Use Condition rather than an outright abandonment authorization between [*endpoint a*] and [*endpoint b*].

A. Request For Public Use Condition

Proponent asks 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 for public use on reasonable terms. Justification for this condition is: [*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 open space and its preservation as a recreational trail is consistent with those purposes*]. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time: [*example: to assemble or to review*

title information, complete a trail plan, or begin 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. Request For Interim Trail Use

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

STATEMENT OF WILLINGNESS TO ASSUME

FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C.

§1247(d), and 49 CFR §1152.29, 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 and operated by .

The property, known as the , extends from railroad milepost near to railroad milepost near , 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- (Sub-No.).

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

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 pre-paid, first class, this day of , 20 .

Respectfully submitted,

Name

on behalf of:

Rail Corridor Preservation Policy



October 1998

Rail Division
Engineering & Safety Branch



N.C. Department
of Transportation

Rail Corridor Preservation Policy

Table of Contents

- I. Background**
 - II. Encroachments**
 - Agreements
 - Customer Service
 - Reimbursable Costs
 - Removal
 - III. Private Use**
 - IV. Commercial Use**
 - Assignments
 - Agreements
 - V. Adjacent Property Development**
 - VI. Crossings**
 - VII. Federal Enhancement Corridors**
 - VIII. Trail Use**
 - IX. Clearing of the Railroad Right of Way**
 - X. Removal of Materials**
 - XI. Hazardous Material**
 - XII. Dumping**
- Appendix A - General Statutes Pertaining to Rail Corridor Preservation**
- Appendix B - NCBOT Resolution 1/9/98**
- Appendix C - Rail Corridor Encroachment Agreement**

Rail Corridor Preservation Policy

The “preservation of rail corridors, through...State acquisition of strategic corridors, is in the public interest and is an integral and necessary part of a balanced transportation system...” [N.C.G.S. 143B-361].

I.Background

Pursuant to N.C.G.S. 136-44.36A, “the North Carolina Department of Transportation is authorized ...to preserve rail transportation corridors and permit interim compatible uses of such corridors” (see Appendix A). “Preservation of railroad corridors for interim trail and future transportation use requires that the integrity of the rights of way be maintained” (see Appendix B). Therefore, the Rail Division must develop a systematic approach to oversee the public’s requests to use the right of way in lieu of the return of the corridor to active rail or other transportation uses.

II.Encroachments

Agreements

NCDOT will allow compatible interim use of the corridor right of way until such time that it is returned to active rail or other transportation use. Compatible use shall be documented in the form of an encroachment or other agreement between the Department and the agreement applicant (see Appendix C).

Customer Service

All agreements will be handled in a manner to ensure that NCDOT’s customer service values are met or exceeded.

NCDOT has the responsibility to the public to maintain rail rights of way in such a manner as to allow for the ultimate return of the property to transportation use. The Department will develop a rail corridor maintenance and management plan. This plan will include signing, vegetation control, means of limiting the state’s liability, track maintenance standards and needs, and the development of an annual railroad corridor maintenance budget.

Reimbursable Costs

Any unusual expense incurred by NCDOT to reach an agreement shall be borne by the encroachment agreement applicant. This could include, but not be limited to, survey, rent study, or appraisal actual costs.

Performance and indemnity bonds may be required from the applicant of an encroachment agreement or the applicant's contractor for construction on the railroad corridor right of way. The Rail Division will follow the existing bond requirement guidelines used by the Division of Highways as stated in the Policies and Procedures for Accommodating Utilities on Highway Rights-of-Ways when requiring a bond.

Removal

In instances of an unauthorized encroachment where an agreement cannot be reached with a property owner, NCDOT will take any and all steps necessary to remove the encroachment. NCDOT forces may assist in the removal if necessary. Any expense incurred by NCDOT during the removal process will be borne by the party encroaching on the right of way and legal action may be taken to recover costs.

At such time as the rail corridor is returned to active transportation use, any existing encroachments interfering with the intended use shall be removed, relocated or adjusted as stipulated in the agreement. The Department will provide a minimum of 120 working days written notice for encroachment removal or adjustment.

III.Private Use

In general, the property owner adjacent to the preserved rail corridor where track has been removed will be allowed to use and maintain the corridor to the centerline of the right of way for private, noncommercial use. No reimbursement of costs will be required except the standard application amount. If the track is still in place, the adjacent property owner may use and maintain the Department's right of way up to a point not to exceed 15 feet from the centerline of the track.

IV.Commercial Use

Assignments

Historically, railroads have allowed the use of its property for private and commercial use. Commercial use of rail property will be handled by the Department in a businesslike manner using rental or lease agreements. Once the State assumes ownership of the corridor from a railroad company, any existing agreements may be assigned to the Department by mutual consent of the Department and the user.

Agreements

It is the general policy of the State that real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit. Therefore, if State corridor property is being used for commercial ventures, it will be necessary to execute an agreement based on current fair market value. A minimum yearly rate of \$100 will be

charged for any commercial encroachment. Rates will be based on comparable industry standards and land values in the areas adjoining the rail corridors. All funds collected shall be earmarked for corridor management and maintenance.

NCDOT will periodically review and assess its existing commercial agreements and accordingly adjust the rates charged based on fair market value.

V.Adjacent Property Development

Residential development along a corridor shall not interfere with the ultimate purpose of the corridor. Commercial and industrial development along a preserved corridor shall not adversely impact the rail corridor. NCDOT will coordinate with local planning agencies to encourage land development which will be harmonious with the development of the preserved rail corridors and future transit options.

VI.Crossings

The safety of the traveling public, whether by foot, bike, motor vehicle or transit use is of utmost importance. While NCDOT will not land lock property owners, it does have the responsibility of making travelways as safe as possible. “The Department will discourage new at-grade street and driveway crossings of State-owned preserved rail corridors and request that local governments along these corridors discourage new crossings in adopted plans, zoning changes, site plan approvals, and building construction approvals” (see Appendix B). NCDOT encourages the consolidation and closure of crossings where possible.

NCDOT District Engineers will be responsible for limiting at-grade crossings when issuing driveway permits and installing driveway pipe that access property along preserved rail corridors. Driveways along preserved rail corridors shall not be installed by Division of Highways personnel without obtaining prior approval from the Rail Division.

VII.Federal Enhancement Corridors

Rail corridors purchased with Federal funds must follow Federal guidelines for right of way disposition. “Applicants for agreements will be responsible for all administrative, appraisal and any Federal enhancement fees associated with the review of potential new at-grade crossings, leases, licenses or utility encroachments of State-owned rail corridors” (see Appendix B). The NCDOT Right of Way Disposal and Control of Access Committee will review and make recommendations for new crossing applications on these rail corridors.

NCDOT will allow interim compatible trails on suitable inactive rail corridors. All interim rail trails on preserved corridors must follow the requirements of N.C.G.S. 136.44.36D (see Appendix A).

Local governments leasing the corridor for interim trail use are charged with the responsibility of following the procedures outlined in the January 9, 1998 “Resolution to Facilitate the Protection of Rail Corridors Preserved by the Department of Transportation and Other Public Bodies in North Carolina” (see Appendix B).

IX. Clearing of the Railroad Right of Way

No unauthorized clearing of the rail corridor right of way will be permitted. Should the inactive corridor be leased for interim trail use, clearing of the right of way for trail use shall be kept to a minimum. NCDOT is establishing a small wildlife habitat area plot approximately every 20 miles on the Interstate system because of a decline in several species of songbirds in the state. The Rail Division will work to improve wildlife areas by preserving the existing natural corridor vegetation buffers in order to enhance wildlife and fauna.

The Department will provide for mowing of the corridor or other vegetation control in municipal areas, parcels where track is maintained in place, or as requested by individuals on a case by case basis.

Timbering of the rail corridor is prohibited without authorization. Companies harvesting timber adjacent to the rail corridor will be responsible for keeping debris out of adjoining ditches. All debris from logging operations obstructing the corridor shall be cleaned up by the timber company. Ditches and drainage pipes shall be returned to working order after logging. A nominal maintenance charge will be imposed for use of the corridor for logging transportation operations or a bond may be required depending upon the situation.

X. Removal of Materials

Removal of railroad ballast or other track materials from inactive rail corridors will not be permitted without authorization from the Department. Theft of railroad materials shall be prosecuted to the fullest extent of the law. All material removed from the corridor without authorization shall be replaced or compensation paid based on current market value of the material.

XI. Hazardous Material

Disposal of hazardous material on the corridor is strictly prohibited. Storing of hazardous material on the right of way is discouraged and will only be allowed by written agreement under monitored conditions. A bond will be required for storing of hazardous material.

Should a spill occur, the applicant will be responsible for cleanup of any hazardous material to the satisfaction of NCDOT and will hold NCDOT harmless from all costs, fees, fines or assessments incurred or imposed as a result of the spill.

XII. Dumping

No dumping will be permitted on the rail corridor. Any individuals or other parties discovered dumping on the right of way will be prosecuted to the fullest extent of the law. The party responsible for unauthorized dumping of materials will be liable for the cleanup. All costs associated with the cleanup will be borne by the responsible party.

The North Carolina Board of Transportation fully endorses the policy proposed by the North Carolina Department of Transportation for the preservation of railroad corridors.

Adopted, this the second day of October, 1998.

E. Norris Tolson
Secretary of Transportation

ATTEST:

Secretary to the Board of Transportation
and Custodian of the Seal of the Department
of Transportation

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