

SERVICE DATE — FEBRUARY 24, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 778

NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS—
PETITION FOR RULEMAKING

Digest:¹ The Board denies a petition for rulemaking asking the Board to add a new notice requirement to the agency's rails-to-trails regulations.

Decided: February 23, 2026

On August 11, 2025, the National Association of Reversionary Property Owners (NARPO) filed a petition for rulemaking requesting that the Board institute a proceeding to revise the agency's regulations implementing the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). Specifically, NARPO asks the Board to adopt a rule that would require a rail carrier or trail sponsor negotiating an interim trail use agreement to send notice of issuance of a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU) to each owner of land adjacent to the right-of-way covered by the CITU/NITU.

On September 2, 2025, the Association of American Railroads (AAR) replied in opposition to the proposed rulemaking. No other comments were received. After considering the petition for rulemaking and the comment received, the Board will deny NARPO's petition for rulemaking.

BACKGROUND

The Trails Act was established in 1968 to create a nationwide system of recreational trails. In 1983, Congress added a rail section, codified at 16 U.S.C. § 1247(d). The 1983 amendments to the Trails Act authorized the Board's predecessor, the Interstate Commerce Commission (ICC), and now the Board, "to preserve for possible future railroad use rights-of-way not currently in service and to allow interim use of the land as recreational trails." Preseault v. ICC, 494 U.S. 1, 6 (1990). Specifically, under the Trails Act, existing railroad rights-of-way are not abandoned and remain within the Board's jurisdiction where a trail sponsor agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. 16 U.S.C. § 1247(d); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988). The statute expressly provides that "if such interim use is subject to restoration or reconstruction

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment.” § 1247(d). Instead, the right-of-way is “rail-banked,” which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or another approved rail service provider) may reassert control over the right-of-way to restore service on the line in the future. See Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996); Iowa Power—Const. Exemption—Council Bluffs, Iowa, 8 I.C.C.2d 858, 866-67 (1990); 49 C.F.R. § 1152.29. If a line is railbanked and designated for interim trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are not activated. Preseault, 494 U.S. at 8; Birt, 90 F.3d at 583. However, such landowners may have takings claims against the federal government pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), and be entitled to compensation. Preseault, 494 U.S. at 11-13. There is a six-year statute of limitations for bringing such claims, 28 U.S.C. § 2501, which accrue starting with the issuance of the CITU/NITU. See Sauer W. LLC v. U.S., 151 F.4th 1339, 1345 (2025); Caldwell v. U.S., 391 F.3d 1226, 1235 (Fed. Cir. 2004).

The Trails Act is invoked when a prospective trail sponsor files a request with the Board to railbank a line that a carrier has proposed to abandon. The prospective trail sponsor’s request must include a statement of willingness to assume responsibility for management, legal liability, and payment of taxes related to the right-of-way, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 C.F.R. § 1152.29(a). Under 49 C.F.R. §§ 1152.29(c)(1) and (d)(1), if the railroad indicates its willingness to negotiate a railbanking/interim trail use agreement for the line, the Board will issue a CITU (in an abandonment application proceeding) or a NITU (in an abandonment exemption proceeding) for the line. The CITU/NITU grants a one-year period (which can be extended by Board order) for the railroad and the potential trail sponsor to negotiate a railbanking/interim trail use agreement. 49 C.F.R. §§ 1152.29(c)(1), (d)(1); Preseault, 494 U.S. at 7 n.5; Birt, 90 F.3d at 583 (affirming the agency’s authority to grant “reasonable” extensions of the Trails Act negotiating period). See also Grantwood Vill. v. Missouri Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996) (the agency was “free to extend” the CITU/NITU negotiating period).

If parties reach an agreement during the trail use negotiating period, the CITU/NITU automatically authorizes railbanking/interim trail use. Preseault, 494 U.S. at 7 n.5. Without further action from the Board, the trail sponsor establishes trail use and assumes management of the right-of-way, subject to the terms of the agreement and the possible future restoration of rail service. 49 C.F.R. §§ 1152.29(c)(2), (d)(2); Birt, 90 F.3d at 583. If no railbanking/interim trail use agreement is reached by the expiration of the CITU/NITU negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to “exercise its option to fully abandon” the line by consummating the abandonment, without further action by the agency, 49 C.F.R. §§ 1152.29(c)(1), (d)(1), provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied prior to consummation. See Nat’l Ass’n of Reversionary Prop. Owners—Pet. for Rulemaking (Oct. 2018 Decision), EP 749, slip op. at 4 (STB served Oct. 2, 2018).

The Board retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of railbanking/interim trail use, and any period during which rail service is restored. Only after a CITU/NITU is no longer in effect and the railroad has lawfully

consummated its abandonment authority is the Board's jurisdiction terminated. See § 1247(d); Hayfield N. R.R. v. Chi. & N. W. Transp. Co., 467 U.S. 622, 633 (1984). At that point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. Preseault, 494 U.S. at 5, 8.

NARPO's Petition for Rulemaking and Comments Received

In its petition, NARPO proposes that the Board require a rail carrier or trail sponsor to "promptly send notice" to adjoining landowners following the issuance of a CITU/NITU. (NARPO Pet. 1.) NARPO argues that effective notice of a CITU/NITU is essential for property owners to adequately protect their interests. (Id. at 1-2.) Specifically, NARPO asserts that because trail construction may not begin "for years" after a trail use agreement is signed and reported to the Board, reversionary property owners may not be aware when their reversionary rights have been implicated and thus fail to file takings claims before the six-year statute of limitations expires. (Id. at 2.)

NARPO asserts that although the Board rejected its earlier requests for such a rule for being too burdensome for railroads or trail sponsors, this is no longer the case because "[p]ractically every county in the United States" now stores its property records electronically. (Id. at 3.) NARPO claims that a rail carrier or trail sponsor could therefore easily search county records, or retain a title company, to obtain the information needed to notify adjoining landowners. (Id.) Given the claimed ease of identifying and providing individual notice to property owners, NARPO maintains that Federal Register notice and local newspaper publication are no longer sufficient and fail to satisfy constitutional due process requirements. (Id. at 3, 7, 9.)

AAR opposes NARPO's proposal, contending that the agency has already considered and rejected similar proposals by NARPO and that locating all adjacent landowners would be time-consuming, expensive, and burdensome. (AAR Comments 2-4.) AAR points out that NARPO provides no support for its argument that its proposed notice requirement could be "easily" accomplished and claims that, in the experience of AAR's members, many smaller jurisdictions do not have easily searchable or identifiable property records, nor do such records identify whether property owners have reversionary rights to the rights-of-way. (Id. at 4.) AAR also questions the benefit of the proposal, noting that NARPO has not provided any example of the statute of limitations period for a takings claim expiring due to lack of notice. (Id.) AAR contends that in addition to the notice currently required by the Board, counsel for landowners in takings litigation "typically provides notice to adjoining landowners when NITUs are filed with the Board." (Id. at 4-5.) AAR further claims that NARPO's proposed rule would be contrary to the purpose of the Trails Act, which is to encourage and facilitate interim trail use of railroad rights-of-way that would otherwise be abandoned. (Id. at 1.) Finally, AAR argues that NARPO's proposed rule is contrary to the current administration's focus on deregulation. (Id. at 5.)

DISCUSSION AND CONCLUSIONS

NARPO's current request that the Board require a rail carrier or trail sponsor to notify adjoining landowners following the issuance of a CITU/NITU is based on the same central arguments NARPO has raised repeatedly. See, e.g., Rail Abans.—Use of Rights-of Way as Trails—Supplemental Trails Act Procs. (1990 Recon. Denial), EP 274 (Sub-No. 13), slip op. at 2-3 (ICC served Feb. 21, 1990) (denying a 1989 petition for reconsideration filed by NARPO, in which NARPO argued that notice to adjacent landowners is necessary to meet constitutional due process requirements). The Board and its predecessor, the ICC, have consistently denied NARPO's requests, most recently in 2018,² and the agency's holding on the matter has been judicially upheld, see Nat'l Ass'n of Reversionary Prop. Owners v. ICC, 70 F.3d 638 (D.C. Cir. 1995) (declining to set aside the ICC's denial of NARPO's request for rulemaking to require actual notice to owners of reversionary interests). The Board will again deny NARPO's petition.

NARPO has not provided the Board with any evidence that the current notice requirements are insufficient. As the Board has previously explained, in every abandonment proceeding, the agency publishes notice in the Federal Register, which includes information about available reuse alternatives, including trail use and public use, and informs the public how it may participate in the Board proceeding. See 49 C.F.R. §§ 1152.22(i), 1152.50(d)(3), 1152.60(a). Courts have repeatedly held that publication in the Federal Register is legally sufficient notice of an agency action to all interested or affected persons, regardless of actual knowledge or hardship resulting from ignorance. See Oct. 2018 Decision, EP 749, slip op. at 6-7 (citing, among others, Fed. Crop Ins. Corp. v. Merrill, 332 U.S. 390, 384-85 (1947)); see also United States v. O'Brien, 926 F.3d 57, 85 (2d Cir. 2019) (explaining that publication of an agency action in the Federal Register "is sufficient to give notice of the contents of the document to a person . . . affected by it" (citations omitted)); Hells Canyon Pres. Council v. U.S. Forest Serv., 593 F.3d 923, 931 (9th Cir. 2010) (finding that publication in Federal Register of a document that notes the existence of a boundary map was sufficient notice to start the statute of limitations even if the document did not contain a fulsome description of the boundary).³ NARPO asserts that the "needs of property owners for adequate notice is illustrated" in CSX Transp., Inc.—Aban.—Between Delphi & Frankfort, Ind., AB 55 (Sub-No. 401) (STB served Sept. 24, 2012). (See NARPO Pet. 3.) Although NARPO correctly notes that there was a long gap between the approval of abandonment authority and issuance of the NITU in that

² See, e.g., Oct. 2018 Decision, EP 749, slip op. at 6-7; Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. S 10903, 2 S.T.B. 311, 312-313 (1997); Rail Abans.—Use of Rights-of Way as Trails—Supplemental Trails Act Procs. (1994 Denial), EP 274 (Sub-No. 13), slip op. at 2 (ICC served July 28, 1994); 1990 Recon. Denial, EP 274 (Sub-No. 13), slip op. at 2.

³ In addition to Federal Register publication, all notices are publicly available on the Board's website, and in every abandonment exemption case the rail carrier must certify that it has published a notice in a newspaper of general circulation in each county in which the line is located. 49 C.F.R. § 1105.12; see also Citizens Ass'n of Georgetown v. FAA, 896 F.3d 425, 435-36 (D.C. Cir. 2018) (holding the Federal Aviation Administration satisfied the notice requirement through publication in local newspapers). Newspaper notices also must provide information about available reuse alternatives, including trail use and public use, and informs the public how it may participate in the Board proceeding. See 49 C.F.R. § 1105.12.

proceeding, it does not identify any adjacent landowners that claim to have been adversely impacted by the issuance of the NITU in that case. See also Ladd v. United States, 713 F.3d 648, 652-53 (Fed. Cir. 2013) (applying claim accrual suspension rule to landowners' takings claims where the initial NITU was "inherently unknowable").

Additionally, as the Board and the ICC have previously found, NARPO's proposal to adopt a rule requiring that individual notice be provided to adjacent landowners would be time-consuming, burdensome, and unnecessary. See Oct. 2018 Decision, EP 749, slip op. at 5-6; Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702, slip op. at 7-8 (STB served Feb. 16, 2011); 1994 Denial, EP 274 (Sub-No. 13), slip op. at 1; Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procs., EP 274 (Sub-No. 13), slip op. at 6 (ICC served May 26, 1989).⁴ NARPO asserts that circumstances have changed to reduce that burden, but NARPO has not supported its assertions. In particular, NARPO claims that electronic property records are widely available. (NARPO Pet. 3). Yet, despite the Board's finding that NARPO failed to support such a claim in a previous case, see Oct. 2018 Decision, EP 749, slip op. at 6-7, NARPO's current petition again is devoid of support.⁵ Moreover, as the Board also explained in its 2018 decision, even if electronic property records are available, a requirement that a rail carrier or trail sponsor identify, locate, and notify all adjacent landowners could still be time-consuming and burdensome. Oct. 2018 Decision, EP 749, slip op. at 6. While locating adjacent landowners might be relatively easy in some instances, abandonment proceedings can involve many miles of line that run through multiple counties, if not states, and could involve numerous adjacent landowners. The ease with which the identity and address of each adjacent landowner may be ascertained could also vary depending on the characteristics of the line (such as its location, length, and age). As the Board previously found, such a burdensome process could result in significant delay in the railbanking/interim trail use process due to chain-of-title errors, multiple tenants-in-common, or claims by third parties against particular property owners. Id. at 6-7.

The other cases cited by NARPO in support of its petition—United States v. 125.2 Acres of Land, 732 F.2d 239 (1st Cir. 1984), and Schroeder v. City of New York, 371 U.S. 208 (1962)—also miss the mark. Importantly, neither case involved the provision of a Federal Register notice, nor did the courts categorically reject the sufficiency of notice short of direct

⁴ NARPO asserts that the U.S. Supreme Court's ruling in Loper-Bright v. Raimondo, 603 U.S. 369 (2024), "discarded the Chevron deference doctrine," and that "[w]ith 'deference' now out of the way, the [Board] can institute a rulemaking as NARPO has proposed here." (NARPO Pet. 3.) It is unclear how the Court's ruling in Loper-Bright should impact the Board's review of the present petition. The standard by which a court reviews an agency's statutory interpretation has no bearing on the merits of NARPO's petition for rulemaking.

⁵ NARPO briefly asserts that railroad valuation maps could be used to help locate adjacent landowners. (NARPO Pet. 8.) It argues that "all the railroads have these Valuation and Tract maps in their offices and could supply the trail entity the book and page number of the right-of-way acquisition instruments." (Id.) Aside from the fact that NARPO fails to establish that "all railroads" currently possess such maps, to the extent those maps do exist, many were produced over 100 years ago and, as such, may be of limited utility in identifying today's adjacent landowners. See City of Jersey City—Pet. for Declaratory Ord., FD 34818, slip op. at 4 (STB served Dec. 19, 2007) (discussing the creation of the valuation maps).

notice to individual landowners. Rather, these cases involve non-trail-use condemnation proceedings in which the court found that the individual landowners' names and places of residence were known or readily ascertainable by the government prior to valuation hearings.⁶ In United States v. 125.2 Acres of Land, the government posted only one copy of the notice of condemnation on the land being taken—on a tract that was not owned by the complaining landowner—and in a local newspaper for three weeks. 732 F.2d at 241-42. While the court noted that such notice could be adequate in some cases, it was held to be insufficient in the situation presented because the landowner was known to the government and his home address was easily ascertainable by looking in the local phonebook. Id. In Schroeder v. City of New York, the court found that the property owner's name and address were readily ascertainable from both the deed records and the tax rolls; therefore, notice by newspaper publication and posted notices in the general vicinity, but not on the property, was not sufficient. 371 U.S. at 210. In neither case, though, did the court find that providing direct, individual notice to all landowners was required in all takings cases. Yet here, NARPO is asking the Board to impose a rule of general applicability for all abandonment proceedings even though, as discussed above, NARPO has not identified any situations where landowners were adversely impacted by the Board's current regulations, and it is far from certain whether adjacent landowners along a rail corridor would be known or their identities and addresses easily ascertainable in every case.

For the reasons discussed in this decision, the Board will deny NARPO's petition.

It is ordered:

1. The petition to institute a rulemaking is denied.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

⁶ NARPO also claims that the Board's current notice requirements are not consistent with other provisions of the Trails Act. (NARPO Pet. 5-7.) However, the only part of the Trails Act implemented by the Board is the rails-to-trails provision in 16 U.S.C. § 1247(d). The other provisions referenced by NARPO involve different statutory bases for trail acquisition or designation that contain their own notice requirements.