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BY E-FILING

Ms. Cynthia T. Brown
Chief, Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RE: FD 36164, Ulster & Delaware Railway Revitalization Corp. Petition for Declaratory Relief

Dear Ms. Brown:

I am submitting on behalf of the Ulster & Delaware Railway Revitalization Corp., petitioner in the above-captioned matter, its Motion to Strike and Petition for Leave to File A Reply To A Reply. Normally this filing would have been due yesterday but that deadline has been tolled until today due to the closure of federal offices in Washington on account of snow.

Sincerely yours,



John D. Heffner

Enclosure

cc: service list

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36164

**ULSTER & DELAWARE
RAILWAY REVITALIZATION CORP.
PETITION FOR DECLARATORY RELIEF**

**MOTION TO STRIKE
AND
PETITION FOR LEAVE TO FILE A REPLY TO A REPLY**

Submitted By:

John D. Heffner
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Counsel for Petitioner

Dated: March 22, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36164

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**I.
INTRODUCTION**

Pursuant to 49 CFR §§ 1104.8, 1104.13, and 1117.1, the Ulster & Delaware Railway Revitalization Corp. (hereafter “U&D”) petitions the Board to strike certain portions of the Reply of Ulster County, NY (“Ulster County” or “the County”) and for leave to file a reply to the reply to its petition for declaratory relief originally submitted on January 16, 2018.¹ U&D’s proposed reply will provide the Board with a better understanding of this dispute giving it a more complete record on which to make its decision. U&D understands that Ulster County may wish to submit a response and U&D is agreeable to allowing it to file such a reply. U&D attaches to its filing a verified statement prepared by its board member and spokesperson Stephanie Bonk as well as a verified statement by

¹ By decision served March 12, 2018, the Board extended the date for filing this pleading until March 21, 2018.

Randall Gustafson of Stone Consulting (“Stone”) correcting or clarifying correcting certain factual inaccuracies in County witness Christopher White’s testimony.

II. BACKGROUND

U&D originally petitioned the Board pursuant to 49 U.S.C. §1321 and 5 U.S.C. §554(e), to issue a declaratory order (1) as to whether a line of railroad located in Ulster County, NY (“the County”), known as the Catskill Mountain Branch (“the Line”) has been abandoned and (2) if so, whether the conversion of that Line’s right of way into a trail could be done pursuant to the National Trails Act (“NTA”). Should the Board conclude that the Line has indeed been abandoned, U&D requests a confirmation that the NTA does not apply to the rail trail the County seeks to establish.

U&D shall briefly restate the facts for the Board’s understanding. U&D is a non-profit tax exempt section 501(c)(3) New York corporation established in 2016 that seeks to preserve the Line as a historic rail corridor for excursion railroad passenger service provided by the Catskill Mountain Railroad (“CMRR”).

Secondarily, U&D believes there may be some potential for using a portion of the Line for rail freight service. The Line is a segment of railroad originally constructed by a predecessor of the bankrupt Penn Central Transportation

Company that extended between Kingston at MP 2.9² and Bloomville at MP 86.6 in Ulster, Delaware, and Schoharie Counties, NY. The Line was analyzed by the United States Railway Association (“USRA”) for inclusion in Consolidated Rail Corporation in its Final System Plan (the “FSP”). However, after USRA declined to include it in the Conrail system, the Penn Central trustees were free to abandon it under the former section 304 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§701, 744 (“3R Act”) absent an operating subsidy. In 1979 the County purchased the subject 38.6 mile segment of the Line within its boundaries from the Penn Central estate. In 1982 the County leased its entire portion of the Line between Kingston and Phoenicia to CMRR to provide an excursion railroad passenger service. Subsequently, the County and CMRR executed a series of additional agreements that extend CMRR’s operations over portions of the Line until as late as December 31, 2020. Beginning in 1987 the Line suffered weather induced flooding on three separate conditions between that year and 2011 resulting in substantial damage and the need for expensive rehabilitation.

Starting around 2006, local trail advocates began promoting a plan to convert portions of the Line into a recreational path including the possibility of using the right of way for both trail use and continued rail operations. The County legislature engaged the services of Stone Consulting (“Stone”) to explore various

² Where it connects at Kingston with CSX Transportation’s mainline between the Selkirk Yard near Albany, NY, and Newark, NJ.

uses for the Line including freight service potential. Finally, in 2013 the New York City Department of Environmental Protection (“NYCDEP”) (which owns a part of the Line adjacent to the Ashokan Reservoir) proposed a trail over the portion of the Line between MP 10.0 and MP 21.6 as well as inside the City of Kingston between the CSX Transportation interchange at MP 2.9 and the current CMRR boarding location at MP 3.6. Both NYCDEP and the Ulster County Planning Department contemplated that rail service including freight rail service could be performed over portions of the Line.³ After the CMRR/Ulster County lease expired by its terms on May 31, 2016, the County issued permits to CMRR for operation on two segments, (1) between MP 3.6 and MP 8.33 (expires on Dec. 31, 2020) and (2) between Cold Brook at MP 22.1 and Phoenicia at MP 27.5 (a short-term permit that ran just from Aug. 1 to Oct. 31, 2016).

After negotiations to preserve tourist rail service over segments of the Line broke down, the County made arrangements to scrap the Line and preserve it as a recreational trail. The County began salvaging the Line on or about January 8, 2018. On February 23, 2018, U&D sought a preliminary injunction and temporary restraining order in the New York State Supreme Court.⁴

III.

³ See exhibits B and C which Ulster County attached to its January 16 Petition and are attached hereto as Exhibits A and B.

⁴ *U&D Railway Revitalization Corp. et al v. County of Ulster*, New York Supreme Court, Ulster County Index #18-0650. TRO denied by Judge Christopher Cahill; hearing on preliminary injunction scheduled for April 5, 2018.

ARGUMENT

A.

The Board should strike certain portions of Ulster County's Reply

The Board's rules of practice provide that the Board may strike material that is redundant or irrelevant. 49 CFR §1104.8. The four inches of exhibits attached to the verified statement of County witness Christopher White fit those criteria and should be stricken. Specifically, U&D asks the Board to strike the following exhibits:

Exhibit E, Annual report (1977). 41 years old and of no relevance.

Exhibit F, Environmental Assessment (1991). 27 years old and of no relevance.

Exhibit H, CE Maquire Report (1978). 40 years old and of no relevance.

Exhibit I, TAD Report (1979). 39 years old and of no relevance.

Exhibit K, Notice of Default (2013). Irrelevant as it pertains to litigation between CMRR and the County, a matter outside the STB's jurisdiction.

Exhibits L through N, HDR Report. Pictures of the deterioration of the Line. Unnecessarily redundant. Not necessarily indicative of abandonment in a legal sense but could support an adverse abandonment application.

Exhibit O, Pictures. Redundant and irrelevant. Not necessarily indicative of abandonment in a legal sense but could support an adverse abandonment application.

Exhibit P, Rail Trail Project pictures. Irrelevant on the issue of abandonment and, if abandoned, irrelevant on the issue of whether the NTA applies.

Exhibit Q, Washout pictures. Redundant and irrelevant.

Exhibit R, New York State Attorney General eminent domain letter. Irrelevant. Indication that New York is providing funding for property acquisition. Has no bearing on abandonment or NTA eligibility.

Exhibit S, Pictures. Redundant and irrelevant. Not necessarily indicative of abandonment in a legal sense but could support an adverse abandonment application.

Exhibit T, Alta Trail Study (2006). Irrelevant.

Exhibit U, Camoin Report (2013). Irrelevant.

Exhibit W, Numerous county resolutions. Irrelevant.

Exhibit Z, New York State SHPO correspondence. Irrelevant.

These documents should be stricken because they are either very old (as much as 40 years old) or have no bearing on the basic issues of whether the Line has been “abandoned” in the legal sense or, if abandoned, it is eligible to be converted to trail use under the NTA. Also they should be stricken as they are voluminous and highly redundant. In addition, Mr. White’s testimony contains repeated page

references to unidentified documents such as White V.S. at 2. U&D does not know what that means and the Board may not too.

B.

The Board should allow U&D's Reply

Simply stated, U&D seeks Board permission to waive the restriction in 49 CFR §1104.13(c) against filing a reply to a reply. As the Board has stated on numerous occasions, it will waive that restriction on a case by case basis. *See, e.g., The New York City Economic Development Corporation*, FD 34429 (STB served Jan. 7, 2004); *City of Alexandria, Va.—Petition for Declaratory Order*, FD 35157 (STB served Nov. 6, 2008) (allowing reply to reply “(i)n the interest of compiling a full record”); *Denver & Rio Grande Ry. Historical Found. d/b/a Denver & Rio Grande R.R.—Petition for Declaratory Order*, FD 35496, slip op. at 3 (STB served Feb. 23, 2012)(reply to reply allowed because of the very fact specific nature of that proceeding). Such is the case here. Ulster County’s four inch thick tome fails to provide the clarity needed for the Board’s understanding of this dispute. U&D should be permitted to respond to the County’s assertions, many of which U&D could not have anticipated in its Petition.

Ulster County would have the Board believe that it is crystal clear that the Line was abandoned sometime in the later 1970’s, and that the only suitable future use for the Line is as a rail trail without any railroad operations, passenger or

freight. Unfortunately, the County's presentation conveniently omits some key facts that U&D provides here.

C.

The Abandonment Status of The Line Is Less Than Clear

Throughout its 33 page reply the County repeatedly asserts with great conviction that the Line was abandoned by providing a copy of the "previously undiscovered" Penn Central abandonment notice. The County uses terms like "undisputedly", "clear", and "clearly" to demonstrate its conviction. It even goes on to cite as gospel that the various reports that it commissioned and paid for refer to the Line as "abandoned." Those characterizations of the Line "as abandoned" must be discounted as self-serving County statements rather than hard evidence. Unfortunately, the facts identified below belie the County's conviction.

The number one exhibit demonstrating the County's uncertainty over whether or not the Line is abandoned was the fact that it seriously considered seeking STB abandonment authority several years ago or, alternatively, asking for Board permission to reactivate the Line followed by an abandonment application.⁵ Presumably, that strategy was to make the Line eligible for preservation as a trail under the NTA.

⁵ See deposition transcripts of Dennis M. Doyle and Aaron Bennett as well as email correspondence with County witness Chris White discussing a possible STB abandonment filing attached as Exhibit C.

Further evidence of lack of abandonment intent was the fact that years after Penn Central filed its abandonment notice and the County acquired the Line Conrail provided some limited service over it (presumably with County approval). In fact, a letter dated April 28, 1995 from a Conrail official named J.R. Beard to Joseph Munster with the Ulster County Public Information Office⁶ indicates that Conrail had been serving a portion of the Line prior to 1993 and indicated a willingness to restore the switch connection at such time as traffic might warrant. While U&D concedes that the STB has held that a railroad which obtained abandonment approval for a line can provide service over it without reactivating the line's common carrier status,⁷ the fact that the Line has been used for freight service is further evidence of lack of abandonment intent.

Even documents prepared by or agreed to by both NYCDEP and the Ulster County Planning Department contemplate at least the possibility of continued rail service over all or portions of the Line. *See* Exhibits B and C submitted with U&D's Petition for Declaratory Relief, cited on page 5 of this Reply.

Additionally, the lease dated May 29, 1991, between Ulster County and the Ulster County Industrial Development Corporation submitted by the County as Exhibit J to its Reply with the relevant pages attached here as U&D's Exhibit E further

⁶ Attached here as Exhibit D.

⁷ *Consolidated Rail Corporation Petition for Declaratory Order*, 1 I.C.C.2d 284 (1984); citing *Conrail Abandonment in Jeanette, PA*, 366 I.C.C. 384 (1972).

rebutts the County's assertion of "clear" abandonment evidence. That lease specifically contemplates the possibility of freight service by defining "gross revenues" to include freight charges generated by traffic on the Line.

The County repeatedly cites as "evidence" of abandonment intent the fact that the Line has been inadequately maintained, overgrown with vegetation and trees, and severed as the result of the construction of a highway bridge at New York Route 28. As the Board is well aware, that description accurately characterizes many out of service rail lines that it would regard as "legally active." Although Ulster County cited the *Beaufort* decision⁸ at page 28 of its Reply in support of its evidence of abandonment intent, it conveniently neglected to include the next sentence of text:

"Because discontinuation of service and lack of maintenance standing alone are not physical acts sufficient to show intent to relinquish permanently the right to use a line for rail service, the State's actions, even as alleged by Petitioners, do not demonstrate that intent."

Lack of service and inadequate maintenance may be valid factors to consider in an adverse abandonment proceeding but they are not dispositive on abandonment intent when other factors are considered. *Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969, 972 (1981); *Norfolk S. Ry.—Adverse Aban.—St. Joseph Cnty., Ind.*,

⁸ See *Beaufort R.R.—Modified Rail Certificate*, FD 34943 (slip op, STB served July 21, 2009), at page 7.

AB 290 (Sub-No. 286), (slip op., STB served Feb. 14, 2008)(hereafter “*Norfolk Southern*”).

At page 19 of its Reply and page 17 of Mr. White’s testimony the County references a report prepared by Stone (“the Stone Report”), one of the many reports requested by and paid by the County or the County’s legislature. But the County fails to cite a specific page, pages, or section of that 86 page report⁹ making verification difficult. The County bases its “revised rail and trail policy”, that rail and trail uses cannot exist side-by-side in most sections of the Line, on the Stone Report. But that is a gross distortion. U&D attaches a brief statement from Stone’s Randall Gustafson stating that rail and trail use are compatible over critical portions of the corridor (particularly between MP 3.6 and MP 8.33 on the Kingston end), that the Line does indeed have freight potential, that the County *actively discouraged* parties seeking to restore rail service from bidding on an RFP for studying transload opportunities at the Kingston end of the Line,¹⁰ and that rail would be ideally suited for moving stone out of the Ashokan Reservoir project area. The Stone Report specifically promotes the idea of establishing a rail-truck intermodal transload facility at the east end of the Line at Kingston. The pages of

⁹ Excluding charts at the end of the report.

¹⁰ More specifically, any party seeking to provide rail service on the Line would be disqualified from bidding on the transload study. For that reason, Railmark Holdings, Inc., withdrew from proposing.

the County's Reply and Mr. White's statement referencing the Stone Report are attached hereto as Exhibit F.

In fact, at least one potential customer, Williams Lumber, wrote CMRR on March 9 of this year expressing a desire to receive 75 to 100 carloads of lumber per year at a facility it would build near Kingston on the County's track with CMRR to provide common carrier rail service in conjunction with CSX Railroad. Copies of correspondence between the customer and CMRR, a letter from CMRR to County Commissioner Thomas Jackson requesting County consent to pursue this opportunity, and Mr. Jackson's response rejecting the Williams proposal are attached as Exhibits G, H, and I.

The STB has stated on many occasions that it is mindful of Congress' intent, that lines be kept within the rail system where possible. *Norfolk S. Ry*, slip op. at 5-6. Moreover, the Board has asserted on many occasions that it must act reasonably in furtherance of its "statutory duty to preserve and promote continued rail service," *N.Y. Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1187 (D.C.Cir.2004) and *Waterloo Ry. Co.*, No. AB-124 (Sub-No.2), 2004 WL 941227, at *3 (S.T.B. Apr.30, 2004). (the Board must protect public "against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service").

Accordingly, the simple fact of the matter is that it is by no means foregone conclusion that the Line has been abandoned. If STB so finds, it should order the

County to terminate salvage until the County seeks and obtains abandonment authority.

D.

If the Line has been abandoned under the 3R Act,
it cannot be converted to trail use under the NTA

The one point on which all parties seem to agree is that *if* the Line has been abandoned under the 3R Act, the NTA does not apply. *See* County Reply at 3, New York City Department of Environmental Protection Reply at 5. Accordingly, there is little purpose to be served dwelling on that point. U&D requests that the STB's decision confirm that conclusion.

The practical result is that portions of the Line for which the County has only a reversionary easement are at risk: adjoining landowners can retake these parcels and/or the County must condemn them resulting in buying the Line twice. This should not come as any surprise to the County as the New York State Department of Transportation had previously warned that "abandonment", which could mean cessation of tourist rail service and removal of the track structure, could jeopardize the integrity of the right of way for trail use.¹¹ The removal of a section of a trail from a protected rail status would have the further effect of jeopardizing the trail status of any sections that were disconnected from the national rail system as a result of that removal.

¹¹ *See*, the email from New York State Department of Transportation officials addressed to the County witness Christopher White is attached as Exhibit J.

Because once the Line is gone, it's gone forever, it behooves all parties to work together to preserve the right of way for rail and trail uses. Consequently, U&D asks the STB to urge the parties to work together to find a solution and to reaffirm its prior offer of its mediation services.

IV. CONCLUSION

U&D requests that the Board strike numerous exhibits accompanying the County's Reply as redundant and irrelevant to the issues presented by U&D's petition. It urges the Board to accept its response to the County's Reply in order to provide a complete record and correct a distorted presentation of the facts. It further asks the Board to find that the Line has not been fully abandoned and to order the County to cease its salvage activities absent Board authorization. Should the Board conclude that the Line has been abandoned, it asks the Board to rule that the Line is not eligible for designation for trail use pursuant to the NTA.

Respectfully submitted



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Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Petitioner

Dated: March 22, 2018

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing "Motion to Strike and Petition for Leave to File a Reply to a Reply" of Ulster & Delaware Railway Revitalization Corporation dated March 22, 2018, was sent by electronic and U.S. mail to the following in this proceeding.

Donn C. Meindersma, Esq.
Daniel Elliott, Esq.
Conner & Winters, LLP
1850 M Street, NW, Suite 600
Washington, D.C. 20036

Charles Spitulnik
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, D.C. 20036

Beatrice Havranek, Esq.
Ulster County Attorney
244 Fair Street
Kingston, NY 12402



John D. Heffner

Dated: March 22, 2018

Verified statement of Stephanie Bonk:

My name is Stephanie Bonk and my business address is P.O. Box 503, Phoenicia, N.Y. 12464. I am a Board member of the U&D Railway Revitalization Corp., a non for profit organization working to protect the entire corridor for rail operations along with auxiliary uses. We are dedicated in helping to facilitate the revitalization of the rails and assist in the economic growth and the environmental wellbeing of the community along the corridor.

I am making this statement to correct misinformation and misleading statements and to request several to be removed due to the information being irrelevant or outdated in Christopher Whites Statement of support of the Ulster County reply to the petition for Declaratory Relief to the Surface Transportation Board by The U&D RRC.

Mr. White states: " The County of Ulster (the County) purchased the former Catskill Mountain Branch (also known as the Ulster and Delaware Railroad) right -of -way within Ulster County from The Penn Central Corporation and The Owasco River Railway, Inc. on July 24,1979 for \$1,500,000 ." This statement is false; Ulster County acquired the Catskill Mountain Branch for back taxes owed by the Penn Central Corporation. Ulster County obtained the line by writing off the debt and filed a quitclaim deed for ownership. Ulster County paid no money in acquiring the line.

We have requested that Exhibit E be stricken as it is 41 years old and of no relevance, Therefore the information taken from this document and contained in and cited on Page 4 paragraph 1 of Mr. White's statement should be stricken as irrelevant.

We are requesting that exhibit F be stricken due to it is 27 years old and of no relevance. Therefore the information taken from these documents and contained in and cited on Page 4 paragraph 2 has no relevance and should be stricken

We are requesting that Exhibit H to be stricken due to being 40 years old and has no relevance. Therefore the information taken from this document and contained in and cited on Page 6 has no relevance and should be stricken.

We have requested that Exhibit I be stricken due to being 39 years old and has no relevance, Therefore the information taken from this document and contained in and cited on page 7 Paragraph 1 and 2 has no relevance and should be stricken.

We have requested that Exhibit K, Exhibit L, Exhibit M ,and Exhibit N, be stricken due to them having no relevance to the issue of abandonment. Exhibit K pertains to litigation between Ulster County and Catskill Mountain Railroad and is not an issue before the STB. Therefore the information taken from these documents and contained in and cited on pages 7- 12 should be stricken.

On page 13 of Mr. White's statement he states "Following the extreme storm events in 2011, the CMRR applied to the Federal Emergency Management Agency (FEMA) for disaster recovery assistance for four major projects including the Boiceville Trestle and wash outs at MP 23.3, which are included in the attached photos. However, to date, none of these FEMA projects have been

implemented because the cost of work estimated by CMRR, on which the FEMA assistance awards are based, was vastly underestimated and based on incomplete scopes of work." This paragraph is factually incorrect. Ulster County and the Ulster County Industrial development agency were the lead agencies for the FEMA applications. As owners of the line it was their responsibility to meet with FEMA and estimate the damages, and repair costs, not to build new but to repair the damage that impacted the rails from Hurricane Irene and Tropical Storm Lee. CMRR was advised that they were not legally able to apply as they do not own the railway and only the owner could apply for grant money. Ulster County has attempted to rescope the FEMA money that was dedicated for the repairs of the railway to pay for their trail and remove the tracks of the railway.

We have requested Exhibit R to be stricken as irrelevant and having no bearing on this case. Therefore the information taken from this document and contained in and cited on pages 13 and 14 should be removed for the stated reasons.

WE have requested Exhibit T, Exhibit U Exhibit W, Exhibit Z to be stricken as irrelevant and repetitive. Therefore the information taken from these exhibits contained in and cited on pages 14-20 should be stricken as repetitive and irrelevant.

On page 21 Mr. White goes on to explain the financial support from DEP for the Ashokan Trail. He stated that NYSDEC has awarded more than \$3.6 million dollars and a grant of \$500,000 through the NYS office of Parks, Recreation, and Historic Preservation. During a public hearing at the Ulster County Legislature Mr. White stated that NYC DEP was granting to the project \$2.5 million and that there was money set aside with a grant from NYS for \$2 million. During this presentation he advised the legislature that rail banking money would be used to build this trail. The 2017 adopted budget for the Ashokan trail project stated that NYSDEC had awarded \$2.6 million dollars and \$2.5 million from the NYC DEP. and an unfunded taxpayer responsibility of 767,000 for planning of the trail. In the 2018 adopted budget it states FEMA has \$2.2 million has been applied for and is pending. The total amount has risen to \$9 million dollars and the unfunded tax payer responsibility has risen to \$3 million. These costs do not include the added \$1.6 million to remove the rails and ties on the DEP Ashokan Reservoir lands.

In the last paragraph of page 21 it is stated "U&D appears to be confused about the line's connection to the national rail transportation system. U&D claims the line is connected but that is simply not the case because the line has clearly been severed at various points." The U&D is fully aware that the switch in Kingston has been removed and replaced several times and though currently severed CSX and the STB have stated that this was possibly a temporary situation. CMRR and CSX had served freight customers on the line in the 80's and 90's. The switch was served by CSX and was to be moved to a different and safer location when the decision was made to remove the switch.

The last paragraph is a personal attack on the U&D board. Three members of the U&D board met with Ulster County attempting to get answers to numerous questions. We attempted to work a compromise and return to the plan of Rail with trail. When I contacted the STB to discuss the issues of abandonment I was advised that the Branch may not have been abandoned. STB staff researched for the appropriate filings and then notified me that no filings were found. A copy of the email I received is

annexed as Exhibit E in the U&D Railway Revitalization Corp. Petition for Declaratory Relief filed on January 16, 2018.

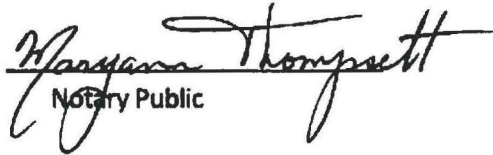
The availability of an active railroad is imperative to stay competitive in an economic environment. The economic impact that would be felt by removal of the rails and the inability to replace the rails at a later date would devastate this valuable infrastructure, as well as the economic and cultural heritage of the rail corridor. I envision a Rail with Trail solution to this issue and the redevelopment of the rail corridor.

I, Stephanie Bonk, verify under penalty of perjury under the laws of the United States that the foregoing statement is true and correct. I certify that I am qualified and authorized to file this verified statement.

Executed on March 20, 2018


STEPHANIE BONK

Sworn to before me this
22nd day of March, 2018.


Notary Public

MARYANN THOMPSETT
Notary Public, State of New York
No. 01TH5075574
Qualified in Dutchess County
Commission Expires April 7, 2019

**VERIFIED STATEMENT
OF
RANDALL GUSTAFSON**

My name is Randall Gustafson, and I am the vice-president – operations of Stone Consulting, in Warren, Pennsylvania. I was the lead consultant retained by the Ulster County Legislative Committee in a ‘highest and best use’ study of the Ulster and Delaware County railroad corridor within Ulster County. This study was performed between October and December 23, 2015.

A significant portion of Stone’s report was submitted into evidence by Ulster County with the recent filing. I would particularly request that the Board recognize that the actual information supplied in the report does not necessarily coincide with the filed conclusions as communicated to the Board by the County.

1. Rail and trail uses were found to compatible over the critical portions of the eastern part of the line, particularly between MP 3.6 and MP 8.33. These recommendations were actually followed by the County and made into final contract language with the Catskill Mountain Railroad.
2. Between MP 8.33 and MP 10, environmental and physical barriers require additional study for both, as a major fill constructed in the 1860’s is not wide enough for rail and trail. It is also not wide enough for a 14’ accessible trail footprint without excavation or additional fill in a highly sensitive wetland area. This was recommended for further study, with

the rails remaining in the interim. Alternative relocation of the trail around this wetland may be required.

3. Rail-with-trail activity had already been designed into a section of the Ashokan reservoir between MP10 and the Glenford Dike MP12, during original construction, as a parallel 10' walkway with a barrier wall now exists on the dike itself.
4. Our investigation discovered that CSX's mothballed freight transload in Kingston was effectively inaccessible to tractor-trailers due to road geometry and intersections, and that an industrial parcel at Hurley Mt. Road was ideal for a truck transload facility directly off of I-87, serving the entire Hudson Valley east side between Albany and New York City. This was referenced in the Legislative report and recommended to be verified by the pending RFP from potential operators *before* a final trail usage decision was made. It was also discovered that the aggregate, rock, and cement industries within Kingston had no remaining direct rail service sidings from CSX, and should be examined for similar interest by a potential freight operator for local outbound transload.
5. The March 16 RFP issued by Ulster County limited proposers to specific milepost areas beginning at MP 3.6, effectively blocking access to CSX for common carrier freight connection. Furthermore, language within

the RFP made any proposal including other line segments necessary for common-carrier service grounds for dismissal of the entire proposal. As a result, one potential operator withdrew from the process.

6. The most critical eastern portions of the line can still be configured for rail with trail access, as any freight activity contemplated would be at minimum speeds and as a switching service only. Our emphasis was on finding ways to preserve both services wherever possible. The western and northern portions of the line – particularly beyond Phoenicia, have such significant washout and infrastructure damage that either rail repair or corridor reconstruction may be entirely infeasible for either. In these areas, trail usage was recommended in our study.
7. It is my recollection that critical portions of the right-of-way between Kingston and the NYCDEP boundary at MP10 were considered by the County to be reversionary in nature, and that those reversionary parcels were enough of a concern that the report scope included commentary on the Rails to Trails process and prior abandonment.

Warren County - Pat
Signed and sworn to before
me on 3-20-18 by
Randall D. Gustafson.
Cree L. Hoag Notary Public

Randall D. Gustafson
3/20/18

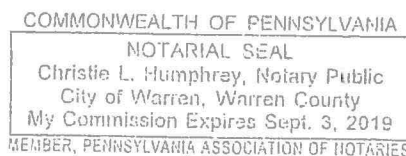


EXHIBIT A

MEMORANDUM OF AGREEMENT
Between
THE CITY OF NEW YORK
By and Through
THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
And
THE COUNTY OF ULSTER
In Connection With
THE ASHOKAN RAIL TRAIL PROJECT

THIS MEMORANDUM OF AGREEMENT ("Agreement") made the ^{4th} ~~16~~ day of ~~June~~, 2015, between the CITY OF NEW YORK ("CITY"), a municipal corporation of the State of New York, having an office and principal place of business at City Hall, New York, New York acting by and through its DEPARTMENT OF ENVIRONMENTAL PROTECTION ("DEP"), a municipal corporation, having its principal offices at 59-17 Junction Boulevard, Flushing, New York 11373, and the COUNTY OF ULSTER ("COUNTY"), a municipal corporation and a county of the State of New York, having its principal offices at 244 Fair Street, Kingston, New York 12401. For purposes of this Agreement, the City, DEP and the County shall each be referred to as a "Party" and shall be referred to collectively as the "Parties."

WITNESSETH

WHEREAS, the City of New York operates a water supply system that provides high quality drinking water to over nine million people in New York State; and

WHEREAS, the City is the fee owner of certain water supply property including the Ashokan Reservoir and watershed lands adjacent to the Ashokan Reservoir ("Watershed Property") located in Ulster County; and

WHEREAS, in an agreement dated June 15, 1911, the City granted to the Ulster and Delaware Railroad Company, a perpetual and exclusive easement to some portions of the Watershed Property, totaling approximately 11.5 miles along the rail corridor for "railroad purposes" (the "Ashokan Railroad Easement");¹ and

WHEREAS, the County acquired approximately 38.6-miles of the Ulster & Delaware Railroad ("U&D Railroad") between the City of Kingston and the Delaware County border at Highmount from The Penn Central Corporation and The Owasco River

¹ AGREEMENT Between THE ULSTER AND DELAWARE RAILROAD, COMPANY, and THE CITY OF NEW YORK, In the Matter of THE LOCATION OF THE TRACKS OF THE RAILROAD COMPANY AND THE DAMAGES TO IT GROWING OUT OF THE CONSTRUCTION BY THE CITY OF NEW YORK OF THE ASHOKAN RESERVOIR – Agreement dated June 15, 1911.

Railway Inc. by Quitclaim deed dated July 24, 1979 and, as such, is the current owner and successor in interest to the Ashokan Railroad Easement; and

WHEREAS, if freight rail use is infeasible, the County, as evidenced by the Ulster County Legislature's Resolution 275 dated August 19, 2014 that specified trail use only on the Ashokan Railroad Easement, seeks to develop, in an environmentally sensitive manner, the existing railroad corridor along the Ashokan Railroad Easement into a recreational trail, to be known as the Ashokan Rail Trail and displayed in Exhibit A annexed hereto; and

WHEREAS, the County has proposed to take steps to preserve the U&D Railroad corridor for future rail service and/or interim use as a non-motorized public recreational trail under the provisions of the National Trails System Act, 16 U.S.C. sec. 1247 (d) and implementing regulations at 49 C.F.R. §1152.29; and

WHEREAS, the City has agreed as a joint project to work cooperatively with the County and to provide, as specified herein, financial support and other assistance to develop the Ashokan Railroad Easement into the Ashokan Rail Trail, which will improve public access to the Watershed Property, expand recreational opportunities in the County, preserve the corridor for freight rail use, and increase economic development and tourism opportunities in the communities along the Ashokan Rail Trail; and

WHEREAS, the County will design the Ashokan Rail Trail, subject to DEP approval, obtain any required permits and approvals, undertake environmental review in coordination with the City, and construct the Ashokan Rail Trail consistent with the approved design; and

WHEREAS, the County and the City have agreed, at the County's request, to ensure that the Ashokan Rail Trail will be constructed, operated and maintained in a manner fully protective of the City's water supply and, to that end, upon DEP's approval of the completed design, the County will develop and operate the Ashokan Rail Trail under a Land Use Permit issued by the City pursuant to Title 15, Chapter 17 of the Rules of the City of New York and, consistent with the terms of this Agreement; and

WHEREAS, if and when the County obtains from the federal Surface Transportation Board ("STB") a Certificate (or Notice) of Interim Trail Use, or upon written request from the City or the County, the Parties shall modify the existing Ashokan Rail Easement or establish an alternative property interest to allow conditional trail use ("Modified Ashokan Rail Easement") to incorporate the terms of the Land Use Permit to ensure such land use conditions run with the land for so long as the trail use continues in accordance with the terms of the Modified Ashokan Rail Easement and the County acknowledges until such time as the Modified Ashokan Rail Easement is executed by the Parties, the terms of the Land Use Permit shall continue to govern use of the Ashokan Rail Trail.

NOW, THEREFORE, in consideration of the foregoing, the City and the County agree, consistent with the terms below, to cooperatively develop the Ashokan Railroad Easement into the Ashokan Rail Trail and allow the public use thereof. This Agreement shall apply to the easement as described and granted to the Ulster and Delaware Railroad Company by the City of New York in an agreement dated June 15, 1911 and recorded on April 18, 1913 in Liber 443 Page 58 in the Office of the Ulster County Clerk which was conveyed to the County by quitclaim deed, as recorded on August 10, 1979 in Liber 1414 Page 933 in the Office of the Ulster County Clerk, consisting of approximately 11.5 miles. The Parties mutually agree hereto as follows:

Section 1. City Obligations

A. The City, through DEP, shall contribute financial assistance to the County in an amount not to exceed Two Million, Five Hundred Thousand Dollars (\$2,500,000), which shall be administered by the County toward the planning, design and construction of the Ashokan Rail Trail in accordance with the terms and conditions set forth in this Agreement.

i. Within ninety (90) days of the City's registration of this Agreement, DEP shall make a payment to the County in the amount of One Million Dollars (\$1,000,000). The County may choose not to commence work on the Ashokan Rail Trail until such time as it receives the initial payment.

ii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty Percent (50%) of the initial payment of One Million Dollars (\$1,000,000). DEP shall make a further payment of Five Hundred Thousand Dollars (\$500,000).

iii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the \$1.5 Million (\$1,500,000), DEP shall make a payment in the additional amount of Two Hundred Fifty Thousand Dollars (\$250,000);

iv. DEP shall make three additional payments of Two Hundred Fifty Thousand Dollars (\$250,000) each consistent with the terms of this paragraph. Each payment shall be made upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the previous \$250,000 payment.

v. The County shall deposit all funds received from DEP in an interest bearing account, not to be comingled with funds from other sources. Interest earned on any portion of the Two Million, Five Hundred Thousand Dollars (\$2,500,000) may be used by the County for any of the allowed purposes as set forth in and in accordance with this Agreement. Any funds received by the

County from DEP that are not expended, including unspent interest, for the purposes set forth in this Agreement, shall be returned to DEP within thirty (30) days of the completion of all activity and transactions related to this Agreement, or the termination of this Agreement.

vi. The Parties may modify timing of the above structured payments by mutual written agreement in response to changes in the cost, scope of work, and/or schedule for completion.

B. The City shall continue to support the County in obtaining, from the Catskill Watershed Corporation (CWC) Catskill Fund for the Future, an additional One Million Dollars (\$1,000,000) in grant funding available in the New York City Watershed as well as provide future support for additional CWC funding to cover any increases in construction costs directly attributable to the Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources ("Watershed Regulations"), 15 Rules of the City of New York (RCNY) Chapter 18, 10 New York Codes, Rules and Regulations (NYCRR) Part 128, and not otherwise required by federal or State law; and

C. In addition to the funding set forth in this Section 1, paragraph A, upon the County's satisfaction of 2G below, the City shall fund, design, construct, operate, and maintain public trailheads, with facilities, including, directional and interpretive signage, sanitary facilities, public parking, and other mutually agreed upon trail support amenities, at locations, mutually agreed upon by the Parties, on Watershed Property or adjacent properties. The City shall also, considering input from the County, provide additional entrance points for bicyclists and pedestrians along Watershed Property, which points do not require parking and related facilities, as long as these points are conducive to the security, operation and/or water quality of the Ashokan Reservoir.

D. The City, using its engineering judgment and operational experience, shall accommodate bicycle and pedestrian traffic, including consideration of a possible dedicated shared-used lane for walking and bicycling, when the City reconstructs the Ashokan Dividing Weir Bridge and the Route 28A Bridge in Boiceville, also known as the Five Arch Bridge.

E. The City shall work with the County to foster tourism, develop interpretive signage relating to the unique history of the Ashokan Reservoir, Catskill Park, and U&D Railroad and upon substantial completion of construction of the Ashokan Rail Trail, promote awareness and responsible use of the Ashokan Rail Trail.

F. The City shall be responsible for all costs associated with any relocation or reconstruction of the Ashokan Rail Trail resulting from DEP activities, including reconstruction of dikes, overpasses, bridges, culverts, roadways, or other DEP

facilities that require the temporary closure and/or rebuilding of portions of the Ashokan Rail Trail. During such construction activities, DEP shall, using its engineering judgment and operational experience, design and construct alternative Ashokan Rail Trail routes to avoid areas of construction, to the extent feasible, and will seek to minimize disruption to public access to the Ashokan Rail Trail. DEP shall obtain input from the County, on the location and design of any required alternate routes or trail closures. In the event that DEP determines, based upon its engineering judgment and operational experience, that an alternate route cannot be safely designed at a reasonable cost so as to not affect the use of the trail, portions of the trail may be closed temporarily and DEP may create temporary trailheads and trails to accommodate such closures.

G. The City, by means of a Land Use Permit, shall allow access to the Ashokan Railroad Easement by the County's employees, consultants and agents for the purpose of conducting necessary planning and engineering studies associated with the design and implementation of the Ashokan Rail Trail. In addition, the City, by means of a Land Use Permit or, consistent with paragraph 3D below, a Modified Ashokan Railroad Easement, shall allow the County's employees, consultants and agents any necessary access for construction, security, operation, and maintenance of the Ashokan Rail Trail as well as allow public access to the trailheads and Ashokan Rail Trail until the resumption of railroad operations and/or termination of the County's public trail use.

Section 2. County Obligations

- A. With the exception of the aforementioned trailheads, the County shall be fully responsible for all planning, design, and construction activities required for the Ashokan Rail Trail, including coordination of community input with DEP involvement. The County will be responsible for acquiring and expending any additional funding required for the planning, design, construction, operation and maintenance of the Ashokan Rail Trail beyond the amount of funding provided by the City pursuant to this Agreement. The County may hire any contractors, subcontractors and/or consultants necessary for the planning, design, and construction of the Ashokan Rail Trail and they shall have access to the Ashokan Railroad easement therefore.
- B. Upon completion of construction, the County, through its employees, agents, contractors, subcontractors, and/or consultants, shall be fully responsible for the operation and maintenance of the Ashokan Rail Trail excluding the trailheads, which the City shall construct, operate and maintain. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct, operate and maintain the Ashokan Rail Trail in a manner that does not endanger, injure or pollute, or otherwise negatively impact, any property or water supply of the City.

- C. The County shall consult and include DEP in the environmental review and planning process for the Ashokan Rail Trail, and prior to any construction, the final design of the Ashokan Rail Trail shall be subject to approval by DEP, which approval shall not be unreasonably withheld. The design shall also include necessary public safety measures including the use of barriers such as fencing or guardrails, use of materials which are not deemed impervious² under the Watershed Regulations for the trail surface unless otherwise mutually agreed upon, and signage identifying the Watershed Property as part of the City's public drinking water system and highlighting the City's and County's cooperation in developing the Ashokan Rail Trail. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct the Ashokan Rail Trail and related facilities in accordance with the DEP-approved design documents.
- D. The County shall act as lead agency for the State Environmental Quality Review Act ("SEQRA) and complete all necessary documents for the construction, operation and maintenance of the Ashokan Rail Trail. With the cooperation of the City and the DEP, the County shall include in its SEQRA review the design, construction, operation and maintenance of the trailheads as well as any other related improvements to be undertaken by DEP with respect to the Ashokan Rail Trail. If the County decides to conduct an environmental review of the Ashokan Rail Trail only, rather than of the entire U&D Railroad corridor, the County shall include, to the extent possible, an analysis of any potential cumulative impacts of the planned future trail development. If the County subsequently conducts an environmental review of additional areas of the U&D Railroad corridor in the New York City Watershed, the County shall afford DEP all the rights of an involved agency during the environmental review(s) of such proposed project(s).
- E. The County shall be responsible for obtaining all required federal, State and local permits and approvals for design, construction, operation and maintenance of the Ashokan Rail Trail, including compliance with the City's Watershed Regulations. DEP will work in good faith with the County to schedule a pre-application conference with respect to any required DEP permits or approvals and to expeditiously process and facilitate any required DEP permits or approvals for construction of the Ashokan Rail Trail.

² *"Impervious surface means an area which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location. Impervious surfaces include, but are not limited to, paving, concrete, asphalt, rooftops, and other hard surfacing materials, and do not include dirt, crushed stone or gravel surfaces."* Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources §18-16 Definitions (54).

- F. The County shall advise the City when it has received the Certificate (or Notice) of Interim Trail Use and confirm that no appeals, requests for stays, reconsideration or reopening or other actions that would delay the effective date of the Certificate (or Notice) have been filed. If any such appeal or other petition for stay, reconsideration, or reopening has been filed, the County shall advise the City when any such proceeding has been concluded and the effective date of the Certificate (or Notice) has occurred.
- G. Upon DEP's written approval of the completed design of the Ashokan Rail Trail, as well as all other necessary permits and approvals pursuant to federal, State, City and local laws, rules and regulations to construct, operate and maintain the Ashokan Rail Trail and associated structures, including but not limited to culverts and bridges, DEP will issue the County a Land Use Permit pursuant to Title 15, Chapter 17 of the Rules of the City of New York, including the terms and conditions specified in Exhibit B, attached hereto, granting the County permission to construct, operate and maintain the Ashokan Rail Trail, excluding the trailheads. Such terms shall not unreasonably interfere with the public's use of the Ashokan Rail Trail. The County shall and shall cause its employees, agents, contractors, subcontractors, and/or consultants, to shall comply with the terms of the Land Use Permit for so long as it is in effect.

Section 3. Railbanking or Abandonment of the U&D Railroad

- A. The Parties agree that their respective counsel shall continue to discuss the legal implications of and consult with each other on any potential action by the County in connection with federal Railbanking pursuant to 16 U.S.C. Sec. 1247 (d) of the National Trails System Act or other legal action to enable the Ashokan Rail Trail to be developed along the Ashokan Railroad Easement.
- B. In connection with the County's potential pursuit of an Abandonment or Railbanking submission to the STB, the County shall provide the City an opportunity to review and comment on any submission to the STB at least 30 days prior to its filing at the STB. The County shall work in good faith to incorporate the City's comments and concerns into its submission to the STB in connection with the Ashokan Railroad Easement and shall update the City on the progress of any submission. As long as Ulster County is in compliance with this Agreement, and any Land Use Permit and/or easement for the Ashokan Rail Trail that is in effect governing the County's use of the rail corridor through City property, the City agrees that it will not oppose in any manner the County's request for Abandonment or Railbanking at the STB. The City reserves its right to comment on such submission to ensure that any action by the STB is consistent with the purposes of this Agreement and in particular, the development and operation of the Ashokan Rail Trail in an environmentally sensitive manner.

- C. The City acknowledges that this Agreement in no way impinges on or diminishes Ulster County's right to allow a railroad operator or the County to seek a modified certificate of public convenience and necessity under STB rules in order to establish the feasibility of freight operations on the line. The County acknowledges that this Agreement in no way impinges or diminishes the City's rights with respect to ensuring that any future use of the rail corridor is conducted in an environmentally sensitive manner which includes, but is not limited to, asserting whatever legal rights it may have before the Surface Transportation Board to protect such interests.
- D. Upon the County obtaining a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, and/or upon written request from the City or the County, the County and the City shall promptly execute a Modified Ashokan Rail Easement which will provide for the County's use of the Ashokan Railroad Easement for trail use. Such Modified Ashokan Rail Easement shall contain, but shall not be limited to, the conditions set forth in Exhibit B to ensure that the Ashokan Rail Trail is constructed, operated and maintained in an environmentally sensitive manner. Pending execution of such Modified Ashokan Rail Easement, the Land Use Permit shall continue to govern the operation of the Ashokan Rail Trail.
- E. Except as the parties consensually agree to undertake in the future as set forth herein, this agreement does not modify or extinguish in any manner whatsoever the Ashokan Railroad Easement as described in the Book of Deeds at Liber 443, Page 58 as filed in the Office of the Ulster County Clerk.

Section 4. Effective Date and Term

- A. This Agreement shall not take effect until it is executed by the Parties and registered by the City pursuant to Section 328 of the City Charter. The Effective Date of this Agreement shall be the date it is registered pursuant to Section 328.
- B. This Agreement shall terminate five (5) years after the Effective Date except that in the event that the County obtains a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, or the City or the County has made a written request for the Parties to execute a Modified Ashokan Rail Easement, this Agreement shall extend until such time as the County has executed such Modified Ashokan Rail Easement. This Agreement may also be extended by mutual written consent of the Parties.
- C. This Agreement may be terminated by either DEP or the County upon one hundred and twenty (120) days written notice to the other Party. Upon receipt of such notice of termination, the County shall seek to minimize the expenditure of funds under this Agreement and shall not incur new costs to the extent practicable. In the event of such termination, the City agrees to reimburse or otherwise compensate the County, within sixty (60) days of termination, for all

reasonable costs and/or expenses, actual and/or obligated by the County for costs incurred through the date of such termination.

Section 5. Indemnification

The Parties shall mutually and reciprocally indemnify each other and their respective officers, employees, and agents, and save each other harmless from any liability, damage, claims, demands, costs or losses arising directly or indirectly out of their officers', employees', or agents' respective acts or omissions pursuant to this Agreement, provided however, that: (1) County's indemnification of City extends solely to County's administration of activities and transactions funded with DEP Funds; and (2) in no event or instance shall County have any liability, under any circumstance(s), for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by City's acts, omissions, obligations and/or responsibilities related to this Agreement; and (3) in no event or instance shall the City have any liability, under any circumstance(s) for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by County's acts, omissions, obligations and/or responsibilities related to this Agreement.

Section 6. Notices

Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by certified mail with postage prepaid, by hand, by over-night courier, or by facsimile confirmed by any of the previous methods, addressed to the Parties as shown below or at such other addresses as such Parties may designate in writing from time to time:

To DEP: New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 12401
Attn: Ira Stern, Chief, Natural Resources Division
Fax: (845) 338-1296 Phone: (845) 340-7207

With a copy to: New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attn: General Counsel
Fax: (718) 595-6543 Phone: (718) 595-6555

To the County: Hon. Michael P. Hein
Ulster County Executive

P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 334-5724 Phone: (845) 340-3800

With a copy to: Beatrice Havranek, Esq.
County Attorney
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3691 Phone: (845) 340-3685

John Parete,
Chair, Ulster County Legislature
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3900 Phone: (845) 340-3651

Section 7. Agreement is a Legally Binding Contract

The respective commitments of the Parties to this Agreement are in consideration of each other, thereby making this Agreement a legally binding contract enforceable by the County and the City in a court of competent jurisdiction.

Section 8. Employees

A. The County and the City agree that the County and its employees, agents, contractors, subcontractors, and/or consultants, are independent contractors and not employees of the City, DEP, or any department, agency, or unit of the City and further agree that neither the County nor its employees, agents, contractors, subcontractors, and/or consultants will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit thereof.

B. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities, or obligations of the County, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the County, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

C. Nothing in this Agreement shall impose any liability or duty on the County for the acts, omissions, liabilities, or obligations of the City, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the City, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social

Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

D. The City shall not be responsible, nor have any liability, for the County's design, construction, operating and maintenance of the Ashokan Rail Trail, except for the trailheads developed and maintained by the City.

E. The provisions of this Agreement shall not be deemed to create any right of action in favor of Third Parties, including any property owners, against the County or the City or their respective officers and employees.

Section 9. Force Majeure

The obligations set forth in this Agreement may be delayed if either Party cannot comply with the terms of this Agreement because of an act of God, war, strike, or other condition as to which conduct on the Ashokan Rail Trail of the Party or its agent was not the proximate cause; provided, however, that such Party notifies the other Party in writing within ten (10) business days of obtaining knowledge of any such condition and requests an appropriate extension of the relevant terms of this Agreement, and provided further that such Party will make its best efforts to provide for alternative arrangements to fulfill the obligation.

Section 10. Cooperation

The Parties acknowledge and agree that during the term of this Agreement they will promptly provide each other with all documentation, reports, and information that the other Party reasonably requests in order to fulfill its obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of either Party, to provide documents or information protected by or to waive the attorney-client privilege or the attorney-work product privilege.

Section 11. Compliance with Law

The Parties represent and warrant that all actions taken pursuant to the terms of this Agreement shall comply with any and all applicable federal, State, and local laws, rules, and regulations, including State and local procurement laws and regulations.

Section 12. Investigations

The County and the City agree to cooperate fully and faithfully with any investigation, audit, or inquiry relating to the subject matter of this Agreement conducted by a federal, New York State, County, or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

Depending on the facts and circumstances, any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

Section 13. Counterparts

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 14. Entire Agreement, Amendments, and Assignments

This Agreement contains the entire understanding between the Parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both Parties. This Agreement may not be assigned by either Party without the written consent of the other Party.

Section 15. Headings

The headings herein are for reference purposes only.

Section 16. Severability

If any provision of this Agreement or its application should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions and the application thereof shall not in any way be affected or impaired.

*****Signature Page Follows*****

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DEP

E-PIN 82615T0008001

Contractor COUNTY OF ULSTER DEPT OF PUBLIC WORKS

Approved as to form

Certified as to legal authority

Electronically Signed By AMRITA BARTH

Date 06/04/2015 18:16

Acting Corporation Counsel

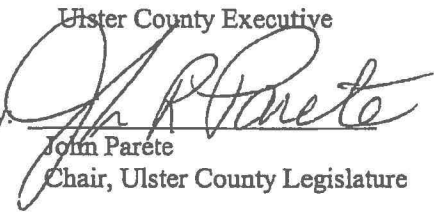
IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the latest date written below.

COUNTY OF ULSTER

By: 

Michael P. Hein
Ulster County Executive

Date: June 11, 2015

By: 

John Parete
Chair, Ulster County Legislature

Date: June 10, 2015

**THE CITY OF NEW YORK, acting by and through
the New York City Department of Environmental Protection**

By: 

Mary F. Pazan
Assistant Commissioner

Date: 6/16/15

Approved as to form and
Certified as to Legal Authority:

Acting Corporation Counsel of the
City of New York

Date: _____

ACKNOWLEDGMENTS

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

On the 11th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Michael P. Hein**, to me known, being by me duly sworn did depose and say that he is the **Ulster County Executive**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.


Notary Public

MARK LONGTOE
Notary Public, State Of New York
Reg. No. 02LO6086350
Qualified In Ulster County
Commission Expires January 21, 20 19

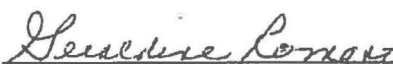
STATE OF NEW YORK

ss:

COUNTY OF ULSTER

On the 10th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **John Parete**, to me known, being by me duly sworn did depose and say that he is the **Chairman of the Ulster County Legislature**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.

GERALDINE ROMANO
Notary Public, State of New York
Qualified in Ulster County
Reg. No. 01RO4767409
My Commission Expires: 9/30/2018


Notary Public

STATE OF NEW YORK

ss:

COUNTY OF QUEENS

On the 16th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Mary F. Pazan**, to me known, being by me duly sworn did depose and say that she is the **Assistant Commissioner of the Department of Environmental Protection of the City of New York**, the individual described herein and who executed the foregoing instrument, and that she signed her name thereto as authorized by said municipal corporation.

NAOMI BURRUS
Notary Public, State of New York
No. 01BU6304146
Qualified In Queens County
Commission Expires May 27, 20 18

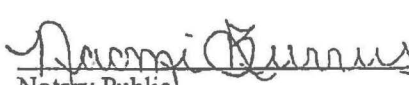

Notary Public

EXHIBIT B



Ulster County Rail Trail Project: “Ashokan Rail Trail”

Ulster County Department of Planning- December 2016- Fact Sheet

PROJECT DESCRIPTION:

Proposed in 2012 by County Executive Mike Hein, the *Ashokan Rail Trail (ART)* will create an 11.5-mile recreational trail along the northern edge of the Ashokan Reservoir between West Hurley and Boiceville. The *ART* will be developed on the County-owned Ulster & Delaware (U&D) Railroad Corridor pursuant to Ulster County Legislative Resolution No. 488 of December 2015 and in cooperation with the New York City Department of Environmental Protection (DEP). The *ART* segment of the U&D has not been used for train service in 40 years and was delineated for conversion to a rail trail as part of the County's segmented “rail-with-trail” policy, which also allowed tourism rail operations in the Kingston and Mount Tremper segments of the U&D corridor.

Planning, preliminary engineering design, and environmental review for the *ART* began in June 2016 and construction is slated to begin in late 2017. The *ART* will be 10 to 12 feet in width and surfaced with a compacted crushed stone surface. The project includes drainage improvements, regrading of the former railbed, installation of signage and fencing, development of trail amenities, and connection to three major trailheads, which are being designed and constructed by the DEP. The construction will include replacement of the destroyed Boiceville Trestle and replacement of the failed major culvert at Butternut Creek as well as measures to protect water quality in the Ashokan Reservoir. The *ART* will also include interpretive signage regarding the history of the Ashokan Reservoir, Esopus Valley communities, U&D Railroad and Catskill Park.

Once completed, the *ART* will be open to the public dawn-to-dusk, year-round for non-motorized uses, such as hiking, bicycling, running, cross-country skiing, and snowshoeing. The *ART* will provide the first public access to the incredibly scenic northern shores of the Ashokan Reservoir without a special DEP permit in more than a century. The *ART* will also be a key component of a developing interconnected rail trail system linking the Walkway Over the Hudson to the Catskill Park.



PROJECT GOALS:

The *ART* is part of Ulster County's initiative to develop its growing rail trail network into a world-class trail system extending from the Walkway Over the Hudson to the Ashokan Reservoir and Catskill Park. The goals of the *ART* include:

- Promoting tourism and economic development
- Expanding outdoor recreational opportunities
- Improving public health through exercise
- Linking communities to open space and nature
- Providing trail opportunities for persons with disabilities and limited mobility
- Improving fishing/ hunting access on DEP lands
- Enhancing the quality of life in Ulster County



**PUBLIC COMMENTS ARE
WELCOMED AND CAN BE SENT TO:**

**Ulster County Planning Department
PO Box 1800
Kingston, NY 12402 or
planning@co.ulster.ny.us**

EXHIBIT C

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER
- - - - - X
CATSKILL MOUNTAIN RAILROAD COMPANY, INC.,
Plaintiff,

- against - INDEX NO.
13-2352

THE COUNTY OF ULSTER,
Defendant.
- - - - - X

EXAMINATION BEFORE TRIAL
of the Defendant, THE COUNTY OF ULSTER, By
and Through DENNIS M. DOYLE, held on Friday,
September 12, 2014, commencing at 9:55 a.m. at
Valley Reporting Services, 115 Green Street,
Kingston, New York 12401, before Michelle L. Conero,
a Shorthand Reporter and Notary Public in and for
the State of New York.

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A. We were looking at abandonment issues and alternatives with the Surface Transportation Board.

Q. What's abandonment?

A. I have to go back. Well, the office has been participatory in a number of regulatory issues of railroads going out of business and rail lines going out of business. As part of that we're aware of some of the alternatives to reusing those rights-of-way. As part of that we're also aware of some of the abandonment processes that are out there. So we were looking at the status of the Catskill Mountain Railroad, the U&D Railroad, particularly with Ulster County as an owner, beginning to start to explore what abandonment has or hasn't taken place and what would the processes be if abandonment hasn't taken place since a municipality was the owner.

Q. What does abandonment mean in lay terms for a railroad, if you know?

A. In lay terms. This is a very complicated topic. The easiest way to say it is that railroads and railroad operation essentially can be abandoned under a number of different provisions under

1
2 Federal statute. That abandonment process offers
3 an alternative reuse for the railroad so that the
4 linear right-of-way is not lost but it doesn't
5 have to be -- once a line is abandoned there's
6 shipper information that has to be done, there's
7 a whole process to essentially deal with any
8 shippers on the line. If there's an abandonment
9 process there's an opportunity for subsidiaries
10 on the line in those instances. So there's a lot
11 of issues associated with this. There's common
12 carrier status associated with that as well. So
13 there's -- the easiest way to think of it is that
14 abandonment of a line means it's no longer in
15 railroad use. The opportunity for other use
16 depends upon how it's abandoned.

17 Q. Do you know where in the abandonment process the
18 Ulster Delaware line is?

19 A. I do not.

20 Q. Does anyone at the County?

21 A. I don't believe so.

22 Q. Okay. So what was the purpose of this document
23 that's included with this e-mail?

24 A. I think we're really trying to basically look at
25 what alternatives were out there to abandonment,

what it's status was and what the process was going through abandonment if it hadn't been abandoned.

Q. And what's the timeframe for this abandonment?

A. It depends. It really is -- it really depends. There is a lot of different timeframes out there. I can't give you one specifically.

Q. What's the current thinking?

MS. STEEVES: Objection to form.

Q. Currently what's the timeframe?

A. I'm not sure that we can essentially establish a timeframe until we establish a status.

Q. Have you submitted any applications related to abandonment?

A. I'm not aware of it.

Q. Have you started preparing any?

A. I'm not aware of any except for the fact that we did do some basic background work on the historic structures associated with the Railroad.

Q. And what kind of work was that?

A. It was done by the Department of Environment. We asked them to take a look at all the structures. It had two purposes. One was to take a look at the condition of the railroad, one was to take a

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DENNIS M. DOYLE

106

look at what structures were out there.

MS. GIUDA: Okay. That is everything.
Thank you.

(Whereupon, the Examination Before Trial
of the Defendant, THE COUNTY OF ULSTER,
By and Through DENNIS M. DOYLE, was
concluded at 12:50 p.m.)

1 there are field notes that I took that day.

2 Q. Okay. What do you mean by collecting data?

3 A. In paragraph 4, and the point of all these -- the
4 point was to collect data on the structures.

5 Q. For what purpose?

6 A. For the application to the Surface Transportation
7 Board to collect environmental -- as I said in
8 the beginning, my department often gets asked for
9 environmental, historical consultation. Because
10 of our mapping and GIS and GPS capabilities we
11 get asked to do these things, and so we were
12 asked to collect historical environmental data
13 for that purpose.

14 Q. What was the application for the Surface
15 Transportation Board?

16 A. I don't know what the purpose was but that was --
17 we were given the list of things that we needed
18 and historical -- anything on the corridor is
19 going to be over fifty years and that was one of
20 the things, photographs and dimensions and dates
21 when it was constructed of any structure over
22 fifty years old. Again, because of my familiarity
23 with the corridor, it was a good fit.

24 Q. Okay. Who asked you -- who gave you this
25

1 assignment?

2 A. My boss.

3 Q. And who is your boss?

4 A. My direct boss is Amanda LaValle.

5 MS. GIUDA: I'd also demand any
6 application to the Surface Transportation Board
7 or documents that are part of it.

8 Q. Chronologically you next reference a visit on
9 March 13, 2013 in paragraph 10.

10 A. Okay.

11 Q. What was the purpose for this visit, if you
12 remember?

13 A. I don't remember. I mean my purpose was as it was
14 likely -- my purpose was to be a tour guide.
15 Again, I know where I'm going.

16 Q. Based on your familiarity. Who were you guiding?

17 A. I believe just Chris White.

18 Q. Did your boss ask you to go to this one, too?

19 A. Yes.

20 Q. Did you contact the Railroad prior to this visit?

21 A. Me personally, no.

22 Q. Do you know if anyone did?

23 A. I don't know.

24 Q. Did anyone else, besides Mr. White, go with you
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site visits I imagine you know the answer to this.

MS. GIUDA: Can I get this marked first.

(Plaintiff's Exhibit 12 was marked for identification.)

Q. Did you have any involvement in preparing these maps?

A. Yes.

Q. So what are they?

A. This is the -- this was the -- this was the result of my initial -- some of my initial work with documenting structures the way that -- the way it -- we started -- how do I explain this? We started documenting the historic and all the structures. The way we started was let's get the biggest structures. We're not sure if we need every little culvert and everything within the right-of-way. So a lot of the times, like I said, in my field visits it was a third of a mile here or whatever. So it was stopping and getting some of these data points, measurements and things that you're required to have for this application, and that's what this is. If you have

specific questions on it, but -- so I would collect the data points, the intermittent streams. This is just simply -- the data we have, it's Lidar data that can detect when there's a stream crossing. So we had it put across there, hopefully making our work in the field easier if we did need to get every little thing.

Q. Did anyone help you prepare the maps?

A. The department of information services would have been -- when ever there is tricky GIS -- sorry. Yes, the department of information services.

Q. That's within the County?

A. Yes.

Q. Anyone in particular that you recall?

A. Tom Hynes.

Q. Like the ketchup or --

A. No. H-Y-N-E-S.

Q. These were meant to be submitted with the Surface Transportation Board application?

A. Yes. I forget exactly what the map is supposed to be, but yes, you have to provide not only photographs but maps of that.

Q. Do you know if any further work has been done on these maps?

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significant damage that's been there for
twenty-five years. Nothing has been done."

Q. Could you repeat the last sentence in full for
the record?

A. It's a long one. "In addition to providing
significant water quality benefits, this project
also assists and furthers the County's project to
develop a world class recreational rail trail
along an eleven-mile corridor running along the
northern edge of the Ashokan Reservoir by
repairing the only significant structural damage
along the former railroad corridor in this
section."

Q. Why was it referred to as the former railroad
corridor?

A. I don't know.

Q. Okay. Did you write that sentence, --

A. Oh, boy.

Q. -- if you recall?

A. I don't recall.

Q. Okay. In part C there, the proposed start date,
why did the County select June 1, 2015?

A. I believe that the water quality improvement
project dollars, it's not -- there's a long --

1 AARON FOSTER BENNETT 88
2 that there's many places, in my opinion, that
3 just are virtually impossible to have a trail
4 alongside a rail in that stretch from Kingston to
5 the reservoir.

6 Q. Okay. I found an e-mail discussing the rail
7 banking application. Is that the Surface
8 Transportation Board application we discussed?

9 A. I believe so.

10 MS. GIUDA: Mark this one.

11 (Plaintiff's Exhibit 18 was
12 marked for identification.)

13 Q. What is the Part-Time Resident Advisory Task
14 Force on Revitalization of the central Catskills?

15 A. It's something I'm not involved in. It's a report
16 that was done by -- the Mark Project I believe
17 commissioned this study several years ago to, I
18 guess, figure out how to revitalize the central
19 Catskills. Nan Stolzenberg was the consultant. I
20 remember that. I believe that's right. Anyway, so
21 they did a number of different surveys and
22 things. I was not involved in it but I read the
23 report.

24 Q. Okay. Do you recall what the general findings of
25 that report were?

Message: RE:

RE:

Hessinger, Raymond (DOT) to Younsi, Mike (DOT); cwhi@co.ulster.ny.us
Wednesday, December 12, 2012 9:01 AM cc
Subject RE:

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Raymond F. Hessinger, P.E.
Director, Freight & Passenger Rail Bureau
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(518) 813-7493<tel:5188137493> (cell)
Raymond.Hessinger@dot.ny.gov<mailto:Raymond.Hessinger@dot.ny.gov>

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Younsi, Mike (DOT)" <Mike.Younsi@dot.ny.gov>
To: "cwhi@co.ulster.ny.us" <cwhi@co.ulster.ny.us>
Cc: "Hessinger, Raymond (DOT)" <Raymond.Hessinger@dot.ny.gov>
Sent: Wed, Dec 12, 2012 12:50:04 GMT+00:00
Subject: RE:

Good morning Chris;
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Thanks
M. Younsi

From: cwhi@co.ulster.ny.us [mailto:cwhi@co.ulster.ny.us]
Sent: Tuesday, December 11, 2012 4:47 PM
To: Younsi, Mike (DOT)
Subject: Re:

Thank you, Mike. This is very helpful.

The documents that we have in the file show that our attorney was clearly aware of and concerned about the possibility

Thanks,
Chris

Chris White
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12/11/2012 02:41 PM

To

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Subject

Hi Chris;
<span style="font-size:10.0pt;

Message: RE:

RE:

Christopher White/Planning
Department/Ulster CountyWednesday, December 12, 2012 9:24
AM

to Hessinger, Raymond (DOT)

cc Younsi, Mike (DOT)

bcc Christopher White/Planning Department/Ulster
County@Ulster County

Subject RE:

Ray and Mike,

Thank you for helping me to understand this. As a follow-up, could you please clarify a couple items for me:

- If the documents that Mike sent to me establish that this line was formally abandoned under the ICC/STB abandonment process, why was the line not subject to reversionary clauses in the deeds at that time. Does the fact that the tracks were not removed prevent the reversionary clauses from taking effect?

- Could the abandonment referred to in the documents have been overturned in the final bankruptcy reorganization approved for Penn Central? It appears from our files that when the County bought the line in 1979, the intention was to run both a tourist railroad AND some freight. We also checked with the STB, which indicated that it has no record of this line being abandoned...Is it possible that this line was intended for abandonment but that abandonment was never accepted or recognized by STB? If so, would rail banking still be an option?

--If the line is abandoned, do you have any suggestions for how the County might make this a trail (remove the tracks) without being subject to reversionary clauses?

Thanks for all your assistance on this. I apologize for the number of questions but as you know, this is a complex situation, and I do not fully understand it yet.

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"Hessinger, Raymond (DOT)" ---12/12/2012 08:59:30 AM---"Hessinger, Raymond (DOT)"
<Raymond.Hessinger@dot.ny.gov>

"Hessinger, Raymond (DOT)"
<Raymond.Hessinger@dot.ny.gov>

12/12/2012 09:00 AM

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12/11/2012 02:41 PM

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Cc: Younsi, Mike (DOT)

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Thanks Chris

M. Younsi

From: cwhi@co.ulster.ny.us [<mailto:cwhi@co.ulster.ny.us>]**Sent:** Wednesday, December 12, 2012 9:31 AM**To:** Hessinger, Raymond (DOT)**Cc:** Younsi, Mike (DOT)**Subject:** RE:

Ray and Mike,

Thank you for helping me to understand this. As a follow-up, could you please clarify a couple items for me:

- If the documents that Mike sent to me establish that this line was formally abandoned under the ICC/STB abandonment process, why was the line not subject to reversionary clauses in the deeds at that time. Does the fact that the tracks were not removed prevent the reversionary clauses from taking effect?

- Could the abandonment referred to in the documents have been overturned in the final bankruptcy reorganization approved for Penn Central? It appears from our files that when the County bought the line in 1979, the intention was to run both a tourist railroad AND some freight. We also checked with the STB, which indicated that it has no record of this line being abandoned...Is it possible that this line was intended for abandonment but that abandonment was never accepted or recognized by STB? If so, would rail banking still be an option?

--If the line is abandoned, do you have any suggestions for how the County might make this a trail (remove the tracks) without being subject to reversionary clauses?

Thanks for all your assistance on this. I apologize for the number of questions but as you know, this is a complex situation, and I do not fully understand it yet.

Chris

Chris White
Deputy Director
Ulster County Planning Department
244 Fair Street, PO Box 1800
Kingston, NY 12402
(845) 340-3338
(845) 340-3429 (fax)
cwhi@co.ulster.ny.us

"Hessinger, Raymond (DOT)" <
Raymond.Hessinger@dot.ny.gov>

12/12/2012 09:00 AM

To "Younsi, Mike (DOT)" <Mike.Younsi@dot.ny.gov>,
"cwhi@co.ulster.ny.us" <cwhi@co.ulster.ny.us>

cc

Subject RE:

There can be a difference between ICC / STB abandonment (in which common carrier rail service is abandoned) and abandonment as defined in the deeds (which could be removal of the tracks). You would need to review each of the deeds that make up the right if way.

The documents Mike transmitted establish that in the STB's eyes the corridor is legally abandoned, and as such, railbanking under the rails to trails act would likely not be available to preserve the corridor from reversionary clauses should

the tracks be removed.

Raymond F. Hessinger, P.E.
Director, Freight & Passenger Rail Bureau
NYS Department of Transportation
50 Wolf Road, POD 54
< geo:0,0?q=50+Wolf+Road%2C+POD+54%0AAlbany%2C+NY+12232>Albany, NY 12232<geo:0,0?q=50+Wolf+Road%2C+POD+54%0AAlbany%2C+NY+12232>
(518) 457-8075<tel:5184578075> (desk)
(518) 813-7493<tel:5188137493>(cell)
Raymond.Hessinger@dot.ny.gov<mailto:Raymond.Hessinger@dot.ny.gov>

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Younsi, Mike (DOT)" <Mike.Younsi@dot.ny.gov>
To: "cwhi@co.ulster.ny.us" <cwhi@co.ulster.ny.us>
Cc: "Hessinger, Raymond (DOT)" <Raymond.Hessinger@dot.ny.gov>
Sent: Wed, Dec 12, 2012 12:50:04 GMT+00:00
Subject: RE:

Good morning Chris;

I don't think we seem to have any ICC's abandonment certificate granted to Penn's Trustees in our files, and I am also not sure based on what the state recognized said abandonment, and sent the notice out to all interested entities! Anyway, I will continue searching our documents. In the overall, it is certain that there was no request for the release of the state's preferential right of acquisition, and I believe, because the Line was going to be used for tourism and scenic operations, and therefore it was not subject to the process of preferential right of acquisition.

Thanks

M. Younsi

From: cwhi@co.ulster.ny.us [<mailto:cwhi@co.ulster.ny.us>]
Sent: Tuesday, December 11, 2012 4:47 PM
To: Younsi, Mike (DOT)
Subject: Re:

Thank you, Mike. This is very helpful.

The documents that we have in the file show that our attorney was clearly aware of and concerned about the possibility that the rail corridor was subject to possible reversionary clauses in the deeds of adjoining properties...The documents seem to reflect that Penn Central conveyed to the County the right to operate a railroad, though, so I'm confused how this could be abandoned in 1977 (as per the documents you sent) and not subject to reversionary clauses. It seems that if this was in fact "abandoned" that we would have faced some reversionary claim by now...Do you have any ideas how the Right-of-Way might still be protected as rail corridor?

Thanks,
Chris

Chris White
Deputy Director
Ulster County Planning Department
244 Fair Street, PO Box 1800
Kingston, NY 12402
(845) 340-3338
(845) 340-3429 (fax)

cwhi@co.ulster.ny.us<<mailto:cwhi@co.ulster.ny.us>>

"Younsi, Mike (DOT)" <Mike.Younsi@dot.ny.gov<<mailto:Mike.Younsi@dot.ny.gov>>>

12/11/2012 02:41 PM

To

"cwhi@co.ulster.ny.us<<mailto:cwhi@co.ulster.ny.us>>"<
cwhi@co.ulster.ny.us<<mailto:cwhi@co.ulster.ny.us>>>

cc

"Hessinger, Raymond (DOT)"
<Raymond.Hessinger@dot.ny.gov<<mailto:Raymond.Hessinger@dot.ny.gov>>>

Subject

Hi Chris;
< span style="font-size:10.0pt;

Message: Additional Map

Additional Map

Christopher White/Planning
Department/Ulster County

to Burt Samuelson/Planning Department/Ulster
County@Ulster County

Thursday, March 14, 2013 3:10 PM

cc Aaron Bennett/Department of the
Environment/Ulster County

bcc Christopher White/Planning Department/Ulster
County@Ulster County

Subject Additional Map

Burt,

Here is the request we've had from our attorney for our railbanking application:

For the Historic Report, we will need to provide the following map:

"A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action."

I am copying Aaron in case he might also have ideas of how best we can quickly identify building and structures along the rail corridor.

Thanks!!!

Chris

Chris White
Deputy Director
Ulster County Planning Department
244 Fair Street, PO Box 1800
Kingston, NY 12402
(845) 340-3338
(845) 340-3429 (fax)
cwhi@co.ulster.ny.us

Message: Re: Information for STB Application

Re: Information for STB Application

Christopher White/Planning Department/Ulster County to Gray, Jennifer
Monday, April 01, 2013 4:41 PM cc Christopher White/Planning Department/Ulster County
Subject Re: Information for STB Application

DOCS-#440622-v1-Items_Needed_from_Ulster_County.DOCX (21 Kb HTML)
Jennifer,

I met with a couple colleagues today who will be helping me map and inventory structures, wetlands, etc. They asked if you could please provide the original STB application or the original language. A few questions came up about structures and other parts of this, and it would be helpful for us to have the original language or the source from which you created the document you sent.

Thank you,

Chris

ps...I sent you previously the list of interested agencies. Did you receive that or do you need me to resend it?

Chris White
Deputy Director
Ulster County Planning Department
244 Fair Street, PO Box 1800
Kingston, NY 12402
(845) 340-3338
(845) 340-3429 (fax)
cwhi@co.ulster.ny.us

* "Gray, Jennifer" ---03/13/2013 07:19:12 PM---"Gray, Jennifer" <jgray@kblaw.com>

"Gray, Jennifer"
<jgray@kblaw.com>

03/13/2013 07:14 PM

To" cwhi@co.ulster.ny.us" <cwhi@co.ulster.ny.us>
cc" Phillips, Edward J." <EPhillips@kblaw.com>
Subject Information for STB Application

Chris -

There are a few pieces of information that would be useful in completing a draft of the Combined Environmental Report and Historic Report. Please see the attached list of questions and let me know whether you and/or others at the County may be able to provide this information. I know that you are working on creating the map(s) and confirming the mileage, so disregard the first two items which were included just to keep a complete working list of all items needed.

Thanks again for your continued cooperation as we work to complete the various components of the STB application documents.

Jennifer L Gray
Associate



445 Hamilton Avenue, Suite
1500
White Plains, NY 10601

(914) 946-4777 Ext:
336
(914) 946-6868
(Fax)
igrav@kblaw.com
www.kblaw.com

PERSONAL & CONFIDENTIAL

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IRS CIRCULAR 230 DISCLOSURE

Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)

Please consider the environment before printing this email message.

 [DOCS-#440622-v1-Items_Needed_from_Ulster_County.DOCX](#)

Ulster County
Surface Transportation Board Application
Rails to Trails

Information Needed from Ulster County:

Confirm mileage of rail line (38.7 miles?)

Map(s) containing the following information:

"Detailed map of the subject line on a sheet not larger than 8x10 1/2 inches, drawn to scale, and with the

"A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildi

Are we including in the application the 1.5 miles of track owned by the City of Kingston where the Troll

What is the width of the railroad corridor generally? (i.e. varied between ___ feet and ___ feet)

Are there any existing railroad structures in any part of the corridor that are 50+ years old? If so, w

Photographs of railroad structures that are 50+ years old and the immediately surrounding area.

Date of construction; date and extent of any major alteration (if known)

Brief summary of documents in Ulster County's possession, such as engineering drawings, that might be us

Any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or

What railroad structures currently exist in the railroad corridor? The following information was contai

Are there any existing Ulster County planning reports or studies that we can cite to demonstrate the pro

Is any portion of the rail corridor within a non-attainment area under the Clean Air Act?

Are there any known hazardous materials waste sites or sites where there have been known hazardous mater

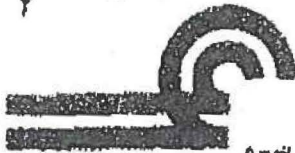
Is any part of the railroad corridor within a federally mapped wetland? 100-year flood plain?

Is the following a generally accurate description of the intended course of action? If not, please advi

Upon receiving abandonment authority, removal of material will be accomplished by use of the right-of-wa

EXHIBIT D

CONRAIL



April 28, 1995

CERTIFIED MAIL

Post-It Fax Note 7671		Date 10-22-96	Page 1 of 1
To John T. Munster	From Paul Viker		
Co/Drop Catskill Mountain	Co. Conrail		
Phone #	Phone # 215-209-5662		
Fax # 201-838-7985	Fax #		

Mr. Joseph Munster
Director
Ulster County Public Information Office
County Office Building
244 Fair Street
P.O. Box 1800
Kingston, NY 12401

Re: Catskill, NY - Catskill Mountain Railroad

Dear Mr. Munster:

This letter will confirm a telephone conversation between you and Conrail Customer Service Manager Tony Giobbie regarding the unused main track turnout at MP 88 on the River Line.

This turnout did not generate linehaul revenue in 1993 nor in 1994 and Conrail desires to remove it, however, you have indicated that you wish to retain it and, in fact, paid a special fee in 1993 that compensated us for some rehab that was needed at that time. Although this fee was established as an annual fee to be paid to Conrail, you have not paid it since that time. Although we assumed that this amount would be paid automatically, you indicated to Mr. Giobbie that you needed a letter or bill in order to process payment. Nevertheless, after careful consideration, we have determined that we cannot continue to maintain this unused main track and we wish to retire it as soon as possible.

This turnout is a continual source of maintenance dollars for Conrail due to its location and condition. In 1995, we are once again facing some rehabilitation expense that is simply not justified and represents a poor use of our resources and assets. It would not be fair for us to accept a maintenance fee and expect to be able to keep this turnout safe and viable for the 40 million gross tons of revenue traffic that we run over the main track at this location.

Mr. Joseph Munster

Page 2

April 28, 1996

In the event that the Catskill Mountain Railroad ever becomes a viable operating entity, you can hold this letter as our commitment to work with you to provide a new connection at this location with fit material at a reduced cost. We can no longer afford to keep the present turnout in track; it represents a costly and potentially expensive liability for us if it remains through the present maintenance season.

I hope that you can understand our concern and can live with our decision. We think it is fair and represents a solution that meets both of our needs.

Sincerely,

J. R. Beard
General Manager, Transportation
And Customer Service
Philadelphia Division

Mount Laurel Corporate Center
1000 Howard Boulevard, Room 400
Mount Laurel, NJ 08054-2200
EOI-231-2000

cc: A. L. Goble

EXHIBIT E

DRAFT

THIS LEASE is made between the COUNTY OF ULSTER, a municipal corporation, having its principal office at 240 Fair Street, Kingston, New York, herein called LESSOR or the COUNTY, and

ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, having its office or principal place of business at 44 Main Street, Kingston, New York, hereinafter called LESSEE.

ULSTER COUNTY RAILROAD ADVISORY COMMITTEE

The term RAILROAD ADVISORY COMMITTEE when contained herein, shall mean that board or body created under the authority of Resolution No. 70 of March 14, 1986 and whose members have been duly appointed thereunder.

DESCRIPTION OF LEASED PREMISES

Lessor hereby leases to Lessee and lessee hereby hires from lessor, certain mileage of the Catskill Mountain Branch railroad from the east side of Downs Street to the Delaware County line for railroad purposes, subject to the terms and conditions hereinafter contained.

AUTHORIZED USES OF PROPERTY

Lessee is authorized to operate a passenger carrying tourist ride on the leased premises, and to operate freight and passenger service.

Lessee is also authorized to use the leased premises for maintenance and rehabilitation. In addition, Lessee may use the trackage between Washington Avenue and the Conrail main line as well as that portion of the railroad extending from milepost 39.7 to the Delaware County line for transport of equipment upon due regard for and coordination with others having any rights with respect to such trackage, including but not limited to, Kingston Associates, National Micronetics, Catskill Rail Committee, Conrail and their successors and assigns, and the rights of the public. Any such use shall be approved by the Railroad Advisory Committee.

The County as Lessor, makes no representations or

The term "gross revenue" as used in this agreement, shall mean any income derived from the lease of the property including, but not limited to, train operations including train fares and freight charges, gift shops on the trains or elsewhere, dining income to the Lessee from dining cars, and any revenues from concessions. The term "gross revenue" shall not include grants from any government or governmental agency nor income that is derived from activities not related to train operations on the leased premises, and there shall be deducted from Lessee's gross revenue, for the purpose of accounting to Lessor, the amount of actual capital investments made by Lessee.

Within 30 days after the end of each year commencing and ending of the , Lessee shall furnish Lessor with a statement certified as correct by Lessee or an officer authorized to so certify, which shall set forth the gross revenue of Lessee and any authorized deductions for capital investments.

Lessee shall keep full, complete and proper books, records and accounts of its gross revenue. The books, records and accounts including any records that Lessee may be required to furnish to any government or governmental agency, shall at all reasonable times be open to the inspection of Lessor, Lessor's auditor, or other authorized representative or agent.

RESTRICTION AGAINST MECHANIC'S LIENS

Lessee shall pay and settle all expenses and liabilities arising out of or in any way connected with any installation, repairs, alterations, rehabilitation, maintenance or upkeep of the premises and shall keep the same free and clear from all liens of mechanics or materialmen, and all liens of a similar character arising out of or growing out of the aforesaid activities.

Neither Lessee nor anyone claiming through, by or under Lessee shall have any right to file or place any mechanic's lien of any kind or character whatsoever upon the premises, and notice is hereby given that no contractor, subcontractor or anyone else who may furnish any material, services or labor for any of the foregoing installation, repairs, alterations, rehabilitation, maintenance or upkeep at any time shall become entitled to any lien thereon whatsoever. For the further security of Lessor, Lessee shall give actual

EXHIBIT F

COUNTY REPLY

Advisory Committee, a bipartisan committee composed of nine County Legislators. The Committee commissioned a detailed report from a railroad consultant, Stone Consulting & Design, P.C., a copy of which is attached as White V.S., Exhibit V. The report, titled the “Highest and Best Use Recommendations-U&D Railroad Corridor” (“Stone Report”), was conducted over an approximately eight-month period, during which the Committee and consultants reviewed all available data and studies, interviewed a wide range of stakeholders, and visited the majority of the Line to personally observe conditions. White V.S. at 16.

The Stone Report recommendations became the basis for a revised rail and trail policy. The Stone Report’s findings recognized that rail and trail use could not exist side-by-side in most sections of the Line, which was constructed as a single-track corridor and had many constraints to co-locating rail and trail, including narrow underpasses, constricted bridge and culvert structures, adjacent wetlands and/or private property encroachments, tight high-fill embankment areas, and regulatory constraints. For instance, in the Ashokan Segment, which the Stone Report strongly recommended for conversion to trail only, the County’s Line was an easement for railroad purposes only. Along the majority of the Line, the County owns the right-of-way in fee; however, in the 11.5-mile segment along the City of New York’s Ashokan Reservoir, the underlying land ownership was the City and the DEP. The DEP agreed to allow the County to convert the Ashokan Segment into a public recreational trail (and provide \$2.5 million in funding to support the project) with the stipulation that rail and trail uses could not take place over the Ashokan Segment concurrently. White V.S. at 16-17.

Recognizing the poor condition of many areas of the Line and the growing opportunity costs of not allowing alternative public uses, the County Legislature developed and passed a compromise segmented rail and trail policy in December 2015 that delineated two sections of the

CHRIS WHITE STATEMENT

The County Executive proposed a compromise plan to leave a second tourism railroad section in the City of Kingston, which led to the Legislature forming the U&D Railroad Advisory Committee, a bipartisan committee composed of nine County Legislators. The Committee commissioned a detailed report from a railroad consultant, Stone Consulting & Design, P.C., a copy of which is attached as White V.S., Exhibit V. The report, titled the “Highest and Best Use Recommendations-U&D Railroad Corridor” (“Stone Report”), was conducted over an approximately eight-month period, during which the Committee and consultants reviewed all available data and studies, interviewed a wide range of stakeholders, and visited the majority of the Line to personally observe conditions. White V.S. at 16.

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EXHIBIT G



WILLIAMS

Lumber & Home Centers

"The name you know and the name you trust"



March 9, 2018

Mr. Ernest Hunt—President
Catskill Mountain Railroad
P.O. Box 1415
Kingston, NY 12401

RE: Letter of Intent for Freight Railroad Service, Kingston, NY

Dear Mr. Hunt,

As per my recent conversation with Tom Whyte, I am writing this letter to serve as our letter of intent to ship by rail via the Catskill Mountain Railroad in Kingston, New York. Williams Lumber and Home Centers anticipates the need of 75 to 100 carloads of lumber per year, to be unloaded at a mutually acceptable location on your railroad in the vicinity of Kingston, New York. The lumber will be distributed to our retail locations in Ulster, Greene and Dutchess Counties.

We understand that you need approval from your landlord, Ulster County, to initiate the process of resuming freight deliveries on the Catskill Mountain Railroad. Please feel free to put them in touch with me directly if they have any questions at (845) 876-7011, Ext. 1007.

We have for some time been looking for a way to ship by rail as an economic alternative to the high cost of shipping by truck. We look forward to working with you on this important way to make our business more competitive in the Mid-Hudson Valley area.

We also believe that the resumption of freight operations on the Catskill Mountain Railroad will help encourage economic development in Ulster County by giving other local businesses access to the lower transportation costs of shipping by rail.

We look forward to working with you to make this happen.

Sincerely,

Don S. Williams
President

RHINEBECK	PLEASANT VALLEY	GREENPORT	HOPEWELL	TANNERSVILLE	RED HOOK	HIGH FALLS	HYDE PARK
6760 Route 9 Rhinebeck, NY 12572 845-876-4054	2424 Route 44 Pleasant Valley, NY 12569 845-266-3435	3679 Route 9 Hudson, NY 12534 518-851-3641	908 Route 82 Hopewell Jct., NY 12533 845-221-2751	34 Bloomer Road Tannersville, NY 12485 518-589-5200	9-11 East Market St. Red Hook, NY 12571 845-758-5615	317 Kyserike Road High Falls, NY 12440 845-687-7676	4246 Albany Post Rd. Hyde Park, NY 12538 845-698-1004

www.williamslumber.com

EXHIBIT H



Catskill Mountain Railroad Company, Inc.
P. O. Box 1415
Kingston, NY 12401
(845) 688-7400
www.catskillmtrailroad.com

March 15, 2018

BY CERTIFIED MAIL

Thomas Jackson
Commissioner
Ulster County Department of Public Works
317 Shamrock Lane,
Kingston, NY 12401

RE: Tourist Railroad Permit, Eastern Segment (Kingston Area),
Request for Permission to Pursue Freight Opportunity

Dear Mr. Jackson,

The CMRR has recently been approached by a potential freight customer, Williams Lumber. They have issued a letter of intent to pursue the shipment of lumber products by rail for distribution to their retail stores in Ulster, Greene Counties and Dutchess Counties (attached). The County is welcome to speak with them directly.

Per section 2.3 (iii) of our permit, the CMRR is requesting the County's "express written and prior consent" to pursue this opportunity.

We realize that the pursuit of freight will require (a) an extension of our permit to include track between our current permit area and the connection with CSX at MP 2.9 and (b) the reinstallation of the switch with CSX.

While we know that the County's plans currently are to remove the tracks from our permit area to CSX, we believe a way can be found to accommodate both rail and trail in this segment. With the addition of retaining walls to widen the corridor, the only real constraints are the overpasses at Elmendorf Street and Albany Avenue, which we believe can be eventually widened to accommodate both rail and trail. Temporarily we believe a signaling system similar to a crosswalk and stoplight can be used to allow joint rail and trail use at these two bottlenecks.

We have also researched the reinstallation of the switch with CSX and believe that it can be affordably reinstalled for freight service. See the attached letter from Conrail in 1995 that states that "you can hold this letter as a commitment to work with you to provide a new connection at this location with fit material at a reduced cost". The CMRR will begin dialogue with CSX to come up with a cost for reinstalling the switch and can apply under the 2017 PFRAP program to obtain state funding to cover the cost (proposals are due in April, 2018)

Additionally, the Stone Report commissioned by the County Legislature in 2015 discussed the advantages of adding freight transload service to the line in great detail. The CMRR believes the freight business will be beneficial to both the CMRR and the County as it will take trucks off the highways and provide a more "green" option method of shipping freight than trucks. It also gives the CMRR an avenue for additional revenue growth now that the Ashokan Reservoir is no longer accessible to the CMRR. We have also attached the relevant pages from the Stone Report for your reference.

As you may recall, the restoration of freight operations on the Catskill Mountain Branch was pursued by the Ulster County in the mid-1980's when it spent \$250,000 to reconnect the line to Conrail and rebuild the line for freight service, which operated between 1987 and 1991. This proposal enables Ulster County to build on that investment and fulfill the long-sought goal to bring low-cost freight transport back to Ulster County.

If the freight business can be restarted with the Williams Lumber contract, the CMRR will pursue several other potential freight customers both on and off the permit area. This will include the NYCDEP which will be requiring thousands of tons of material in the next few years for the rebuilding of the Glenford and Woodstock Dikes. Keeping this material on the railroad will keep it off Route 28 and other highways in Ulster County.

We would like to add that that the pursuit of freight business will likely result in the CMRR filing as a common carrier at some time in the future so that it can interchange traffic with CSX.

The CMRR looks forward to working with the County on this exciting new business opportunity in Ulster County. We believe that the addition of the freight transload business, in addition to our existing passenger business and future side-by-side trail will make this part of the corridor a model for other Counties across the state.

Please feel free to speak to me at (347) 229-6977 or by email at eehiv@mindspring.com if you have any further questions.

Sincerely,



Ernest E. Hunt
President, CMRR

cc: Ken Ronk, Chairman, UC Legislature,
Jim Maloney, Chairman, Ulster County TRAC Committee
Chris White, Deputy Director, Ulster County Planning Department

Attachments

EXHIBIT I

ULSTER COUNTY DEPARTMENT OF PUBLIC WORKS

317 Shamrock Lane, Kingston, New York, 12401
Telephone (845) 340-3100, Fax: (845) 340-3113

MICHAEL P. HEIN
County Executive



THOMAS H. JACKSON, JR.
Commissioner

BY CERTIFIED MAIL

March 19, 2018

Ernest E. Hunt, President
Catskill Mountain Railroad Company, Inc.
1165 Park Avenue, Apt. 1D
New York, NY 10128

RE: Tourist Railroad Permit, Eastern Segment

Dear Mr. Hunt:

This letter is in response to your correspondence, dated March 15, 2018, a copy of which is attached for reference.

CMRR's request for prior consent pursuant to Section 2.3.iii of the Permit is hereby denied.

Sincerely,

Thomas Jackson
Commissioner

enc.

cc: Hon. Kenneth J. Ronk, Jr.
Hon. James F. Maloney
Chris White

EXHIBIT J

"Hessinger, Raymond (DOT)" ---12/12/2012 08:59:30 AM---"Hessinger, Raymond (DOT)"
<Raymond.Hessinger@dot.ny.gov>

"Hessinger, Raymond (DOT)"
<Raymond.Hessinger@dot.ny.gov>

12/12/2012 09:00 AM

To "Younsi, Mike (DOT)"
<Mike.Younsi@dot.ny.gov>,
"cwhi@co.ulster.ny.us"
<cwhi@co.ulster.ny.us>

cc

Subject RE:

There can be a difference between ICC / STB abandonment (in which common carrier rail service is abandoned) and abandonment as defined in the deeds (which could be removal of the tracks). You would need to review each of the deeds that make up the right if way.

The documents Mike transmitted establish that in the STB's eyes the corridor is legally abandoned, and as such, railbanking under the rails to trails act would likely not be available to preserve the corridor from reversionary clauses should the tracks be removed.

Raymond F. Hessinger, P.E.
Director, Freight & Passenger Rail Bureau
NYS Department of Transportation
50 Wolf Road, POD 54

< geo:0,0?q=50+Wolf+Road%2C+POD+54%0AAlbany%2C+NY+12232>Albany, NY 12232<geo:0,0?q=50+Wolf+Road%2C+POD+54%0AAlbany%2C+NY+12232>

(518) 457-8075<tel:5184578075> (desk)

(518) 813-7493<tel:5188137493> (cell)

Raymond.Hessinger@dot.ny.gov<<mailto:Raymond.Hessinger@dot.ny.gov>>

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Younsi, Mike (DOT)" <Mike.Younsi@dot.ny.gov>
To: "cwhi@co.ulster.ny.us" <cwhi@co.ulster.ny.us>
Cc: "Hessinger, Raymond (DOT)" <Raymond.Hessinger@dot.ny.gov>
Sent: Wed, Dec 12, 2012 12:50:04 GMT+00:00
Subject: RE:

Good morning Chris;

I don't think we seem to have any ICC's abandonment certificate granted to Penn's Trustees in our files, and I am also not sure based on what the state recognized said abandonment, and sent the notice out to all interested entities! Anyway, I will continue searching our documents. In the overall, it is certain that there was no request for the release of the state's preferential right of acquisition, and I believe, because the Line was going to be used for tourism and scenic operations, and therefore it was not subject to the process of preferential right of acquisition.

Thanks

M. Younsi

From: cwhi@co.ulster.ny.us [<mailto:cwhi@co.ulster.ny.us>]
Sent: Tuesday, December 11, 2012 4:47 PM
To: Younsi, Mike (DOT)
Subject: Re: