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**Effective: December 19, 2014**

United States Code Annotated [Currentness](#)

Title 16. Conservation

[Chapter 27](#). National Trails System ([Refs & Annos](#))

**→→ § 1247. State and local area recreation and historic trails**

(a) Secretary of the Interior to encourage States, political subdivisions, and private interests; financial assistance for State and local projects

The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to chapter 2003 of Title 54, needs and opportunities for establishing park, forest, and other recreation and historic trails on lands owned or administered by States, and recreation and historic trails on lands in or near urban areas. The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to division A of subtitle III of Title 54, needs and opportunities for establishing historic trails. He is further directed, in accordance with the authority contained in chapter 2003 of Title 54) [\[FN1\]](#), to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) Secretary of Housing and Urban Development to encourage metropolitan and other urban areas; administrative and financial assistance in connection with recreation and transportation planning; administration of urban open-space program

The Secretary of Housing and Urban Development is directed, in administering the program of comprehensive urban planning and assistance under section 701 of the Housing Act of 1954, to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961 [\[42 U.S.C.A. § 1500 et seq.\]](#), to encourage such recreation trails.

(c) Secretary of Agriculture to encourage States, local agencies, and private interests

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [[45 U.S.C.A. § 801 et seq.](#)], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of the Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.

CREDIT(S)

(Pub.L. 90-543, § 8, Oct. 2, 1968, 82 Stat. 925; [Pub.L. 95-625, Title V, § 551\(22\)](#), Nov. 10, 1978, 92 Stat. 3516; [Pub.L. 98-11, Title II, § 208](#), Mar. 28, 1983, 97 Stat. 48; [Pub.L. 104-88, Title III, § 317\(1\)](#), Dec. 29, 1995, 109 Stat. 949; [Pub.L. 113-287, § 5\(d\)\(24\)](#), Dec. 19, 2014, 128 Stat. 3266.)

[FN1] So in original. The closing parenthesis probably should not appear.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Acts. House Report No. 1631, see 1968 U.S. Code Cong. and Adm. News, p. 3855.

1983 Acts. [House Report No. 98-28](#), see 1983 U.S. Code Cong. and Adm. News, p. 112.

1995 Acts. [House Report No. 104-311](#) and [House Conference Report No. 104-422](#), see 1995 U.S. Code Cong. and Adm. News, p. 793.

## References in Text

Chapter 2003 of Title 54, referred to in subsec. (a), is classified to [54 U.S.C.A. § 200301 et seq.](#)

Division A of subtitle III of Title 54, referred to in subsec. (a), is classified to [54 U.S.C.A. § 300101 et seq.](#)

Section 461 of Title 40, referred to in subsec. (b), was repealed by Pub.L. 97-35, Title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 701 of the Housing Act of 1954, referred to in subsec. (b), was classified to section 461 of former Title 40 prior to repeal by Pub L. 97-35, Title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

The Housing Act of 1961, referred to in subsec. (b), is Pub.L. 87-70, June 30, 1961, 75 Stat. 149, as amended. Title VII of the Housing Act of 1961 was classified generally to chapter 8C (section 1500 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 5316 of Title 42 which terminated authority to make grants or loans under such Title VII after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables volume.

The Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (d), is Pub. L. 94-210, Feb. 5, 1976, 90 Stat. 31, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 45, Railroads, and Tables volume.

## Amendments

2014 Amendments. Subsec. (a). Pub.L. 113-287, § 5(d)(24), struck out “the Land and Water Conservation Fund Act [[16 U.S.C.A. § 4601-4 et seq.](#)]” and inserted “chapter 2003 of Title 54”; struck out “the Act of October 15, 1966 (80 Stat. 915), as amended [[16 U.S.C.A. § 470 et seq.](#)]” and inserted “division A of subtitle III of Title 54”; and struck out “the Act of May 28, 1963 (77 Stat. 49)” and inserted “chapter 2003 of Title 54”.

1995 Amendments. Subsec. (d). Pub.L. 104-88, § 317(1), substituted “Chairman of the Surface Transportation Board” for “Chairman of the Interstate Commerce Commission” and “Board” for “Commission”.

1983 Amendments. Subsec. (d). Pub. L. 98-11, § 208(2), added subsec. (d). Former subsec. (d) was redesignated (e).

Subsec. (e). Pub. L. 98-11, § 208(1), redesignated former subsec. (d) as (e).

1978 Amendments. Subsec. (a). Pub.L. 95-625 inserted in first sentence “and historic” following “establishing park, forest, and other recreation” and following “administered by States, and recreation” and directed the Sec-

retary to encourage States to consider in their plans and proposals needs and opportunities for establishing historic trails.

#### Effective and Applicability Provisions

1995 Acts. Amendment of this section by section 317(1) of Pub.L. 104-88 effective Jan. 1, 1996, see section 2 of Pub.L. 104-88, set out as a note under section 701 of Title 49, Transportation.

#### CODE OF FEDERAL REGULATIONS

Abandonment and discontinuance of rail transportation, see [49 CFR § 1152.1 et seq.](#)

Guidelines for implementation of environmental policy, railroads, see [49 CFR § 1105.1 et seq.](#)

#### LAW REVIEW COMMENTARIES

Beyond [16 U.S.C. § 1247\(d\)](#): The scope of congress' power to preserve railroad rights-of-way. Note, 18 [Hastings Const.L.Q.](#) 907 (1991).

Constitutionality of rails-to-trails conversions under the National Trails Systems Act Amendments of 1983: [Preseault v. ICC](#). Note and Comment, 26 [Tulsa L.J.](#) 295 (1990).

Does the Rails-to-Trails Act effect a taking of property? Richard A. Allen, 31 [Transp. L.J.](#) 35 (2003).

Use of discontinued railroad rights-of-way as recreational hiking and biking trails: Does the National Trails System Act sanction takings? Comment, 33 [St.Louis U.L.J.](#) 205 (1988).

#### LIBRARY REFERENCES

##### American Digest System

[Woods and Forests](#)  5, 8.

Key Number System Topic No. 411.

##### Corpus Juris Secundum

[CJS Carriers § 47](#), Use of Railroad Rights-Of-Way as Trails.

[CJS Carriers § 226](#), Application to Abandon Line or Discontinue Operations.

[CJS Limitations of Actions § 237](#), Takings Claims; Condemnation and Inverse Condemnation.

[CJS Railroads § 252](#), Jurisdiction of Surface Transportation Board; Railbanking.

[CJS Railroads § 257](#), Right to Reversion--Effect of National Trails System Act.

[CJS Railroads § 733](#), Interim Conversion of Rights-Of-Way as Recreational Trails.

#### RESEARCH REFERENCES

## ALR Library

[10 ALR, Fed. 2nd Series 231](#), What Constitutes Taking of Property Requiring Compensation Under Takings Clause of Fifth Amendment to United States Constitution--Supreme Court Cases.

[14 ALR, Fed. 760](#), Maintenance of Class Action in United States Court of Claims.

[76 ALR, Fed. 46](#), Discretionary Exercise of Pendent Jurisdiction of Federal Court Over State Claim When Joined With Claim Arising Under Laws, Treaties, or Constitution of United States.

[176 ALR, Fed. 517](#), When Are Proceedings Parallel So as to Permit Federal Court Abstention Under [Colorado River Water Conservation Dist. v. U. S.](#), 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, 9 Env't. Rep. Cas. (Bna)...

[49 ALR 6th 205](#), Elements and Measure of Compensation in Eminent Domain Proceeding for Temporary Taking of Property.

[6 ALR 3rd 973](#), Deed to Railroad Company as Conveying Fee or Easement.

[95 ALR 2nd 468](#), What Constitutes Abandonment of a Railroad Right of Way.

[85 ALR 404](#), Boundary Under Conveyance of Land Bordering on Railroad Right of Way.

[94 ALR 522](#), Right of Railroad Company to Use or Grant Use of Land in Right of Way for Other Than Railroad Purpose.

[132 ALR 142](#), Deed to Railroad Company as Conveying Fee or Easement.

[136 ALR 296](#), Who is Entitled to Land Upon Its Abandonment for Railroad Purposes, Where Railroad's Original Interest or Title was Less Than Fee Simple Absolute.

[152 ALR 307](#), Comment Note.--Frustration of Contractual Rights as Basis of Claim for Compensation Where Another's Real Property is Taken in Exercise of Eminent Domain.

## Encyclopedias

[16 Am. Jur. Proof of Facts 2d 55](#), Intent of Contracting Parties to Benefit Third Person.

[2 Am. Jur. Proof of Facts 3d 197](#), Establishment of Public Prescriptive Easement.

[32 Am. Jur. Proof of Facts 3d 405](#), Inverse Condemnation by Physical Invasion.

[51 Am. Jur. Proof of Facts 3d 489](#), Recovery of Damages for Temporary Conditions Ensuing from Construction or Repair of Public Improvement.

[53 Am. Jur. Proof of Facts 3d 519](#), Proof of Intent to Abandon Easement.

[22 Am. Jur. Trials 743](#), Condemnation of Easements.

[98 Am. Jur. Trials 371](#), Dominant Estate Owner's Abandonment of Easement of Way.

[Am. Jur. 2d Eminent Domain § 163](#), Additional Uses of Railroad Right of Way.

[Am. Jur. 2d Eminent Domain § 728](#), Contractual Waiver or Release.

[Am. Jur. 2d Eminent Domain § 764](#), Defendants; Responsibility of the United States.

[Am. Jur. 2d Federal Courts § 2104](#), Prerequisites.

[Am. Jur. 2d Federal Courts § 2160](#), Basis for Summary Judgment; Absence of Genuine Issue as to Material Fact.

[Am. Jur. 2d Railroads § 55](#), National Trails System Act.

#### Forms

[Federal Procedural Forms § 56:59](#), Protests and Comments--Contents of Protest or Comment.

[Federal Procedural Forms § 56:70](#), Notice of Intent to Abandon or Discontinue Rail Service [[49 C.F.R. § 1152.21](#)].

[Federal Procedural Forms § 13:133](#), Action by Property Owner for Just Compensation--Particular Actions.

[Federal Procedural Forms § 66:164.50](#), Motion--To Dismiss--For Lack of Subject Matter Jurisdiction [[16 U.S.C.A. § 1247\(D\)](#); [49 C.F.R 1152.29](#)].

[Am. Jur. Pl. & Pr. Forms Railroads § 27](#), Notice--Intent to Abandon Railroad Line or to Discontinue Service--Filing of Application With Surface Transportation Board.

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 67:108](#), Administrative Appeals.

[West's Federal Administrative Practice § 5378](#), Substantive Responsibilities--Rail.

[Wright & Miller: Federal Prac. & Proc. § 3722](#), Removal Based on Federal Question Jurisdiction.



## NOTES OF DECISIONS



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### 1. Constitutionality

Assuming that taking of reversionary interest of adjacent landowners occurs when railroad rights-of-way are converted to interim public trail use under amendment to National Trails System Act, Tucker Act remedy is available for such taking claims, and thus Act cannot be deemed to take property without just compensation.


[Preseault v. I.C.C., U.S.1990, 110 S.Ct. 914, 494 U.S. 1, 108 L.Ed.2d 1. Eminent Domain](#)  2.16


Any waiver of state sovereign immunity required by National Trails System Act, which mandated that railroads be fully protected from liability following conversion of railroad right-of-way from freight-transportation use to recreational trail, was condition of state's voluntary acceptance of federal benefits of participating in rails-to-trails program, and thus waiver was not unconstitutional. [Maryland Transit Admin. v. Surface Transp. Bd., C.A.4 2012, 700 F.3d 139. Federal Courts](#)  2375(6); [Railroads](#)  82(1)

Even if right-of-way agreements given by predecessors in interest to owners of property adjacent to unused railroad line were contracts, and provision of National Trails System Act authorizing Interstate Commerce Commission to enter orders permitting railroad rights-of-way to be used on interim basis as recreational trails impaired those contractual rights, Congress acted rationally in enacting statute by electing to postpone railroad abandonment and to encourage interim trail use so as to further its railbanking purpose, and thus, statute did not violate either substantive due process or commerce clause. [Glosemeyer v. Missouri-Kansas-Texas R.R., C.A.8 \(Mo.\) 1989, 879 F.2d 316, certiorari denied 110 S.Ct. 1295, 494 U.S. 1003, 108 L.Ed.2d 473. Commerce](#)  85.6; [Constitutional Law](#)  4363

Party holding reversionary interest in railroad right-of-way failed to show that section of National Trails System Act governing conversion of abandoned railroad rights-of-way to nature trails impaired existing contracts, in violation of due process clause of Fifth Amendment, absent showing that legislature had acted in arbitrary and irrational way. [National Wildlife Federation v. I.C.C., C.A.D.C.1988, 850 F.2d 694, 271 U.S.App.D.C. 1. Constitutional Law](#)  4255; [Railroads](#)  82(5)

## 2. Rules and regulations

Assuming conversion of abandoned railroad rights-of-way to nature trails pursuant to National Trails System Act involved takings, participation of private organizations in such takings did not amount to appropriation of property for private, rather than public, purposes; purposes advanced by rules were implementing Act establishment of interim nature trails and long run preservation of existing railroad rights-of-way. [National Wildlife Federation v. I.C.C., C.A.D.C.1988, 850 F.2d 694, 271 U.S.App.D.C. 1. Eminent Domain](#)  2.16

Interstate Commerce Commission's interpretation of National Trails System Act as conditioning so-called rail-to-trail conversions on negotiation of voluntary agreements between abandoning railroads and prospective interim trail users was reasonable; it achieved primary statutory objective of precluding reversions while steering clear of potentially difficult constitutional problems relating to "takings" and payment of "just compensation" which would have accompanied proposed interpretation that Commission was required to order interim trail use once state agency agreed to accept full responsibility for right-of-way. [Washington State Dept. of Game v. I.C.C., C.A.9 1987, 829 F.2d 877. Commerce](#)  85.6

### 2a. Preemption

Surface Transportation Board (STB) did not preempt all of landowners' state-law property claims when it in-



voked National Trails Systems Act to allow railroad to transfer its railroad right-of-way across landowners' properties to trail operator without right-of-way being treated as being abandoned under state law, although state-law claims of abandonment of railroad right-of-way were preempted by operation of Act. [Dana R. Hodges Trust v. United States, Fed.Cl.2013, 111 Fed.Cl. 452](#). [Eminent Domain](#) 2.16; [Railroads](#) 82(6); [States](#) 18.21

### 3. State regulation or control

Missouri statutes requiring railroad corporations operating in state to erect and maintain fences on side of railroad lines and to keep right of way clear of brush did not apply to railroad after a Notice of Interim Trail Use (NITU) had been issued pursuant to National Trails Systems Act and right of way had been dedicated to trail use; Missouri statutory maintenance duties only extended to railroad corporations running or operating railroad lines, railroad line in question had not been used for rail purposes in over two years when it received notice of need for repairs, railroad line would have been abandoned if NITU had not been issued, and NITU converted right of way to public use so that railroad was no longer running or operating the line. [Fletcher v. Burlington Northern and Santa Fe Ry. Co., C.A.8 \(Mo.\) 2007, 474 F.3d 1121](#). [Railroads](#) 82(1); [Railroads](#) 103(1); [Railroads](#) 109

Conflict between ordinance's "practical alternative" public agency utility exception (PAUE) requirement and National Trails Systems Act (NTSA) required preemption of ordinance to any railbanked railroad right-of-way, since federal regulation of railroads was pervasive and comprehensive, railbanked corridors remained part of national rail transportation system subject to jurisdiction of Surface Transportation Board (STB), STB entered order declaring that interim trail use could be implemented, and safety, land use, and zoning regulation on recreation trails could be applied only to extent that they did not frustrate development of trail on railbanked right of way. [Friends of the East Lake Sammamish Trail v. City of Sammamish, W.D.Wash.2005, 361 F.Supp.2d 1260](#), reconsideration denied. [Municipal Corporations](#) 53; [Railroads](#) 82(1)

Federal law preempts state law on threshold question of whether trail use/rail banking agreement was effective to invoke antiabandonment provisions of National Trail System Act in light of showing that Interstate Commerce Commission (ICC) retained regulatory authority after giving orders to preserve railroad rights-of-way for future reactivation to rail service and to promote public interest in recreational trails. [Schneider v. Union Pacific R. Co., D.Neb.1994, 864 F.Supp. 120](#). [Commerce](#) 85.6; [States](#) 18.21

Under Michigan law, use of right-of-way as a recreational trail was distinct from, and inconsistent with, use of right-of-way for railroad purposes; Michigan Transportation Preservation Act's declaration of trail use as a public purpose could not be employed to enlarge the scope of railroad easement granted many decades prior in derogation of the intent of the parties to the original grant of the right-of-way. [Dana R. Hodges Trust v. U.S., Fed.Cl.2011, 101 Fed.Cl. 549](#). [Eminent Domain](#) 2.16; [Railroads](#) 69

Question would be certified to Indiana Supreme Court as to whether under Indiana law railbanking and interim trail use, pursuant to National Trails System Act (NTSA), were within scope of easements acquired by railroads either by prescription, condemnation, or deed, and if not within scope, whether railbanking with interim trail use was shifting public use, since question was issue of Indiana law that was determinative of property owner's rails-

to-trails case alleging that conversion of railroad rights of way into recreational trails, pursuant to NTSA, effected taking of property without just compensation. [Howard v. U.S., Fed.Cl.2011, 100 Fed.Cl. 230](#), certified question accepted [948 N.E.2d 1179](#), certified question answered [964 N.E.2d 779](#), answer to certified question conformed to [106 Fed.Cl. 343](#). [Federal Courts](#) 🔑 3107

#### 4. Voluntary transfers

Section of National Trails System Act governing conversion of abandoned railroad rights-of-way to nature trails only allows voluntary transfers of rights-of-way from railroads to trail operators. [National Wildlife Federation v. I.C.C., C.A.D.C.1988, 850 F.2d 694, 271 U.S.App.D.C. 1](#). [Railroads](#) 🔑 82(1)

#### 5. Abandonment

The act of removing and salvaging tracks, ties, and other railroad materials is not sufficient in and of itself to establish an abandonment of a right-of-way under Pennsylvania law, for purposes of deciding whether a taking of property of abutting property owners has occurred as a result of the operation of the Railbanking Act. [Troha v. U.S., W.D.Pa.2010, 692 F.Supp.2d 550](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 82(2)

Railroad easements across landowners' properties would have terminated through abandonment, under Washington law, but for National Trails System Act, issuance by Surface Transportation Board (STB) of notices of interim trail use (NITUs), and Act's rail-banking provision, such that owners would have held fee interests unencumbered by easements in their properties absent federal intervention by STB, and therefore damages for takings effected by STB's actions had to be determined using value of landowners' properties in unencumbered condition. [Haggart v. United States, Fed.Cl.2012, 108 Fed.Cl. 70](#). [Eminent Domain](#) 🔑 85; [Eminent Domain](#) 🔑 147

Whether by exceeding the scope of its easements, or by expressing its intent to renounce its interest in the right of way, railroad abandoned its easements in the railroad corridor; recreational trail use of railroad corridor pursuant to Trails Act was outside the scope of the railroad's easement since railroad's primary purposes were to construct and maintain a rail line and to transport persons or property on that rail line, and railbanking also exceeded the scope of the railroad's easement, as it was too hypothetical and unlikely to serve as a railroad purpose. [Gregory v. U.S., Fed.Cl.2011, 101 Fed.Cl. 203](#), on reconsideration in part [102 Fed.Cl. 631](#). [Railroads](#) 🔑 82(2)

Railbanking was not a railroad purpose that worked to preserve railroad purpose easements under Kansas law after conversion of the easements to recreational trail pursuant to the "railbanking" provision of National Trails System Act Amendments (Trails Act); future use as a railroad was "highly improbable" and thus railbanking was not a railroad purpose sufficient to preserve the easements and prevent the abandonment of a railroad easement under Kansas law. [Biery v. U.S., Fed.Cl.2011, 99 Fed.Cl. 565](#). [Railroads](#) 🔑 73(1); [Railroads](#) 🔑 82(1)

Under Vermont law, railroad right-of-way was abandoned when tracks and equipment were removed, triggering landowners' reversionary interest in the easement, for purposes of determining whether landowners were entitled

to compensation when easements were used as bicycle paths pursuant to National Trail Systems Act. [Preseault v. U.S., Cl.Ct.1992, 24 Cl.Ct. 818](#). [Eminent Domain](#) 🔑 85; [Railroads](#) 🔑 82(2)

Interim use of former railroad right-of-way as trail was not “abandonment” of right-of-way that would trigger fee owner's reversionary interest. [Burnier v. Department of Environmental Resources, Pa.Cmwlth.1992, 611 A.2d 1366, 148 Pa.Cmwlth. 530](#). [Railroads](#) 🔑 82(2)

#### 6. Reversionary interests

Recreational use of railroad right-of-way as trail would not exceed scope of railroad's easement under Pennsylvania law, and such finding supported determination that operation of Railbanking Act did not constitute taking of property of abutting property owners, even though deed stated that easement was conveyed for as long as it was used as railroad “and when not so used to revert back to” original property owner. [Troha v. U.S., W.D.Pa.2010, 692 F.Supp.2d 550](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 82(2)

Following conversion of right-of-way from railroad use to trail use pursuant to National Trails System Act, holders of reversionary interest in property were not required to convey by quitclaim deed any interest in disputed land in return for just compensation for taking of their reversionary rights. [Swisher v. U.S., D.Kan.2001, 176 F.Supp.2d 1100, amended 201 F.Supp.2d 1131](#). [Eminent Domain](#) 🔑 166

Landowners' authenticated recorded deeds and local tax records were sufficient to establish their reversionary right in fee simple absolute to land that railroad previously acquired by condemnation or prescription for rights-of-way, in support of landowners' takings claim for their reversionary rights to otherwise abandoned rights-of-way subjected to railbanking, pursuant to Rails-to-Trails Act, even though landowners did not demonstrate unbroken chain-of-title to land. [Thompson v. U.S., Fed.Cl.2011, 101 Fed.Cl. 416](#). [Eminent Domain](#) 🔑 85; [Eminent Domain](#) 🔑 205

#### 7. Interim use of railroad rights-of-way

Pursuant to regulations promulgated by the Surface Transportation Board, sponsors of trails under the National Trails System Act must submit certain documentation describing the site and indicating the user's willingness to assume full responsibility for management, legal liability, and taxes, as well as an acknowledgment of the user's continuing obligation to meet its responsibilities subject to future reactivation of the right-of-way for rail service. [Citizens Against Rails-to-Trails v. Surface Transp. Bd., C.A.D.C.2001, 267 F.3d 1144, 347 U.S.App.D.C. 382](#). [Railroads](#) 🔑 82(5)

Interstate Commerce Commission (ICC) had authority retroactively to extend Certificate of Interim Trail Use (CITU) after CITU expired, where railroad did not abandon the right-of-way between expiration and extension of CITU. [Birt v. Surface Transp. Bd., C.A.D.C.1996, 90 F.3d 580, 319 U.S.App.D.C. 357](#), rehearing denied , suggestion for rehearing denied [98 F.3d 644, 321 U.S.App.D.C. 195](#). [Commerce](#) 🔑 85.6

Recognition of United States as third-party beneficiary of property owners' covenant-not-to-sue agreements with

city would be appropriate to effectuate parties' intent in agreements, in which owners promised not to seek compensation from United States in connection with certificate of interim trail use or abandonment (CITU) authorizing use of former rail line as recreational trail pursuant to National Trails System Act, as required for United States to be intended third-party beneficiary entitled to enforce agreements under New York law; it did not matter that United States was mentioned only once in agreements and did not participate in negotiations or drafting of agreements. [West Chelsea Buildings, LLC v. United States, Fed.Cl.2013, 109 Fed.Cl. 5](#), affirmed. [Public Contracts](#) 🔑 261; [United States](#) 🔑 70(5)

Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU), pursuant to National Trails System Act, authorizing railbanking and conversion of railroad easements from rail use to trail use, effected Fifth Amendment taking of property interests of owners of property adjacent to or underlying easements; under Indiana law, railbanking and interim trail use were not uses within scope of railroad's easements that encumbered owner's property thereby infringing on their property rights. [Howard v. U.S., Fed.Cl.2012, 106 Fed.Cl. 343](#). [Eminent Domain](#) 🔑 2.16; [Eminent Domain](#) 🔑 85

By operation of the National Trails System Act Amendments of 1983 (Trails Act), the Surface Transportation Board (STB) may issue a Notice of Interim Trail Use (NITU), suspending exemption proceedings for 180 days to allow a third party to enter into an agreement with the railroad to use the right-of-way as a recreational trail. [Beres v. U.S., Fed.Cl.2012, 104 Fed.Cl. 408](#). [Railroads](#) 🔑 82(1)

#### 8. Restoration for railroad purposes

National Trails System Act and its implementing regulations require that a trail sponsor have the same control over the entire right-of-way corridor that would be held by a railroad in order that the trail sponsor can ensure that any and all uses made of the right-of-way are consistent with the restoration of rail service. [Illig v. U.S., Fed.Cl.2003, 58 Fed.Cl. 619](#). [Railroads](#) 🔑 82(5)

#### 9. Takings and compensation

Taking of landowners' state law reversionary interest in property underlying railroad right-of-way occurred when Surface Transportation Board (STB) issued Notice of Interim Trail Use or Abandonment (NITU) pursuant to Trails Act, notwithstanding that no conversion to recreational trail subsequently occurred; NITU was the government action that prevented landowners from possession of their property unencumbered by easement. [Ladd v. U.S., C.A.Fed.2010, 630 F.3d 1015](#), rehearing and rehearing en banc denied [646 F.3d 910](#), on remand [108 Fed.Cl. 609](#). [Eminent Domain](#) 🔑 2.16

Fifth Amendment taking occurs when, pursuant to National Trail Systems Act, state-law reversionary interests are effectively eliminated in connection with conversion of railroad right-of-way to trail use, i.e. if original easement granted to railroad under state property law is not broad enough to encompass recreational trail. [Caldwell v. U.S., C.A.Fed.2004, 391 F.3d 1226](#), rehearing en banc denied, certiorari denied [126 S.Ct. 366, 546 U.S. 826, 163 L.Ed.2d 72](#). [Eminent Domain](#) 🔑 2.16

Public transportation easement for railroad purposes was converted into new and different easement under California law as result of interim use of land as public recreational trail and linear park through Rails to Trails Act, and although government had legal power and was free to impose such new uses upon fee interests held by adjacent landowners, private property interests taken were not free and government was required to pay just compensation mandated by Fifth Amendment. [Toews v. U.S., C.A.Fed.2004, 376 F.3d 1371](#), rehearing denied. [Eminent Domain](#) ↪ 2.16

Federal government agency's approval, under Rails-to-Trails Act, of state's act of leasing former railroad easement to city for use as public recreational trail constituted taking of property belonging to owners whose property had been burdened by easement, since either easement had been abandoned at time of such action or use of easement as public trail was outside of scope of original easement for maintenance and operation of railroad, and owners thus held interest under state property law that was protected from governmental expropriation. (Per Plager, Circuit Judge, with three Circuit Judges concurring and two Circuit Judges concurring separately.) [Preseault v. U.S., C.A.Fed.1996, 100 F.3d 1525](#). [Eminent Domain](#) ↪ 2.16

Railroad did not abandon right-of-way under Pennsylvania law, and such finding supported determination that operation of Railbanking Act did not constitute taking of property of abutting property owners, even though railroad sought authorization to abandon service on rail corridor, transferred right-of-way to recreational trail association, and removed rails and ties from railroad bed, where railroad continuously negotiated with several potential trail sponsors in attempt to reach agreement to railbank and preserve right-of-way, railroad expressly retained right to reacquire land and reactivate rail service, and Railbanking Agreement protected railroad's ongoing interest in right-of-way by requiring association to retain bridges, roadbeds, and other structures necessary for rail service. [Troha v. U.S., W.D.Pa.2010, 692 F.Supp.2d 550](#). [Eminent Domain](#) ↪ 2.16; [Railroads](#) ↪ 82(2)

Conversion of right-of-way from railroad use to trail use pursuant to National Trails System Act, which had effect of blocking abandonment of right-of-way even though conditions for abandonment under state law were otherwise met, was “taking” for which holders of reversionary interest were entitled to compensation. [Swisher v. U.S., D.Kan.2001, 176 F.Supp.2d 1100](#), amended [201 F.Supp.2d 1131](#). [Eminent Domain](#) ↪ 2.16

Allegations that railroad fulfilled Kansas's statutory requirements for abandonment of line, and that Surface Transportation Board's issuance of Notice of Interim Trail Use or Abandonment (NITU) blocked abandonment that would have occurred if not for its issuance, thereby blocking reversion of property interests due to property owners, were sufficient for property owners to assert Fifth Amendment takings claims. [City of Ford v. U.S., Fed.Cl.2012, 2012 WL 3090024](#). [Eminent Domain](#) ↪ 2.16

Proposed settlement of landowners' rails-to-trails class action against United States, claiming that National Trails System Act provision authorizing “railbanking” as alternative to abandonment of railroad right-of-way effected Fifth Amendment taking of landowners' reversionary rights to property, which set forth that government would pay into a common fund for 253 landowners the amount of \$139,881,218.69 as well as \$27,961,218.69 in interest, and statutory attorney fees of \$1,920,000.00 and \$660,000 in costs, pursuant to Uniform Relocation Assistance and Real Property Acquisition Policies Act, was substantively fair, as required for approval by Court of

Federal Claims; relatively large settlement amount reasonably reflected the strengths of landowners' case, a trial would have been lengthy and complex, requiring proof of each class members' ownership of individual parcel and its fair market value, because fees were likely lower than what the attorneys might otherwise have received under the statute, they were presumptively reasonable, and only two class members had objected to the settlement, citing only their inability to determine the fairness of their individual settlement amounts. [Haggart v. United States, Fed.Cl.2014, 116 Fed.Cl. 131. Compromise and Settlement](#) 🔑 61

In calculating damages resulting from government's temporary takings of landowners' reversionary rights to railroad easements on their land that occurred when Surface Transportation Board (STB) issued notice of interim trail use or abandonment (NITU) pursuant to National Trails Systems Act, landowners' property had to be valued using landowners' right to unencumbered possession of land before taking, rather than land's value as railroad easement; landowners' reversionary interests had to be determined by subtracting value of land with easements for recreational trails from value of land without easements. [Ladd v. United States of America, Fed.Cl.2013, 110 Fed.Cl. 10. Eminent Domain](#) 🔑 143

Under Iowa law, prior landowners' deed to railroad conveyed easement limited to railroad purposes, and therefore government's issuance of notice of interim trail use or abandonment (NITU), pursuant to National Trails Systems Act, blocked subsequent landowners' reversionary rights in that portion of rail corridor converted to recreational trail, rendering government liable for just compensation for such taking under Fifth Amendment; language of conveyance contemplated railroad use, including deed's specific reference to "main track of said Railroad" for which easement was to be used. [Rasmuson v. United States, Fed.Cl.2013, 109 Fed.Cl. 267. Railroads](#) 🔑 69

City intended to give United States the benefit of promise not to sue United States included in property owners' covenant-not-to-sue agreements with city, in which owners promised not to seek compensation from United States in connection with certificate of interim trail use or abandonment (CITU) authorizing use of former rail line as recreational trail pursuant to National Trails System Act, as required for United States to be intended third-party beneficiary entitled to enforce agreements under New York law. [West Chelsea Buildings, LLC v. United States, Fed.Cl.2013, 109 Fed.Cl. 5, affirmed. United States](#) 🔑 70(5)

Federal government, acting through Surface Transportation Board (STB), exercised its power to exceed scope of railroad easements that were granted for railroad purposes only by issuing notices of interim trail use (NITUs) authorizing recreational trail use of former railroad right-of-way, and therefore government was liable for resulting takings of landowners' properties, even though county, via agreement with railroad, created physical trail. [Haggart v. United States, Fed.Cl.2012, 108 Fed.Cl. 70. Eminent Domain](#) 🔑 85

Railbanking fell outside scope of railroad purpose easements, under Tennessee law, on grounds that any future rail use was too hypothetical to be needful and helpful to operation of railroad, and thus, Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU), pursuant to railbanking provision National Trails System Act, effected compensable taking of adjacent landowners' reversionary interests in fee underlying easements. [Thomas v. U.S., Fed.Cl.2012, 106 Fed.Cl. 467. Eminent Domain](#) 🔑 2.16; [Eminent Domain](#) 🔑 85

Surface Transportation Board's (STB) Fifth Amendment taking of owners' property adjacent to or underlying railroad easements, by STB's issuance of notice of interim trail use (NITU), pursuant to National Trails System Act, authorizing railbanking and conversion of railroad easements from rail use to trail use, required just compensation to owners, calculated as difference between unencumbered fee and fee encumbered with easement for public trail use for indefinite future; STB issued certificate of public convenience and necessity, relieving railroad of its common carrier obligations on easements, rails, switches, ties, and other facilities, thereby rendering easements unusable for continued rail traffic, so that easements were considered abandoned, and owners held title free and clear of easements under Indiana common law. [Howard v. U.S., Fed.Cl.2012, 106 Fed.Cl. 343. Eminent Domain 🔑 147](#)

Property owners' just compensation for takings of their reversionary interests in railroad easement by National Trails System Act Amendments was appropriately measured by difference between fee simple value of owners' land unencumbered by railroad easement and value of their land encumbered by perpetual trail use easement subject to possible reactivation as railroad, rather than calculating "before" value based on owners' land encumbered by railroad easement; under Kansas law, easement would have reverted back to owners in fee simple if not blocked by Surface Transportation Board's (STB) issuance of Notice of Interim Trail Use or Abandonment (NITU) pursuant to Trails Act. [Anna F. Nordhus Family Trust v. U.S., Fed.Cl.2012, 106 Fed.Cl. 289. Eminent Domain 🔑 147](#)

Upon taking of owners' properties resulting from conversion of railroad easements across their South Carolina properties from rail use to trail use when Surface Transportation Board (STB) issued a notice of interim trail use (NITU) pursuant to the National Trails System Act (NTSA), measure of just compensation to landowners required capturing the value of the reversionary interests in their "before taken" condition, unencumbered by the easements; properties had to be valued as fee interests unencumbered by the easements since the railroad easements were extinguished when the NITU was issued because they no longer were to be used for the designated railroad purposes since record did not contain even a suggestion that a railroad line would be reactivated across the easements. [Ingram v. U.S., Fed.Cl.2012, 105 Fed.Cl. 518. Eminent Domain 🔑 124; Eminent Domain 🔑 128\(1\); Eminent Domain 🔑 147](#)

Under Washington law, conversion of public transportation prescriptive easement, acquired by railroad operator for railroad purposes, into public recreational trail through conversion of owners' reversionary interest in railroad right of way on their properties via issuance of notice of interim trail use (NITU) and conversion of rail-banked right of way to recreational trail pursuant to National Trails System Act Amendments, exceeded scope of prescriptive easement, and thus, constituted taking entitling property owners to compensation; prescriptive easement acquired by operator did not encompass trail use. [Beres v. U.S., Fed.Cl.2012, 104 Fed.Cl. 408. Eminent Domain 🔑 85](#)

Under Mississippi law, railroad charter did not permit railroad to acquire fee title to land when it exercised its power of eminent domain, but rather, indicated that when railroad condemned land, original landowners maintained ownership, while railroad acquired only easement to use or occupy land, thereby entitling alleged owners of reversionary interests in parcels to just compensation when government converted railroad corridor into public recreational trail pursuant to Trails Act. [Gregory v. U.S., Fed.Cl.2011, 102 Fed.Cl. 631. Eminent Domain 🔑 85; Eminent Domain 🔑 317\(2\)](#)

Government's takings liability for blocking landowners' right to unencumbered property, in connection with taking landowners' reversionary interest in railroad right-of-way easements when Surface Transportation Board (STB) approved conversion of rail line to recreational trail pursuant to "railbanking" provision of National Trails System Act Amendments, extended to all actions authorized by government in notice of interim trail use or abandonment (NITU); fact that Act authorized government to preempt state abandonment laws during negotiations for an interim trail use agreement did not alter extent of government's liability in event an agreement was eventually reached, fact that STB did not enter into agreement with railroad or trail operator did not limit scope of its taking liability, and government, by issuing NITU, blocked landowners' interests and allowed foundation to serve as trail operator on what would be an otherwise abandoned rail line. [Jenkins v. U.S., Fed.Cl.2011, 102 Fed.Cl. 598](#). [Eminent Domain ↪ 2.16](#); [Eminent Domain ↪ 85](#)

Measure of just compensation for Trails Act taking of property owners' land was the difference between the value of owners' land unencumbered by a railroad easement and the value of owners' land encumbered by a perpetual easement for recreational trail use, where, but for the Notice of Interim Trail Use (NITU) and subsequent trail use agreement, property owners would have had fee title to their land unburdened by the railroad easement. [Ybanez v. U.S., Fed.Cl.2011, 102 Fed.Cl. 82](#). [Eminent Domain ↪ 147](#)

Conversion of railroad's easements into public recreational trail by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU), pursuant to Rails-to-Trails Act, exceeded scope of railroad's easements, under Michigan law, and thus, landowners were entitled to just compensation for taking of their reversionary rights to property that railroad acquired by condemnation or prescription for easements, since all rights in land acquired for easements reverted back to landowners in fee simple absolute once railroad's use for railroad purposes ended. [Thompson v. U.S., Fed.Cl.2011, 101 Fed.Cl. 416](#). [Eminent Domain ↪ 2.16](#)

Conversion of railroad easements to a recreational trail pursuant to National Trails System Act Amendments (Trails Act) prevented the expiration of the railroad easements that would have otherwise been abandoned under Kansas law, and thus the issuance of Notice of Interim Trail Use or Abandonment (NITU) resulted in a taking of fee simple owners' reversionary interests; by operation of the Trails Act, the fee simple owners had been deprived of the unencumbered fee they would have otherwise enjoyed under state property law. [Biery v. U.S., Fed.Cl.2011, 99 Fed.Cl. 565](#). [Eminent Domain ↪ 2.16](#); [Eminent Domain ↪ 85](#); [Railroads ↪ 82\(1\)](#)

Because Notice of Interim Trail Use or Abandonment (NITU) issued by the federal Surface Transportation Board (STB) pursuant to National Trails System Act Amendments imposed both interim trail use and railbanking, the imposition of a recreational trail on original railroad easement, which would have been extinguished due to abandonment absent federal action, was beyond the scope of original easement and constituted a taking of fee simple landowners' reversionary property interests; while the scope of the easement was broad enough to include different modes of public transportation, it was not broad enough to include a recreational trail, and railbanking was not a permissible use under the easement. [Capreal, Inc. v. U.S., Fed.Cl.2011, 99 Fed.Cl. 133](#). [Eminent Domain ↪ 2.16](#); [Eminent Domain ↪ 85](#)

Surface Transportation Board's (STB) governmental action in issuing four Notices of Interim Trail Use or Abandonment (NITUs) and exercising indefinite jurisdiction over railroad rights-of-way, which operated to prevent



abandonment of the rail corridors and to preclude the vesting of reversionary interests in the rights-of-way under Kansas law, effected continuous temporary government takings of servient estateholders' properties; STB had statutory authority to extend the NITUs, and railroad had neither abandoned the rights-of-way nor filed a notice of consummation of abandonment in time gaps between expiration of one 180-day NITU negotiation period and the issuance of a second NITU affecting the same trail segment, and, in the absence of conversion of the corridor to a recreational trail, once an NITU expired, railroad was no longer precluded by federal government action from completing the abandonment of the rail corridor, and the taking of that corridor ceased. [Farmers Co-op. Co. v. U.S., Fed.Cl.2011, 98 Fed.Cl. 797](#), reconsideration denied [100 Fed.Cl. 579](#). [Eminent Domain](#) 🔑 2.16

Use of former railroad corridor as recreational trail was outside scope of easements that railroad acquired under Texas law by means of prescription, by using the subject land exclusively for railroad purposes over prescriptive period, such that a Fifth Amendment taking of abutting landowners' property occurred when the Surface Transportation Board issued Notice of Interim Trail Use (NITU). [Ybanez v. U.S., Fed.Cl.2011, 98 Fed.Cl. 659](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 73(2)

Imposition of recreational trail on landowners' underlying fee interests in railroad rights-of-way, pursuant to National Trails System Act, resulted in Fifth Amendment takings, since easements at issue, as created under Indiana law, did not include recreational trail use within their scope. [Macy Elevator, Inc. v. U.S., Fed.Cl.2011, 97 Fed.Cl. 708](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 73(2)

#### 9a. Damages

Temporary takings of landowners' reversionary rights to railroad easements on their land arising from issuance by Surface Transportation Board (STB) of notice of interim trail use or abandonment (NITU) pursuant to National Trails Systems Act would end, for purposes of calculating landowners' damages, when railroad consummated its abandonment of easements and landowners' reversionary interests reverted to unencumbered status, or when government showed that it had abandoned the takings, leaving no government claim to jurisdiction or control over landowners' property. [Ladd v. United States of America, Fed.Cl.2013, 110 Fed.Cl. 10](#). [Eminent Domain](#) 🔑 143

#### 10. Easements

Fact that city, and not federal government, actually established public recreational trail upon land that was formerly railroad easement did not preclude finding that federal government was liable for taking of property belonging to owners whose property had been burdened by easement, since city acted under federal government's authority through Rails to Trails Act. [Toews v. U.S., C.A.Fed.2004, 376 F.3d 1371](#), rehearing denied. [Eminent Domain](#) 🔑 285

An easement for railroad purposes is sufficiently broad to encompass use as a recreational trail, such that the current intended use of a right-of-way as a trail does not exceed the scope of the railroad's original acquisitions under Pennsylvania law, for purposes of determining whether operation of the Railbanking Act constitutes a taking of property of abutting property owners. [Troha v. U.S., W.D.Pa.2010, 692 F.Supp.2d 550](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 82(2)

Under Tennessee law, as predicted by district court, deeds granting to railroads two easements limited those easements to railroad right-of-way purposes only, rather than conveying general purpose rights-of-way as would have permitted recreational trail use, under railbanking provision of National Trail Systems Act, that would have precluded takings claim based on reversionary interests in fee underlying easements; Tennessee courts consistently limited rights obtained by railroads and stated that rights-of-way in context of conveyances to railroads were limited to railroad purposes, and intention of parties to conveyance was to grant railroad right-of-way for use as rail corridor. [Thomas v. U.S., Fed.Cl.2012, 106 Fed.Cl. 467](#). [Eminent Domain](#) 85; [Railroads](#) 69 ; [Railroads](#) 73(2)

Under Washington law, scope of easements granted in railroad right of way deeds was limited to the construction, operation and maintenance of the railway line “so long as the same shall be used for railroad purposes;” furthermore, conveyances did not allow for use of rights of way as a recreational trail, and, consequently Surface Transportation Board's (STB) issuance of a notice of interim trail use (NITU) pursuant to the National Trails System Act exceeded the scope of the easements, and effected a taking of grantors' successors' reversionary interests in the rights of way. [Longnecker Property v. U.S., Fed.Cl.2012, 105 Fed.Cl. 393](#). [Eminent Domain](#) 2.16; [Railroads](#) 69

Under Indiana law, railroad purpose easements terminated when railroad stopped using easements for railroad purposes and instead transferred easements to trail operator for use as recreational trail pursuant to National Trails System Act Amendments, and thus, for purposes of determining just compensation to be paid to fee owners, properties' condition had to be valued as property unencumbered by any railroad purpose easements, where deeds either limited easement's existence so long as right-of-way was used for railroad, or provided that easement would revert when not used for railroad purposes. [Macy Elevator, Inc. v. U.S., Fed.Cl.2012, 105 Fed.Cl. 195](#). [Eminent Domain](#) 147; [Railroads](#) 82(1)

Under Washington law, scope of easements conveyed by property owners for purpose of location, construction and operation of railroad was exceeded by government's conversion of owners' reversionary interest in railroad right of way on their properties, through issuance of notice of interim trail use (NITU) and conversion of railbanked right of way, to recreational trail pursuant to National Trails System Act Amendments, as required for taking entitling property owners to compensation; easements had specific and limited purpose, as their intention was only for building and operating railroads, and there was no monetary consideration listed in deeds. [Beres v. U.S., Fed.Cl.2012, 104 Fed.Cl. 408](#). [Eminent Domain](#) 85

Under Mississippi law, easements granted to railroad by deeds and adverse possession were limited to use for railroad purposes, and thus issuance of Notice of Interim Trail Use (NITU), authorizing conversion of line for use as recreational trail under the Trails Act, was beyond the original scope of easements; railroad was specifically limited by its charter to take and possess as much more land as necessary for construction, maintenance, and management of railroad, deeds specifically referred to same exact terms and conditions as railroad's charter, and creation of trails was not consistent with railroad purposes. [Buford v. U.S., Fed.Cl.2012, 103 Fed.Cl. 522](#). [Railroads](#) 73(2); [Railroads](#) 82(5)

Under Iowa law, right-of-way deeded easements, which conveyed from landowners to “railroad as the same is

located said right of way to be one hundred feet in width to be used for a single or double track for said railroad and for any other [r]ail [r]oad purposes or uses over and across the [described] tract,” were limited to railroad purposes only, as required for landowners' takings claim alleging government improperly converted rail line to recreational trail pursuant to “railbanking” provision of National Trails System Act Amendments; fact that deeds did not use words “railroad purposes only” or language akin to “only” did not mean deeds created unlimited easements, and any recreational trail use fell outside of easements. [Jenkins v. U.S., Fed.Cl.2011, 102 Fed.Cl. 598](#). [Eminent Domain](#) 🔑 85; [Railroads](#) 🔑 73(2)

Under Michigan law, scope of easements granted by landowners was a right-of-way for railroad purposes; the “all other things” language of the deed was manifestly limited to the purposes of “the location, building, maintaining, and running” of a railroad, and the reference to engines, cars, and horses, etc., related to the means of effectuating the passage of the railroad's employees, agents, et al., rather than as transportation purposes in themselves in the grant of the right-of-way. [Dana R. Hodges Trust v. U.S., Fed.Cl.2011, 101 Fed.Cl. 549](#). [Railroads](#) 🔑 69

Under Michigan law, railroad's interest in strip of land conveyed by deed for railroad purposes only was fee simple absolute, rather than easement, even though deed described strip of land as “across” grantor's larger plot, thus precluding takings claim of landowners based on deed that did not convey them reversionary rights that they alleged were forestalled by railbanking, under Rails-to-Trails Act, where deed did not use term “right-of-way” and granted “all the Estate right[,] title[,] interest[,] claim and demand whatsoever” to railroad and its “successors and assigns forever,” including “reversion and reversions[,] remainder & remainders[,] rents[,] issues and profits thereof.” [Thompson v. U.S., Fed.Cl.2011, 101 Fed.Cl. 416](#). [Eminent Domain](#) 🔑 85; [Railroads](#) 🔑 69

Conversion of railroad easements to a recreational trail pursuant to National Trails System Act Amendments (Trails Act) was not a railroad purpose within the scope of easements such that use would maintain the railroad easements under Kansas law, preventing their reversion to the former fee simple owners; use of the railroad purpose easements for recreational trail purposes was not related to train travel nor did it advance the purposes for which the easements were created, and imposed a different burden on servient estates beyond that reasonably contemplated at the time of conveyance or condemnation. [Biery v. U.S., Fed.Cl.2011, 99 Fed.Cl. 565](#). [Railroads](#) 🔑 73(1); [Railroads](#) 🔑 82(5)

Scope of railway easement, granted under General Railroad Right of Way Acts, over of Category 1 landowner whose predecessor-in-interest acquired land pursuant to former Homestead Act, did not include recreational trail, despite railbanking process under National Trails System Act (Trails Act), authorizing Surface Transportation Board (STB) to convert railroad easement to biking and hiking trail, as required for landowner's just compensation for taking of property, since Acts limited easement only to railroad purposes, Trails Act railbanking did not convert recreational trail purposes into railroad purposes, and there were no definitive plans to resume active rail service on property. [The Ellamae Phillips Co. v. U.S., Fed.Cl.2011, 99 Fed.Cl. 483](#). [Eminent Domain](#) 🔑 2.16; [Eminent Domain](#) 🔑 85; [Railroads](#) 🔑 82(1)

Easements granting railroad the right to use right-of-way for construction and maintenance of railroad, and for

use of materials on right-of-way such as wood, water and stone, could not be interpreted as providing for use of railway corridor as public trail or for other recreational purposes, such that a Fifth Amendment taking of abutting landowners' property occurred when the Surface Transportation Board issued Notice of Interim Trail Use (NITU). [Ybanez v. U.S., Fed.Cl.2011, 98 Fed.Cl. 659. Eminent Domain ↪ 2.16; Railroads ↪ 73\(2\)](#)

Scope of general easements granted by landowners to railroad were insufficiently broad under Indiana law to encompass subsequent use of railbed as recreational trail, for purposes of landowners' claims challenging conversion of railroad line to trail, since deeds executed by parties to original transactions contained language limiting use of easements to railroad purposes, and did not contemplate trail, road or other non-railroad uses. [Macy Elevator, Inc. v. U.S., Fed.Cl.2011, 97 Fed.Cl. 708. Railroads ↪ 73\(2\)](#)

Underlying fee owners of property burdened by former railroad easements taken by the United States under the National Trails System Act were not entitled to treat trail as a general easement under Missouri law, and thus use the surface in any way not inconsistent with the purpose of the easement; rather, the Act imposed a new easement across their properties which retained essentially the same characteristics as the original easement, both in its location and exclusivity of use. [Illig v. U.S., Fed.Cl.2003, 58 Fed.Cl. 619. Railroads ↪ 82\(5\)](#)


#### 10a. Adverse possession

Interstate Commerce Commission (ICC) valuation maps, which failed to indicate any recorded conveyance at all to or for any railroad over fee owners' properties, together with owners' deeds, and tax records, sufficiently established under Michigan law that railroad right-of-way over the properties was obtained without any grant, but rather, via adverse possession, and consequently, railroad's interest at the time of the alleged takings due to conversion of right-of-way to recreational trail pursuant to National Trails System Act was no more than a prescriptive easement. [Dana R. Hodges Trust v. U.S., Fed.Cl.2011, 101 Fed.Cl. 549. Eminent Domain ↪ 2.16; Eminent Domain ↪ 85; Railroads ↪ 69](#)


Genuine issue of material fact existed as to whether railroad met the requirements under Florida law for acquiring fee title to land segment without a recorded conveyance by adverse possession, precluding summary judgment in favor of either government or plaintiffs asserting takings claim based on conversion of corridor from railroad use to recreational trail use under National Trails System Act. [Whispell Foreign Cars, Inc. v. U.S., Fed.Cl.2011, 100 Fed.Cl. 529, reconsideration denied 106 Fed.Cl. 777. United States ↪ 113.21\(5\)](#)


#### 11. Environmental effects


Surface Transportation Board reasonably concluded that the National Trails System Act did not require it to conduct a separate environmental assessment before issuance of a certificate of interim trail use (CITU); language used by Congress in the Act focused on Act's purposes of preserving rail corridors for future railroad use and permitting public recreational use of trails, implicitly leaving environmental considerations either to environmental assessments accompanying the abandonment proceeding, the parties' agreement, or other federal or state and local law, and nothing in the text or the legislative history suggested a contrary congressional intent. [Citizens Against Rails-to-Trails v. Surface Transp. Bd., C.A.D.C.2001, 267 F.3d 1144, 347 U.S.App.D.C. 382. Environmental Law ↪ 582](#)


The NEPA does not require the Interstate Commerce Commission (ICC) to consider, as part of an abandonment proceeding, the environmental effects of conversion of a railroad right-of-way to interim trail use pursuant to the Rails to Trails Act; the ICC can exercise little discretion in issuing a Certificate of Interim Trail Use or a Notice of Interim Trail Use and, thus, no purpose can be served by requiring it to conduct an environmental assessment as to trail use in abandonment proceedings. [Goos v. I.C.C., C.A.8 1990, 911 F.2d 1283. Environmental Law](#)  582


## 12. Jurisdiction

While state law generally creates the property interest in a railroad right-of-way, the disposition of reversionary interests is subject to the Surface Transportation Board's (STB) exclusive and plenary jurisdiction to regulate abandonments of railroad rights of way; thus, federal, not state, law dictates when abandonment occurs. [Barclay v. U.S., C.A.Fed.2006, 443 F.3d 1368, rehearing en banc denied, certiorari denied 127 S.Ct. 1328, 549 U.S. 1209, 167 L.Ed.2d 81. Federal Courts](#)  3084(3)

Railroad's continued negotiations with city for "rails to trails" conversion showed an intent not to abandon the right-of-way, notwithstanding the railroad's incidental use of the words "abandonment" and "abandoned" in letters regarding the rail line, for purposes of determining whether Interstate Commerce Commission (ICC) retained jurisdiction to extend Certificate of Interim Trail Use (CITU). [Birt v. Surface Transp. Bd., C.A.D.C.1996, 90 F.3d 580, 319 U.S.App.D.C. 357, rehearing denied, suggestion for rehearing denied 98 F.3d 644, 321 U.S.App.D.C. 195. Commerce](#)  85.6

Federal district court retained subject matter jurisdiction of removed suit challenging transfers of easements under federal "Rails to Trails" statute, despite plaintiff's asserted dropping of federal claims and retention of only state law claims; plaintiff's state law rights were preempted by federal statute, with any available relief coming from federal law. [Louisiana-Pacific Corp. v. Texas Dept. of Transp., E.D.Tex.1999, 43 F.Supp.2d 708. Removal Of Cases](#)  25(1)

District court lacked subject matter jurisdiction to hear challenge to interim trail use order of Interstate Commerce Commission (ICC) where challenge was based on nonconstitutional grounds; plaintiffs brought actions in state court to try to quiet title to real estate and claimed that railroad's rights to that real estate had been abandoned. [Schneider v. Union Pacific R. Co., D.Neb.1994, 864 F.Supp. 120. Commerce](#)  85.6

Property owners' claims against nonprofit corporation involved in converting inactive railroad corridors into recreational trails and against director and commissioners of the Washington State Parks and Recreation Commission for taking private property without just compensation and for violating of National Trails System Act amounted to requests to enjoin or for review of final Interstate Commerce Commission (ICC) orders permitting interim trail use/rail banking on rail corridors, and as such were within exclusive jurisdiction of Court of Appeals. [Dave v. Rails to Trails Conservancy, E.D.Wash.1994, 863 F.Supp. 1285, affirmed 79 F.3d 940. Federal Courts](#)  3913

District court had jurisdiction to consider challenge by landowners adjacent to abandoned railroad right-of-way

to National Trails System Act section authorizing Interstate Commerce Commission to enter orders permitting railroad rights-of-way to be used on an interim basis as recreational trails, but not ICC regulations implementing statute or order applying statute and regulations to right-of-way adjacent to their property; under Hobbs Act, federal circuit Courts of Appeal had exclusive jurisdiction to consider implementing regulations and order. [Glosemeyer v. Missouri-Kansas-Texas R. Co.](#), E.D.Mo.1988, 685 F.Supp. 1108, affirmed 879 F.2d 316, certiorari denied 110 S.Ct. 1295, 494 U.S. 1003, 108 L.Ed.2d 473. [Commerce](#) ↪ 85.6

Prior final state court judgment in property owners' quiet title action, determining that railroad was granted fee simple interest in right of way on owners' property, rather than mere easement, did not bar, under *Rooker-Feldman* doctrine, owners' subsequent takings action in Court of Federal Claims based on denial of alleged reversionary interest in right of way by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) and conversion of right of way to recreational trail, pursuant to National Trails System Act Amendments, since subsequent action did not challenge finality of state court judgment, but rather, asserted independent takings claim. [Beres v. U.S.](#), Fed.Cl.2010, 92 Fed.Cl. 737, subsequent determination 97 Fed.Cl. 757. [Courts](#) ↪ 509.3(2)

Issue of whether railroad had abandoned right-of-way after regulatory oversight of Interstate Commerce Commission (ICC) ended was matter of state law, and thus district court did not abuse its discretion in declining to exercise supplemental jurisdiction over state law trespass claims asserted by owners of real property underlying allegedly abandoned railroad track against township following dismissal of owners' federal constitutional claims. [Lucas v. Township of Bethel, C.A.3 \(Pa.\) 2005](#), 137 Fed.Appx. 450, 2005 WL 1123301, Unreported. [Federal Courts](#) ↪ 2564

### 13. Abstention

*Pullman* abstention doctrine, which prevented federal court's resolution of federal constitutional question if case could be resolved on questions of state law, did not apply to lawsuit against municipality which claimed that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA); case was not about how ordinance applied, it was about constitutionality of ordinance in light of Supremacy Clause. [Friends of the East Lake Sammamish Trail v. City of Sammamish, W.D.Wash.2005](#), 361 F.Supp.2d 1260, reconsideration denied. [Federal Courts](#) ↪ 2640

### 14. Persons entitled to maintain action

Owners of land abutting railroad failed to demonstrate injury attributable to mayor's actions in entering city into proceedings before Surface Transportation Board (STB) to convert rail line to allow for trail use pursuant to National Trails System Act, in light of fact that city did not incur any expenses from involvement in STB proceedings, and thus landowners lacked standing to pursue mandamus claim against town and mayor alleging they improperly entered into negotiations with railroad. [Fletcher v. Burlington Northern and Santa Fe Ry. Co., C.A.8 \(Mo.\) 2007](#), 474 F.3d 1121. [Mandamus](#) ↪ 22; [Railroads](#) ↪ 82(6)

Landowners who owned property that adjoined railroad right-of-way had Article III standing to challenge the Surface Transportation Board's issuance of a certificate of interim trail use (CITU) authorizing use of the right-

of-way as a trail pursuant to the National Trails System Act. [Citizens Against Rails-to-Trails v. Surface Transp. Bd.](#), C.A.D.C.2001, 267 F.3d 1144, 347 U.S.App.D.C. 382. [Railroads](#) ↪ 82(6)

Court of Appeals was required to consider railroad's argument that landowner lacked standing to challenge Interstate Commerce Commission's (ICC's) decision that NEPA did not apply to ICC's consideration of a conversion of a railroad right-of-way, even though ICC and railroad did not challenge landowner's standing below, but rather railroad first raised argument in its initial brief to Court of Appeals; standing is necessary before Court of Appeals has jurisdiction. [Goos v. I.C.C.](#), C.A.8 1990, 911 F.2d 1283. [Commerce](#) ↪ 158

Non-profit organizations and their members demonstrated “injury in fact,” in order to have standing in lawsuit against municipality claiming that ordinance's “practical alternative” public agency utility exception (PAUE) requirement, which stymied county's efforts to implement trail, was preempted by National Trails Systems Act (NTSA), on plaintiffs' allegations that they used trail, their activities and pastimes were affected by proposed trail development plans, and their economic and property interests, due to their investment in development of trail, and their contractual interest in right-of-way, would have been affected if county failed in its efforts to develop trail due to PAUE. [Friends of the East Lake Sammamish Trail v. City of Sammamish](#), W.D.Wash.2005, 361 F.Supp.2d 1260, reconsideration denied. [Railroads](#) ↪ 82(6)

Property owner that did not own its property at the time of alleged taking lacked standing to pursue takings claim in action brought pursuant to National Trails System Act. [West Chelsea Buildings, LLC v. United States](#), Fed.Cl.2013, 109 Fed.Cl. 5, affirmed. [United States](#) ↪ 113.12(2)


Landowners suffered injury in fact that could be redressed by ruling requiring government to pay just compensation for alleged taking of owners' fee simple estates abutting and underlying railroad rights-of-way subjected to railbanking, pursuant to Rails-to-Trails Act, as required for landowners' Article III standing to assert Fifth Amendment claims, since landowners' alleged reversionary rights to their property were forestalled by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) for otherwise abandoned rights-of-way. [Thompson v. U.S.](#), Fed.Cl.2011, 101 Fed.Cl. 416. [Eminent Domain](#) ↪ 2.16; [Eminent Domain](#) ↪ 85


Evidence in class action against the United States, asserting Fifth Amendment takings claims arising out of conversion of former rail line to trail use pursuant to the Rail-to-Trails Act, supported conclusion that claimants' property did not abut rail corridor, and thus they could not claim ownership to lands affected by the Trails Act. [Moore v. U.S.](#), Fed.Cl.2003, 58 Fed.Cl. 134. [Eminent Domain](#) ↪ 300


Purported holders of reversionary interests in former railroad right-of-way allegedly consisting of abandoned railroad easements had no compensable property interests, precluding relief on their claim that government took their property without just compensation under authority of National Trails System Act, which enabled use of right-of-way as bicycle path; holders bought burdened properties with expectations rooted in evolving federal law regulating abandonments of railroads and repeatedly sold or transferred their interests during a period in which federal laws impacted conditions under which their reversionary interests could be expected to ripen. [Preseault v. U.S.](#), Fed.Cl.1992, 27 Fed.Cl. 69, reversed 100 F.3d 1525. [Eminent Domain](#) ↪ 85; [Railroads](#) ↪

82(5)


#### 14a. Class actions

United States acted on grounds generally applicable to putative class of owners of real estate underlying or abutting an allegedly abandoned railroad right-of-way bringing action against the United States, alleging that the government effected a Fifth Amendment taking of the land by the conversion of the right-of-way to a public use trail pursuant to the National Trails System Act, supporting certification of class under Rules of the Court of Federal Claims; plaintiffs' claims, like those of the putative class members, hinged on the Surface Transportation Board's (STB) issuance of the Notice of Interim Trail Use (NITU). [Jenkins v. U.S., Fed.Cl.2009, 104 Fed.Cl. 641. United States](#)  113.13

Subclasses of landowners claiming taking of their property underlying or abutting railroad right-of-way by government's issuance of notices of interim trail use (NITUs), under National Trails System Act, satisfied numerosity requirement for certification of each subclass in rails-to-trails case; each class had more than 18 members, claims would be so small as to discourage individual suits, and judicial economy favored certification of subclasses, as resolution of issues pertinent to each subclass had implications for other subclasses and case as whole, so potential for inconsistent results and delay made separate consideration of each class member's claim impracticable. [Haggart v. U.S., Fed.Cl.2012, 104 Fed.Cl. 484. United States](#)  113.13

Property owner satisfied commonality requirement for class certification in action alleging that trails designation of property pursuant to National Trails System Act caused compensable taking, even though question of just compensation would require individualized proof; government's issuance of notice of interim trail use (NITU) was wellspring of all putative class members' claims, and central legal questions of case concerning original easement given to railroad, reversionary rights of class members under state law, and NITU's effect on those rights could all be resolved through generalized proof. [Geneva Rock Products, Inc. v. U.S., Fed.Cl.2011, 100 Fed.Cl. 778. United States](#)  113.13


#### 15. Accrual of claims




Surface Transportation Board's (STB) issuance of first notice of interim trail use or abandonment (NITU) pursuant to Trails Act was inherently unknowable, and thus accrual suspension rule suspended accrual of property owners' takings claims until issuance of second NITU, which allegedly effected taking of owners' state-law reversionary interest in property underlying railroad right-of-way; owners did not know and had no reason to know about first NITU, which was not made public in any way, although exemption notice in Federal Register indicated railroad would be exempt from certain requirements if it abandoned railroad. [Ladd v. U.S., C.A.Fed.2013, 713 F.3d 648. Limitation of Actions](#)  95(7)


A taking under the National Trail Systems Act begins, and a takings claim accrues, if at all, on issuance of the Notice of Interim Trail Use or Abandonment (NITU) that prevents abandonment of the corridor and vesting in adjacent landowners; the issuance of the NITU is the only event that must occur to entitle the landowner to institute an action, and accrual is not delayed until a trail use agreement is executed or the trail operator takes physical possession of the right-of-way. [Barclay v. U.S., C.A.Fed.2006, 443 F.3d 1368, rehearing en banc denied](#) , cer-




tiorari denied [127 S.Ct. 1328](#), [549 U.S. 1209](#), [167 L.Ed.2d 81](#). [Limitation Of Actions](#)  [55\(5\)](#)

In context of railroad's application for exemption from standard abandonment proceeding that is halted due to “railbanking” petition under National Trail Systems Act, abutting property owner's state-law reversion interests are forestalled under Trails Act, and thus owner's Takings Clause cause of action accrues for purposes of Tucker Act's six-year limitations period, when railroad and trail operator communicates to Surface Transportation Board (STB) their intention to negotiate trail-use agreement, and STB issues Notice of Interim Trail Use (NITU) that operates to preclude abandonment under Act; accrual does not occur later with finalization of negotiated agreement or actual transfer of right-of-way to trail operator. [Caldwell v. U.S.](#), [C.A.Fed.2004](#), [391 F.3d 1226](#), rehearing en banc denied , certiorari denied [126 S.Ct. 366](#), [546 U.S. 826](#), [163 L.Ed.2d 72](#). [Limitation Of Actions](#)  [55\(5\)](#)


Because the issuance of Notice of Interim Trail Use or Abandonment (NITU) by the Surface Transportation Board (STB) forestalled the abandonment process in favor of the potential conversion of railroad right-of-way to a use outside the scope of the original easement, it blocked the vesting of landowners' state law reversionary interests, thus effecting a taking of landowners' property interests, and such takings claim accrued on date of issuance of NITU. [Farmers Co-op. Co. v. U.S.](#), [Fed.Cl.2011](#), [98 Fed.Cl. 797](#), reconsideration denied [100 Fed.Cl. 579](#) . [Eminent Domain](#)  [2.16](#); [Eminent Domain](#)  [85](#); [United States](#)  [113.11\(4\)](#)

For purposes of six-year statute of limitations on suits against the United States in the Court of Federal Claims, taking claims based on conversion of railroad easement to interim trail use by city pursuant to the National Trails System Act accrued on date that trail use agreement was signed, rather than on prior date that notice of interim trail use (NITU) was issued, or subsequent date that railroad issued quitclaim deed transferring easement to city. [Caldwell v. U.S.](#), [Fed.Cl.2003](#), [57 Fed.Cl. 193](#), affirmed [391 F.3d 1226](#), rehearing en banc denied , certiorari denied [126 S.Ct. 366](#), [546 U.S. 826](#), [163 L.Ed.2d 72](#). [United States](#)  [113.11\(4\)](#)


#### 15a. Tolling of limitations period


Statute of limitations was tolled for duration of opt-in period in action alleging that trails designation of property pursuant to National Trails System Act caused compensable taking, even though plaintiff did not file motion for class certification until after limitations period had expired, and plaintiff did not give reasonable count of other potential plaintiffs until its motion for class certification, where plaintiff filed complaint containing class action allegations before limitations period expired, there were no concerns about commonality or justiciability, and complaint provided enough information to estimate size of potential class. [Geneva Rock Products, Inc. v. U.S.](#), [Fed.Cl.2011](#), [100 Fed.Cl. 778](#). [United States](#)  [113.11\(6\)](#)


#### 16. Exhaustion of remedies

Exhaustion of administrative remedies was not required for court to hear conflict preemption challenge under National Trails Systems Act (NTSA) to ordinance's “practical alternative” public agency utility exception (PAUE) requirement. [Friends of the East Lake Sammamish Trail v. City of Sammamish](#), [W.D.Wash.2005](#), [361 F.Supp.2d 1260](#), reconsideration denied. [Railroads](#)  [82\(6\)](#)


### 16a. Summary judgment

Genuine issues of material fact remained regarding costs of and necessity for fencing along railroad easement that was converted to trail use easement under National Trails System Act Amendments, thus precluding summary judgment awarding real property owners' costs of fencing as part of their just compensation for taking of their reversionary interests in railroad easement by National Trails System Act Amendments. [Anna F. Nordhus Family Trust v. U.S., Fed.Cl.2012, 106 Fed.Cl. 289. United States](#)  113.21(5)


Genuine issues of material fact remained as to whether railroad easements on landowners' properties were abandoned, as matter of South Carolina law, prior to alleged taking from application of Rails-to-Trails Act, thus precluding summary judgment on methodology for calculating just compensation based on value of properties before takings. [Carolina Plating Works, Inc. v. U.S., Fed.Cl.2011, 102 Fed.Cl. 555. United States](#)  113.21(5)

Genuine issue of material fact remained as to whether landowners had any property interest in strip of land “quit claimed” by grantor and conveyed by deed to railroad “so long as the said above described premises shall be used for Rail Road purposes,” thus precluding summary judgment as to landowners' Fifth Amendment claim based on any of their property interests that were allegedly taken by railbanking, under Rails-to-Trails Act, for strip of land that was not conveyed as easement, by deed describing strip as “across the farm” of grantors, but rather, conveyed to railroad “the reversion and reversions[,] remainder and remainders[,] rents[,] fees[,] and profits thereof.” [Thompson v. U.S., Fed.Cl.2011, 101 Fed.Cl. 416. United States](#)  113.21(5)

### 17. Parties

County, as property owner, project permit applicant, entity financially responsible for railbed pursuant to Notice of Interim Trail Use (NITU), and ultimate operator of trail, was not “necessary party,” in lawsuit against municipality claiming that ordinance's “practical alternative” public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA), since interest in subject matter alone did not make county necessary party and county was aware of litigation and chose to entrust non-profit organization and its members to adequately litigate issue of federal preemption. [Friends of the East Lake Sammamish Trail v. City of Sammamish, W.D.Wash.2005, 361 F.Supp.2d 1260, reconsideration denied. Federal Civil Procedure](#)  219

### 18. Review

Court of Appeals's mandate did not bar Court of Federal Claims from addressing on remand federal government's liability in action by property owners who alleged that taking of their state-law reversionary interest in property underlying railroad right-of-way occurred when Surface Transportation Board (STB) issued notice of interim trail use or abandonment (NITU) pursuant to Trails Act; Court of Appeals did not decide government's liability when it reversed dismissal of owners' claims, but concluded only that Court of Federal Claims erred when it concluded that issuance of NITU could not constitute a taking. [Ladd v. U.S., C.A.Fed.2013, 713 F.3d 648. Federal Courts](#)  3796

Landowners' petition for review of Interstate Commerce Commission's (ICC) denial of their motion to reopen decision to issue notice of interim trail use in abandonment proceeding concerning rail line which existed pursu-

ant to easement over landowners' property was timely, even though it was filed more than 60 days after decision which landowners sought to reopen, where motion to reopen presented new material to ICC; namely, that landowners were denied opportunity to submit protests to interim trail use because they were unaware of rail-line owner's motion seeking such use. [Fritsch v. I.C.C., C.A.D.C.1995, 59 F.3d 248, 313 U.S.App.D.C. 252](#), rehearing and suggestion for rehearing in banc denied, certiorari denied [116 S.Ct. 1262, 516 U.S. 1171, 134 L.Ed.2d 210](#). [Administrative Law And Procedure](#) 🔑 722.1; [Commerce](#) 🔑 157

In determining whether railroad abandoned right-of-way under Pennsylvania law, for purposes of deciding whether taking of property of abutting property owners occurred as result of operation of Railbanking Act, District Court was not required to analyze whether abandonment would have occurred absent or but for National Trails System Act, under normal abandonment proceeding, inasmuch as such approach would require District Court to disregard actions that railroad actually took in connection with railbanking process and, instead, speculate as to what actions railroad might have taken in the absence of Railbanking Act. [Troha v. U.S., W.D.Pa.2010, 692 F.Supp.2d 550](#). [Eminent Domain](#) 🔑 2.16; [Railroads](#) 🔑 82(2)

#### 19. Attorney fees

Although class counsel sought attorney fees of 35 percent of the \$137,961,218.69 common fund established following settlement of landowners' rails-to-trails class action against the United States alleging a Fifth Amendment taking of landowners' reversionary rights to property, a reduction in the percentage fee sought was appropriate, using a scaled methodology approach, in order to establish reasonable attorney fees of 24 percent; the common fund consisted only of principal and interest, not the \$1,920,000 separately awarded as statutory fees under Uniform Relocation Act, which would offset any contingency fee awarded, so a scaled methodology of awarding class counsel 30 percent of the first \$50 million, 25 percent of the next \$50 million, and 20 percent of all monies over \$100 million recognized the complexity of the case and the hard work by class counsel, but prevented a windfall resulting from the unusually high value of the land at issue. [Haggart v. United States, Fed.Cl.2014, 116 Fed.Cl. 131](#). [United States](#) 🔑 113.23

16 U.S.C.A. § 1247, 16 USCA § 1247

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