

*U.S. Surface Transportation Board
395 E Street, NW
Washington, DC 20423-0001*

ENTERED
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Public Record

Re: Opposition to Proposed Rulemaking – STB Ex Parte No. 777

Dear Ms. Brown,

I write to strongly oppose the proposed rule changes in **STB Ex Parte No. 777**, which would further strip landowners of their property rights, eliminate transparency, and facilitate backroom deals that benefit railroads and trail sponsors at the expense of private property owners. This proposal undermines due process and makes it even easier for landowners to have their property taken without fair notice, negotiation, or compensation.

Though this rule does not retroactively impact my pending takings litigation, it sets a dangerous precedent, further eroding landowners' rights and due process.

In 2019, I learned that a **3.1-mile Norfolk Southern Railroad easement** running through my property in midtown Greensboro, NC, had been railbanked and converted into a public recreational trail. I was never notified by the STB, never consulted, and never given the opportunity to object or be at the table for this critical decision—one that majorly impacted **30 years of my hard work, my business, and my legacy**, shifting control to the City of Greensboro over about one-third of the acreage I had painstakingly assembled for commercial development.

This process, enabled by the **Trails Act (16 U.S.C. § 1247(d))**, took away my **reversionary property rights, caused a direct \$61 million market value loss—excluding the additional impact on development and assemblage value—and restricted the future use of my land.**

Despite the federal government acknowledging that a taking occurred, the **Department of Justice (DOJ) has refused to offer a single dollar in compensation** and instead spent over five years and millions of taxpayer dollars fighting my claim. I have spent over **\$2 million in out-of-pocket legal expenses** to protect my property rights, with nothing resolved as of the date of this letter. These proposed rule changes will make it even harder for landowners to defend their property or receive fair compensation.

1. The Proposed Rule Change Eliminates Transparency and Encourages Secret Land Deals

One of the biggest flaws in the **current Rails-to-Trails system** is the **lack of transparency**—landowners often have no idea their land is being railbanked until it is too late. They have no seat at the table.

Under current law, **railbanking follows an abandonment application, which at least requires public notice**. However, landowners are **not automatically notified when a railbanking agreement is negotiated, and their input is neither solicited nor required**. This allows railroads and trail sponsors to cut deals and unilaterally dictate terms to private property owners concerning their property rights.

The proposed rule change eliminates even the minimal safeguards relating to abandonment proceedings by replacing the process with a **“Notice of Negotiation,”** which allows railroads and trail sponsors to **strike deals behind closed doors without any formal abandonment process or public notice**.

Had the proposed rule been in place in 2019, I would have had even less recourse to learn that my land was being taken and subjected to control by the City. Future landowners will have no way to object—or even know—that their land is being railbanked until it is too late.

This rule will encourage more backroom deals, benefiting railroads and trail sponsors at the expense of private property owners.

2. The Rule Change Expands Government Land Grabs with No Justification

The stated purpose of the **Rails-to-Trails Act** is to preserve rail corridors for possible future rail use. However, **courts have repeatedly ruled that railbanking results in a taking of private property under the Fifth Amendment**. In practice, railbanking is often nothing more than a **land grab for government-controlled trails**.

- **Landowners lose their property rights** with no direct notification and no ability to negotiate fair terms.
- **In my case, the City of Greensboro paid Norfolk Southern \$8.5 million for control of the rail corridor**, even though the railroad no longer needed the land for rail use. Meanwhile, adjacent landowners like myself—who held reversionary property rights—**received nothing and were excluded from the negotiation process**.
- **This proposed rule change will make it even easier for governments to take excessive land**, lock it into permanent government and railroad control, and prevent landowners from using or developing their own property.

By **removing abandonment requirements**, this rule eliminates the last remaining procedural protections and will allow railroads and local governments to take **more land than necessary—without oversight**.

3. The DOJ's Own Litigation Strategy—Not Landowner Claims—Is the Real Taxpayer Cost

The DOJ and the Department of the Interior claim that this rule will save taxpayer money by making railbanking easier. That may be true for **railroads, trail sponsors, and the DOJ—but not for property owners or taxpayers**.

The real reason **Rails-to-Trails cases** are expensive is **because the DOJ refuses to settle legitimate claims and instead drags landowners through years of unnecessary litigation**.

- In my case alone, DOJ has spent **over 4,400 hours of government legal time and millions in expert witness fees—all to fight a compensation claim where liability is already established**.
- I have spent **over \$2 million out of pocket** on legal expenses to combat the **army of DOJ attorneys and their hired gun “experts.”**
- **The total taxpayer cost for payouts on my 3.1-mile corridor, when factoring in damages, accrued interest, and attorney fees, could exceed \$100 million.**

If the government **truly** wanted to **save taxpayer money**, it would minimize the scope of railbanking takings by narrowing corridors at the beginning of the process, **stop dragging out these cases, and prioritize settlements instead of wasting millions fighting rightful compensation claims**.

4. The Rule Change Will Not “Eliminate Temporary Takings”—It’s Just a Bureaucratic Sleight of Hand

The DOJ and DOI claim that this rule will eliminate temporary takings by adjusting terminology and altering how railbanking is initiated. That is simply **not true**.

- **The Supreme Court and federal courts have already ruled that railbanking results in a taking of private property.**
- **The government is still taking land—it’s just calling the process something different.**
- **This rule will delay landowners’ ability to seek compensation and further complicates the legal process.**

If the government wants to **fix** the problem of **Rails-to-Trails litigation**, the solution is simple:

Stop fighting rightful compensation claims and start respecting landowners' property rights.

Recommendations for Reform

If the **Surface Transportation Board** is truly interested in **fairness and efficiency**, it should **reject this rule change** and instead:

1. **Require direct notification** to landowners **before any railbanking agreement is reached**.
2. **Mandate fair compensation** processes that prevent endless legal battles.
3. **Limit the scope of land railbanked** to only the portion actually necessary for trail use or railroad reactivation, to the extent it is a realistic future possibility.
4. **Ensure railbanking negotiations** are **transparent and open to public input**, rather than being conducted behind closed doors.
5. **Hold the DOJ accountable** for excessive litigation costs and refusals to engage in settlement dialogues that drive up taxpayer expenses.

The proposed rule changes in **STB Ex Parte No. 777** **do nothing to fix the Rails-to-Trails program**—they just make it easier for the government to **take land without consequence and without input from the parties who are most affected** – the property owners whose rights are taken.

If enacted, **these changes will irreparably harm property owners across the country**. The Board must **reject this petition** and instead work toward reforms that **respect private property rights and ensure fair compensation**.

Sincerely,

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