



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

September 30, 2019

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Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
September 30, 2019
Part of
Public Record

Re: New York State Department of Environmental
Conservation – Adverse Abandonment – Saratoga and
North Creek Railway in Town of Johnsbury, NY
STB Docket No. AB 1261

Dear Ms. Brown:

This office represents the New York State Department of Environmental Conservation. Enclosed please find a request for a certificate of interim trail use in the above-captioned proceeding, coupled with a request for waiver of the applicable filing fee.

Yours truly,

/s/Joshua M. Tallent

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encl.
cc: service list

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION – ADVERSE ABANDONMENT – SARATOGA AND NORTH
CREEK RAILWAY IN TOWN OF JOHNSBURG, NY

REQUEST OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION FOR INTERIM TRAIL USE

LETITIA JAMES
Attorney General
State of New York
*Counsel for the New York State
Department of Environmental
Conservation*

Susan L. Taylor
Loretta Simon
Joshua M. Tallent
Of Counsel

I. Request for Certificate of Interim Trail Use

Pursuant to 49 U.S.C. § 10903(a) and 49 C.F.R. § 1152.29, the New York State Department of Environmental Conservation (DEC), an executive agency of the State of New York, has applied for a determination that the public convenience and necessity require or permit the abandonment by Saratoga and North Creek Railway (SNCR) of a 30-mile section of railroad commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at North Creek, New York and the Line's terminus near the former Tahawus Mine at milepost NC 29.71. Pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, DEC hereby requests issuance of a certificate of interim trail use with respect to the Line. A map of the Line is submitted herewith.

As noted in DEC's abandonment application, the Line is situated entirely within New York State's six-million-acre Adirondack Park. Much of the Line lies on publicly owned, constitutionally protected Forest Preserve lands. Nearly the entirety of the Line lies within privately or publicly owned riverbank areas protected under New York's Wild, Scenic and Recreational Rivers System Act. DEC maintains extensive recreational facilities—principally hiking trails and related infrastructure—in the general vicinity of the Line. Accordingly, DEC has identified the Line as potentially well-suited for public recreational use. In the event the Board issues a certificate of interim trail use, DEC will seek to negotiate an interim use agreement with SNCR.

Interim trail use is wholly consistent with the granting of DEC's abandonment

application. As described in detail in the application, no freight has moved on the Line since the late 1980s and the likelihood that freight service will resume in the future is, for a number of reasons, extremely remote. SNCR's attempt to operate the Line has proved financially disastrous; the railroad has removed its equipment from the Line, laid off its employees, defaulted on its obligations to local governments, and is performing no maintenance on its infrastructure. In the event the Board grants DEC's application and authorizes abandonment of the Line, a use agreement between DEC and SNCR would allow the railroad to avoid substantial maintenance and liability costs while permitting DEC to coordinate with concerned municipalities and other stakeholders to ensure the Line benefits the region in the future.

II. Statement of Willingness to Assume Financial Responsibility

To establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 with respect to the right-of-way owned and operated by SNCR, DEC is willing to assume full responsibility for management of the right-of-way and for any legal liability arising out the transfer or use of the right-of-way (except to the extent DEC is immune from liability, in which case its only obligation shall be to indemnify SNCR), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

DEC acknowledges that use of the right-of-way is subject to DEC's compliance with the foregoing representations, and also subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this request is being served on SNCR on the same date it is being served on the Board.

III. Request for Fee Waiver

Pursuant to 49 C.F.R. § 1002.2(f), the filing fee for DEC's interim trail use request is \$350. Under 49 C.F.R. § 1002.2(e), the Board has made available a fee waiver for "an application or other proceeding which is filed by," inter alia, "a . . . state or local government entity." *See* 49 C.F.R. § 1002.2(e)(1).

While the Board has clarified that the fee waiver for state and local governments does not apply where a governmental entity comes before the Board in its proprietary capacity, *see Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement*, 5 S.T.B. 352 (served Dec. 6, 2000), DEC does not own or propose to own a carrier. Rather, in the context of the ongoing abandonment proceeding, DEC seeks a trail use condition in its governmental capacity on behalf of the people of the State of New York. As such, DEC's application falls within the scope of 49 C.F.R. § 1002.2(e)(1). Accordingly, DEC respectfully requests that the Board waive the fee ordinarily due and owing upon filing of its interim trail use request.

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York

By: /s/Joshua M. Tallent
Susan L. Taylor
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CERTIFICATE OF SERVICE

I certify that on September 30, 2019, I caused a true and accurate copy of this request for interim trail use to be served by first class mail on SNCR and all parties of record in the proceeding bearing docket number AB 1261.

/s/Joshua M. Tallent

Joshua M. Tallent
Assistant Attorney General



Tahawus Branch Railroad Corridor

Key

Wild, Scenic, and Recreational Rivers
Source: DEC

Railroad
Source: DEC, Bureau of Real Property

Mile Posts
Source: DEC, Bureau of Real Property

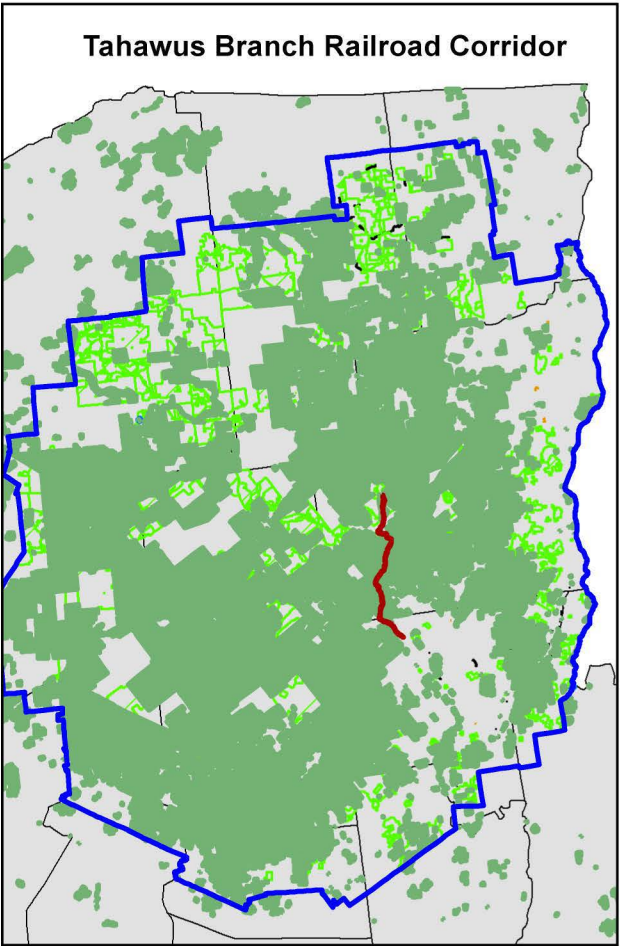
Private Land Classification

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management
- Industrial Use

State Land Classification

- Wilderness
- Primitive
- Wild Forest
- Intensive Use
- State Administrative

Source: Adirondack Park Agency, 2018 Land Use and Development Plan Map



NEW YORK
STATE OF OPPORTUNITY

Department of Environmental Conservation

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/24/2018

