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16. Abstract

The use of existing and abandoned railroad rights-of-way has been a proven method of acquiring linear corridors for the construction of roadways since the formation of the Texas Highway Department. Either paralleling existing rail lines or re-using corridors first used by railroad companies exhibited tremendous wisdom since the railroads had dictated development patterns throughout the state in the half-century prior to the road building era. The long period of railroad system consolidation since the end of World War II has resulted in the loss of many abandoned rail corridors that could now be extremely valuable if put to use either as new transportation corridors (roadway, transit, etc.) or multiuse recreational trails (hiking, biking, skating, etc.). This project evaluated the current Texas Administrative Code statutes governing the Texas Department of Transportation acquisition and use of abandoned rail corridors, suggested changes to these existing statutes, characterized the abandoned rail lines in the state, and identified potential uses of existing and prospective abandoned corridors in Texas.

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ABANDONED RAIL CORRIDORS IN TEXAS: A POLICY AND INFRASTRUCTURE EVALUATION

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CHAPTER 1: INTRODUCTION

BACKGROUND

The use of existing and abandoned railroad rights-of-way has been a proven and successful method of acquiring linear corridors for the construction of roadways since the formation of the Texas Highway Department in 1916. Either paralleling existing rail lines or re-using corridors first used by railroad companies exhibited tremendous wisdom since the railroads had dictated development patterns throughout the state in the half-century prior to the road building era. The state's rail network continued to expand during the early years of highway building until reaching its peak mileage in 1932. With the growth of travel by road and air following World War II, the rail system went into a long period of contraction and consolidation—many corridors were abandoned as rail companies went bankrupt or as mergers between rail companies made multiple routes between the same two cities or maintenance of surplus, secondary facilities within urban areas unprofitable.

This period of rail system rationalization continued up through the 1970s when several of Texas' major urban freeway corridors were built using wholly or partially abandoned rail corridors (e.g., North Central Expressway and the Dallas North Tollway in Dallas) or along operating railroads in excess rail right-of-way (such as the Loop1/Mopac Freeway in Austin). Secondary, collector roads have also been built by municipalities on abandoned rail corridors. Examples include Dessau Road in East Austin and Jones-Butler Road/I&GN Road in College Station. Numerous "Railroad Streets" and "Railroad Avenues" in smaller towns throughout the state are a testament to the many local streets now occupying corridors once travelled by trains. Several other former rail corridors such as the Katy Trail in Dallas or the Caprock Canyons State Park Trailway have been converted to recreational or alternative transportation uses such as hiking, skating, or cycling. Unfortunately, however, hundreds of miles of rail corridor have not been preserved—largely having been redeveloped as residential or commercial lots within urban areas or reverting to adjoining landowners along rural segments. Still other former rail corridors lie dormant; waiting to be rediscovered and reconstituted for use as the population of the state rapidly grows requiring additional rights-of-way for transportation or recreational purposes.

SIGNIFICANCE OF EVALUATION

This research effort evaluates the possibility of abandoned rail corridors, both already abandoned and those potentially abandoned in the future, to provide a means to assist in future transportation and community needs. A recent Transportation Research Board report rightly indicates that the rising costs and complexity of establishing new transportation corridors for passenger or freight service and the growing congestion for all surface freight modes has focused new attention on the issues surrounding retention of rights-of-way or restoration of rail services (*1*). The transportation system has reached a saturation point; a point in which land and resources are no longer available to easily expand facilities to increase capacity. The need to maintain and improve flows of both people and goods has resulted in concentrated efforts to examine multimodal options, including commuter, higher and high-speed intercity passenger rail.

The long history of rationalizing the rail network to shed excess capacity is largely over. Freight railroads now find that capacity is a precious commodity and many communities find existing rail corridors desirable for passenger rail services. The same is true for intercity passenger rail service interest. Thousands of miles of abandoned rail corridors exist within the State of Texas. Very few areas of the state have not been impacted in some way by the loss of rail service. Luckily some of the to-be abandoned corridors were preserved for additional freight services by short line railroads or were utilized in other ways to benefit the public, such as for trails. This report is an attempt to document the legal issues surrounding abandoned corridors and their purchase by the state for alternative transportation uses. In addition, case studies of several abandoned corridors, now re-purposed, are presented to give an overview of the possible uses available to state and local planners.

PREVIOUS RESEARCH

The research team for this project combined subject matter experts from the Texas Transportation Institute (TTI) and the Center for Transportation Research (CTR) at The University of Texas at Austin. Collectively, both TTI and CTR have completed several closely related TxDOT research projects over the past two decades that provide a firm foundation for this research effort. Examples of this body of research include the following titles. A more

detailed summary of the information from these projects is presented in Appendix A, which is meant to serve as a quick-start primer for those planners new to railroad abandonment issues.

- ***Protecting Rail Corridors against Encroachment,*** **Research Project 0-5546; CTR** – This project examined means in which the public can protect rail corridors against encroachment by incompatible development. It first examined the legal tools existing in Texas that could facilitate the preservation of rail corridors. The project then investigated policies that have been adopted in other states to set aside future corridors for new construction, prevent incompatible land uses in close proximity to existing rail corridors, and preserve corridors that have been abandoned for recreational or future transportation use. Finally, it examined various mitigation techniques that could be used to lessen the impact of rail activity on surrounding communities.

- ***The Railroad System of Texas: A Key Component of the State and National Rail Infrastructure,*** **Research Project 0-1703; TTI and CTR –**
  This robust research effort by both TTI and CTR provided detailed investigations into rail policies, plans, and programs of 32 other states with active rail programs; developed exemplary state rail programming and planning based on case studies; and provided a framework for future rail planning activities in Texas.

- ***The Role of Rural Rail Transportation Districts in Texas,*** **Research Project 0-4007; TTI** – This multi-year project produced several reports and products that extensively evaluated the history, status, and potential future of Rural Rail Transportation Districts (RRTDs) that formed in the State of Texas after the state legislature authorized them beginning in 1981. While early RRTDs were generally created to prevent loss of rail infrastructure in the state as a result of rail line abandonment, in recent years, changes to the statutes have allowed RRTDs to become more active in the purchase and operation of abandoned rail rights-of-way for economic development purposes related to specific projects and/or long-term reinstitution of freight or even transit rail service.

- ***Funding Strategies and Project Costs for State-Supported Intercity Passenger Rail: Select Case Studies and Cost Data,*** **Research Project 0-4723; TTI –** This project investigated project costs and funding strategies utilized by U.S. states and coalition of states to fund intercity passenger rail projects. Several case studies and exemplary state programs were identified that served as models for potential Texas programs should state funding and direction of intercity passenger rail programs occur.

- ***Rail Relocation Projects in the U.S.: Case Studies and Lessons for Texas Rail Planning,*** **Research Project 0-5322; TTI** – This project examined rail relocation projects throughout the United States to determine best practices, documented project costs and the anticipated benefits of those projects, and developed recommended policies for TxDOT use in assessing proposed urban rail relocation projects throughout the state. Five major case studies are presented that give detailed analyses of the steps taken to relocate rail lines in a variety of circumstances and pointing out lessons learned in each case.

Appendix A includes full bibliography information for each of these reports along with the lengthier summary of each document.

REPORT ORGANIZATION

This report is divided into two major areas of the research: Part I – Legislative and Policy Issues and Part II – Infrastructure Analysis. The first area focuses on the legislative and policy items associated with abandoned rail corridors, while the second area focuses on characterizing the existing abandoned rail lines and current/potential uses of abandoned or potentially abandoned corridors in Texas. The project closes with a summary of the research findings, conclusions, and recommendations from the research. Finally, an extensive set of appendices are included that support Part I and Part II. The final appendix is a tabular compilation of the history of Texas railroad construction and abandonment by year and railroad.

PART I: LEGISLATIVE AND POLICY ITEMS

CHAPTER 2: INTRODUCTION TO LEGISLATIVE AND POLICY ISSUES

The rationalization of railway trackage in the U.S. has a long history; peak network mileage was achieved in the 1920s and has fallen steadily since the end of World War II. How states and communities react to the shrinkage of rail service varies from state to state (*1*). The rising costs and complexity of establishing new transportation corridors for passenger or freight service and the growing congestion for all surface freight modes has focused new attention on the issues surrounding retention of rights-of-way or restoration of rail services (*1*).

The U.S. Surface Transportation Board (STB) has plenary authority during both rail abandonment proceedings and railbanking procedures. However, once the STB has approved or exempted abandonment it relinquishes jurisdiction and state property law determines a party's property interest in a rail corridor (*2*). Corridor preservation can be seen as the concurrence of three principal rail theories, all of which retain direct relevance today (*3*):

- Federal authority over rail operation.
- Federal law promoting either rail trails or public use of rail corridors that are candidates for abandonment or for which abandonment has been declared.
- The common law of property at a state level—the application of state law.

The first part of this document will explore the historic background of rail development in the country, and federal regulation such as the STB abandonment and railbanking procedures and its challenges, from a rail-trail and public use perspectives. Texas current framework regarding rail corridors' preservation is analyzed in the second part of this document. These subsections will explore the main legislative actions that have been taken to achieve this purpose, as well as the powers of all relevant public agencies and parties to acquire abandoned rail corridors. In a third and final part of this document, the main challenges applicable to rail line conversions are presented from a federal and Texas perspective, mainly focusing on legal issues regarding property regulation, past local case law and local measures that have been taken to preserve rail corridors in Texas. Finally, in the appendix section of this document contains both a table of all cases consulted in the construction of this report (Appendix B) and a table of current STB abandonment proceedings of Texas rail lines (Appendix C). To assist the reader, the researchers have also put together a table of definitions governing property law at the beginning of this chapter.

LEGAL DEFINITIONS

The following two tables outline the levels or types of land ownership typically held by railroad companies and the methods through which railroads acquire land for railroad use. In general, railroads acquire land through three types of interests, as presented in Table 1. Methods used to acquire corridor land can be seen in Table 2.

Table 1. Types of Interest in Land.

Fee Simple Absolute	Today most property is sold as a *fee simple absolute* without any condition imposed on the use of the land.
Defeasible Fees	A *fee simple determinable* or a *fee simple subject to a condition* imposes a condition for the use of the land; an uncertain future event, which if it occurs may cause the fee interest to automatically terminate and revert to the grantor, his heirs, or assigns (the grantor who initially imposed the limitation on the land's use). By creating a fee simple determinable or subject to a condition, the deed also creates a "possibility of reverter" in the grantor.
Easements	An easement is the right to use part of someone else's property giving a right-of-way over that land (i.e., giving access to a public road or a body of water); thus, the right to make use of the land of another for some definite and limited purpose or purposes. The cardinal rule in property law is that one cannot sell what one does not own (*4*). Thus, grants of easement usually use different language than grants of ownership interests in land and focus on characteristics of use rather than quality of title (*5*).
	Railroad Easement: railroads needed a property interest that was more substantial than a regular easement; this included exclusive control over the land, and the ability to fence, dig tunnels and drainage, ditches, alter elevations, among others, and this created the need for a different type of easement. As railroads started to abandon lines in the 1870s, the issue of where the land would go upon removal became important. The logical solution seemed to imply reversion of all grants. In 1898, the Supreme Court noted that the railroad easement has "the attributes of a fee simple, perpetuity and exclusive use and possession; also the remedies of the fee and like it corporeal, non incorporeal property." Railroads may lose their easements through abandonment because, unlike fee simple title that cannot be abandoned even when the owner does not want the land, an easement is merely a right to use and occupy someone else's land (*4*).

Sources: (*4*, *5*)

Table 2. Methods to Acquire Land.

Eminent Domain	Eminent domain powers were given to all railroads under their charters or by statute. The ways that railroads could use these powers differed from state to state and from time to time. Common law might interpret that the interest condemned might be a fee or an easement.
Private Conveyance	Free transfer from the land owner to the railroad for an agreed compensation. The latter enabled the railroad company to hold its property interests in the corridor. In the majority of states, railroads were entitled to purchase full fee simple interests.
Prescription	If the deed is not available (burned, lost, illegible, etc.) the latter situation resulted in entry by railroad onto privately owned land that was used for many decades without complaint. Closely linked with the concept of adverse possession, the issue comes down to determine if the railroad acquired by prescription an easement or a fee simple absolute; the latter will mostly depend on state legislation.
State and Local Grants	Congress granted thousands of miles of right-of-way to the states and railroads for construction of the transcontinental railroads. In this case, fee simple is assumed since railroad easements had not been created at that time. These grants are normally recorded at the National Archives and on land records at the Department of Interior. However, in the case of merely local or state grants these might have been the result of municipal or county ordinances of that time.
Federally Granted Rights-of-Ways	In 1832, Federally Granted Rights of Way were granted on a case by case basis, generally conveying a right-of-way across public lands along a broadly defined route. Used normally in conjunction with state grants, the latter mostly went across newly developed territories to avoid acquiring privately owned land that was much more expensive. After 1852, Congress enacted a general right-of-way act to avoid having to make decision on a case by case basis. After the Civil War, liberal railroad transportation policies partially ended this program because of the inefficiencies caused by the use of different gauges by rail companies. By the early 1870s, Congress stopped the construction grants. Until the 1950s, 200 ft right-of-way were still being granted.
Acquisition of Federal Indian Lands	Once the government acknowledged the right of Indians tribes to possess a particularly described land, the government could not grant any of that land to a railroad for corridor construction. However, negotiations did occur in the 1860s and certain approvals were granted by treaty, therefore authorizing Congress to grant an easement interest on that land. By 1899, Congress amended the general right-of-way act to grant railroads a right-of-way across Indian lands; however, railroads that entered Indian territory did so at their own peril.

Source: (*5*)

CHAPTER 3: FEDERAL LEGISLATION AND POLICY ISSUES

BACKGROUND

The first railroads in the U.S. were built in the late 1820s and early 1830s beginning in Massachusetts (*5*). Within 20 years, much of the east coast was connected through a medley of rail lines that rarely interconnected, as competing roads would use different distances between the rails (gauges) to prevent competitors' trains from operating on their tracks. By the 1850s, many Midwestern states were building railroads connecting major cities and urban centers in the East and South (*5*). Because the lines used different gauges, this decreased productivity and increased costs since goods had to get unloaded and reloaded to different cars before reaching their destination.

After 1834, Congress began granting railroads right-of-way through public lands (*5*). By the 1850s, the railroads were emerging as the most efficient investment in transportation infrastructure as they were less expensive to build than canals and could be built almost anywhere. The economic potential presented by the development of the railroad to conquer the *"tyranny of distance"* (that had slowed the economic integration of the United States), the federal government was understandably eager to take whatever action deemed necessary to speed up railroad development. In 1852, Congress passed a right-of-way act (Act of August 4, 1852, Statute 28) giving railroads a 100 ft right-of-way across public lands, plus the right to use earth, stone, and timber of adjacent public land and to take additional land for depots and water tanks (*5*).

By 1858, federal land grants to the railroads totaled almost 28 million acres and over 8,600 miles of road in Michigan, Wisconsin, Iowa, Missouri, Arkansas, Alabama, and Florida (*5*). Even then, the policies were somewhat haphazard and the legality of, and the commitment to, these grants in aid where subject to political flux until the 1860s. For better or for worse "the Civil War was a railroad war," which demonstrated the power of the technology beyond dispute (*6*). After the Civil War, the government stepped in to aid in the construction of the great transcontinental railroads, which could not have been funded through the traditional methods of private capital investment or statewide agreements (*5*).

During the 19th century, state and local governments also facilitated railroad development. Besides granting land for railroads and depots, state charters often allowed for

state and local investment in the funding of railroads (*5*). Local governments were allowed to invest in the railroad stock and state legislatures often allowed the purchase of the entire railroad (franchise, property, and all contract rights) simply by paying the sum expended to construct the improvements to-date (*7*). If railroads found it difficult to sell all their stock, amendments to railroad charters were made to allow the state treasurer to subscribe, in the name of the state for a certain number of shares (*5*). States also gave railroads eminent domain powers and the rights to build bridges over navigable waterways. It was not just through the facility of state corporations laws that railroads were aided and encouraged by state governments; railroads were sometimes granted substantial public assistance through tax relief investment and donations of land if they would trace their path through certain areas (*5*).

By the 1860s, railroad companies were in crisis; as states had started to cut back on their land grant, liberal eminent domain, and tax rebate policies. Additionally, destructive competition and numerous adverse court decisions led the rail companies to advocate for federal regulation (*5*). Railroads were considered good candidates to be federally regulated because (i) railroads were going bankrupt due to monopolistic practices and an overbuilt system and (ii) heavy state and local regulation and price policies had hampered the development of a much needed national rail network.

States had created a patchwork of regulations to control the railroads, and according to Wild, (*7*) these were inefficient and confusing. In fact the situation was described by Meyer in 1903 thus: *"…the railway legislation in the United States is full of inconsistencies and anomalies, spasmodic expressions of legislative impulses and the futile attempts of administrative bunglers"* (*8*).

In 1887, with the railroad companies approval, the Interstate Commerce Commission (ICC) Act was enacted and the era of federal regulation over railroads began (*9*). The ICC regulated the rates and services of railroads at the federal level; thus, the ICC Act preempted all local regulation and rates (*5*). Additionally, the ICC Act reached into the realm of state property rights of the railroads and landowners, since it provided that rail services could be ordered to continue when the railroad would otherwise have chosen to abandon it. In this way, the creation of the ICC led to situations in which railroad easements that might otherwise have terminated under state law were nevertheless retained. In 1906, the Hepburne Act additionally

provided that the ICC was responsible to set the maximum and minimum rates (*5*). Table 3 further discusses the ICC and STB.

Table 3. History of ICC Termination/Transfer of Powers to STB.

In 1887, the ICC was created to regulate rates and services of railroads that served in interstate commerce. Between 1887 and 1920, the ICC did not seek to regulate discontinuation of services nor in any way order a railroad to operate or discontinue a particular line. In 1920, because of the alarming numbers of railroad abandonment in the early decades of the 20th century and the breakdown of rail service during World War I, Congress extended ICC's control over railroad abandonments. Thus, after 1920 any railroad seeking to abandon an unprofitable line had to seek abandonment authority from the ICC. The ICC had the sole authority to determine whether a railroad had abandoned a line—if public convenience and necessity allowed the discontinuation of rail service along a particular route, then the railroad might be given the authorization to abandon. In 1995, following the deregulation of the railroads in the 1980s, Congress passed the Interstate Commerce Commission Termination Act (ICCTA) to reinforce the federal government's continued goals to promote a safe and efficient rail transportation system, and to ensure continued development and continuation of a sound rail transportation system (49 U.S.C. § 10101 (3), (4)). However, the latter placed the federal government in more of a watchdog role as opposed to directing rail development. The ICCTA established the Surface Transportation Board, which has exclusive jurisdiction over transportation by rail carriers and the construction and operation of rail tracks (§ 10501(b)). For rail trail purposes, the jurisdiction and powers are the same, and so the terms ICC and STB are employed interchangeably, depending on the context. Courts have reviewed STB's express authority and in BNSF v. the City of Houston (171 S.W. 3d 240; 2005 Tex. App) the Appeals Court of Texas court found that *"… it is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations… As such, under principles of express and conflict preemption, courts have found that state laws that constitute regulation of railroad are preempted."*

Source: (*5*)

Notwithstanding the federal regulation intended to help the railroad industry, railroads continued to see declines after World War I. During this time trucking and highways became this sector's major competition: 20th century economic and transportation changes led to a major contraction in the nation's railroad corridors (*10*). After this period, many railroad companies started abandoning their lines. At this point, property rights cases related to the land ownership started to crowd courts (*5*).

The decision to formally regulate abandonment's at the federal level was taken in 1920, when Congress passed amendments to grant the ICC jurisdiction over rates, services, and the abandonment of rail lines. Since these amendments railroads have been permitted to discontinue services and abandon lines when there has been no showing of a "serious adverse impact on rural and community development" (*5*). By 1922, the abandonment situation was still alarming; Congress, facing the abandonment of lines that had even received federal right-of-way grants passed the Abandoned Railroad Right of Way Act (43 U.S.C.). Section 912 of this 1922 Act provided that "*any land given by the United States for use as a railroad right-of-way in which the United States retained a right of reverter (under N. Pac. Ry. Co. v. Townsend, 190 U.S. 267,*

S.Ct 671 (1903)) must be turned into a public highway within one year of the railroad company's abandonment or be given to adjacent landowners." Subsequently when Congress enacted the National Trails System Improvement Act of 1988 (16 U.S.C. §1248(c)) this was amended so that lands not converted to public highways within one year or abandonment reverted back to the United States, and not adjacent landowners.

Slowly, during the 20th century all state subsidies shifted from railroad to highway infrastructure. By the 1970s and 1980s, railroad lines were being completely abandoned as trucks took over as a preferred form of freight and passenger transport; only half of the nation's rail corridor miles remained active (*11*). In 1976, Congress enacted the Railroad Revitalization and Regulatory Reform Act (4R Act) creating Conrail and reorganizing the rail system (Pub. L. 94-210; at 49 U.S.C). In 1980, the Staggers Rail Act (P.L 96-488) lifted many restrictions on railroad abandonment to allow the companies to get rid of unprofitable lines (*5*). In 1983, Congress in recognition of the value of public rail corridors amended the National Trails System Act (NTSA) (*12*).

The conversion of these rail corridors in which service had been discontinued into recreational trails by holding the state-law property rights in the corridor land intact, provided railroads with an incentive to negotiate a trail use (*5*). As soon as railroads realized they could retain the corridor and preserve the option to resume freight service at some future date, as well as the possibility of tax saving involved through charitable deductions, they often fully supported the sale or transfer of their soon to be abandoned corridors for conversion to trail use (*5*).

By allowing railroads to railbank corridors and allow an interim trail use, Congress created a legal fiction, maintaining the *status quo* with regard to legal property rights and interests while the public sector and the railroads determined whether national transportation needs would ever require future reactivation of these corridors (*5*). The NTSA for railbanking has been largely driven by trail interests rather than those seeking to restore rail service at some point in the future (*1*). Planning coordination of recreation and active rail use possibilities for a given alignment is the exception rather than the rule (*1*).

Additionally, railbanked rights-of-way present a potentially valuable resource for communities engaged in the development of new or expanded transit links or other dedicated transportation interests. It is clear however that the importance behind recreational outlets for biking and other trail uses have grown in political importance (*1*).

FEDERAL REGULATION: THE BASIC CYCLE FOR THE ABANDONMENT OF A RAIL LINE

Federal law, as codified in 49 United States Code (U.S.C.) §10904, establishes strict filing and procedural requirements for abandonment applications. The STB has adopted regulations to implement these requirements; the latter can be found at 49 Code of Federal Regulations (CFR) 1152. Table 4 further discusses the reasons for regulation.

Table 4. Reasons for Railroad Regulation.

The necessity for regulatory protection was recognized because rail carriers still have significant market power in particular situations and because rail transportation is sometimes vital to the public. The current regulatory scheme governing abandonments and acquisitions to preserve service seeks to balance these competing considerations. Lines over which no local traffic has moved for 2 years without any formal complaint have been exempted from traditional regulatory scrutiny: regulation is found to be unnecessary in these cases. In the latter case, a rail carrier may usually abandon a line by simply filing a notice with the STB (Class Exception – out of service lines). Additionally, the railroad company might be eligible under other individual exceptions, under 49 CFR 1152.60. However, under the more detailed application for abandonment the STB balances the economic burden of continued operation against the public's need for the service.

Source: (*13*)

The System Diagram Map

The earliest indication that a railroad intends to abandon a line comes from the carrier's system map. Regulation requires a rail carrier to maintain a map of all its rail lines. For the system diagram map purposes a narrative report can also be submitted; however, the carrier must identify separately:

- Any line for which it expects to file an abandonment application within the next 3 years (category 1).
- Any line that it considers a potential candidate for abandonment (category 2) (*13*).

A carrier must publish its system diagram map or narrative in a newspaper of general circulation in each county containing a rail line in category 1 and any subsequent changes to the latter. An application for abandonment of a line that has not been catalogued in category 1 for at least 60 days will be rejected by STB.

This requirement gives shippers, local and state governments, and any interested citizens the possibility to oppose the abandonment or consider alternative means of continuing rail operations by the current railroad or another operator (*13*). Category 2 lines, however, do not need to be listed for a pre-established amount of time.

Notice of Intent to Abandon

In addition to the system diagram map, the STB requires the railroad to file a Notice of Intent to abandon (*13*). This notice needs to comply with the following procedures (*14*):

- *Prior to filing*: at least 20 days prior to filing, the applicant must submit an environmental and historic report. The latter is to ensure compliance with federal laws including the Endangered Species Act, the National Historic Preservation Act, and the National Environmental Policy Act (*3*).
- *Filing*: the applicant must serve its Notice of Intent to the Board by certified letter and by first class mail. This notice needs to be sent to the Governor, the Public Service Commission, the designated agency in each state for these purposes, the State Cooperative Extension Service in the State, the U.S. Department of Transportation (Federal Railroad Administration) and the Department of Defense, among others. The Code of Federal Regulations establishes in section 1152.21 the exact STB format that must be submitted.
- *Posting*: the notice of intent must be posted by the applicant at each agency station and terminal on the line to be abandoned.
- *Newspaper publication*: the applicant must publish its notice of intent at least once during each of the three consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.
- *Timeframe*: the notice of intent must be served at least 15 days but not more than 30 days prior to the filing of the abandonment application
- *Other interested parties*: if any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to the 4R Act, it must additionally file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) a petition indicating that it would like to do so (this is known as a Statement of Willingness to Assume Financial Responsibility [WAFR]). This document should be accompanied with an acknowledgment that the user assumes full responsibility (financial and managerial), will make all payments related to taxes, and is aware that the interim trail use is subject to possible future reactivation for rail service. However, a party filing a WAFR in accordance with CFR

1152.29 is not accepting any financial responsibility: it is merely expressing an interest in possibly doing so.

The abandonment application must also contain detailed information about the costs and revenues on the line to be abandoned and the overall financial condition of the carrier (49 CFR 1152.22). Any interested party may request a copy of the application by the carrier in order to examine the information (*13*). Under these circumstances, STB may waive or exclude certain information requirements; however, an opponent who believes relevant information has been left out can appeal to request this information.

Times for Protests or Comments

Once the application has been filed, opposed parties have 45 days to submit their protests or comments describing their interest in the proceeding in as much detail as possible. Section 1151.25 (a) of the aforementioned regulation lists all the information that should be included in the protest; however, in the case that oral hearings are held in order to determine the abandonment, the requests must be filed within 10 days of receipt of the application (*13*).

Procedure

Two types of procedures will determine the abandonment or continuance of service of the rail line (i) an oral hearing; or (ii) a "modified procedure" (whereby no oral hearing is held, all evidence is filed in writing). The latter procedure is the most common according to the STB (*13*).

Granting of the Permission

After receiving the protests and carrier's reply, STB will issue its decision within 110 days after the application is filed (*13*). Figure 1 demonstrates the STB process. Table 5 provides a note regarding agency abandonments.

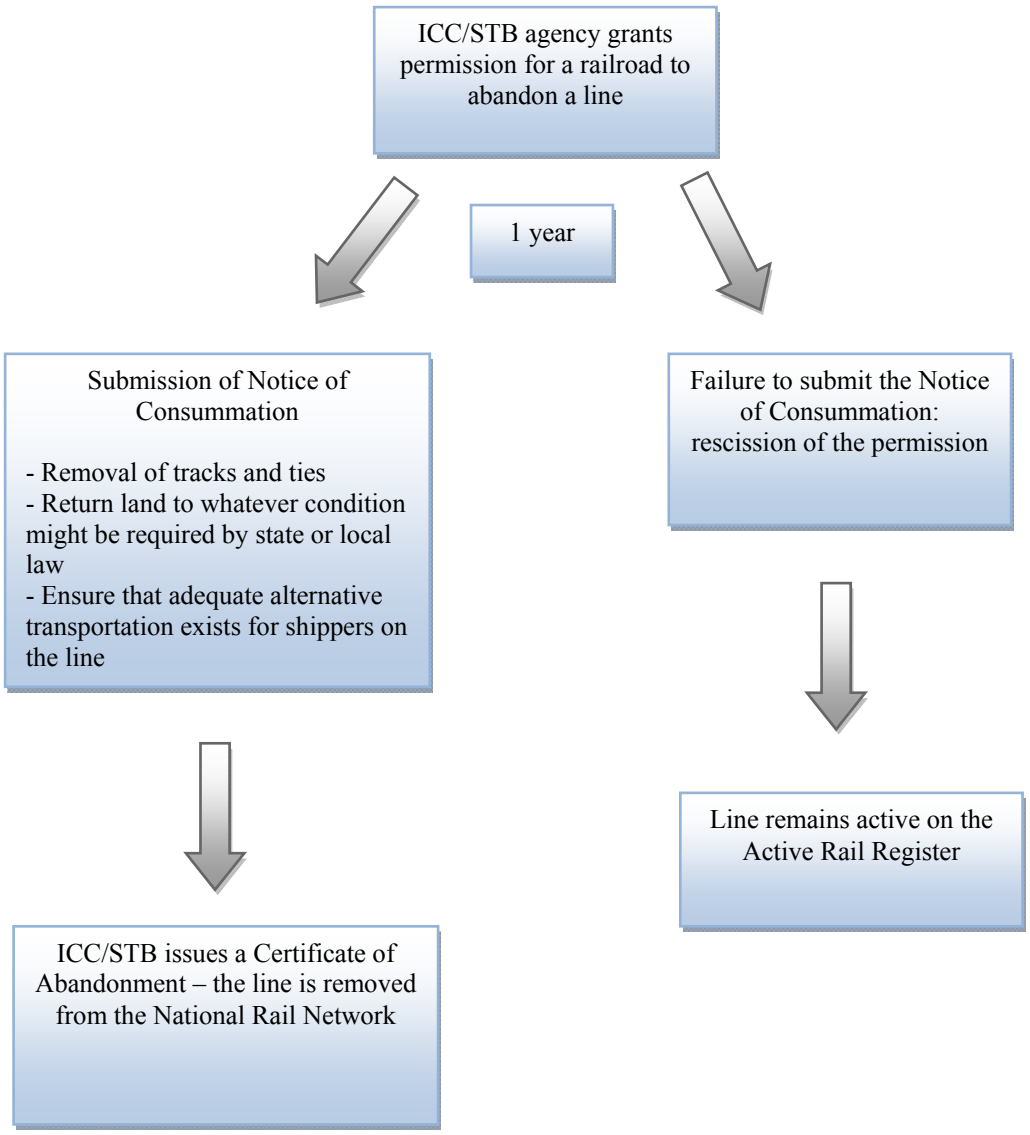


Figure 1. STB Abandonment Process.

Table 5. Note on Agency Abandonment.

Agency abandonment consists only of the authorization or discontinuance of rail service(s) and does not entail abandonment of property rights owned by the railroad company in its real or personal property. Agency abandonment (or discontinuation of rail services) is noticeably different from the abandonment of the property interest the railroad might possess by virtue of state law. Except for one case (*Preseault v. United States* (1996)), federal and state courts have generally recognized that until agency jurisdiction has been removed, through consummation of abandonment and issuance of an abandonment certificate, state laws governing disposition of property rights do not come into play. Only then do the reverter interests vest or easement interests extinguish.

Source: (*5*)

If a party is dissatisfied with the decision, it may ask the STB to reconsider the matter. Additionally, the latter may seek the review of the appropriate Court of Appeals by filing a petition for review (*13*).

RAILBANKING

U.S.C 49 and the National Rails to Trails Act, along with STBs regulations give interested parties the opportunity to negotiate voluntary agreements to use a railroad right-of-way that otherwise would be abandoned for recreational or other public use, such as commuter rail service or a highway (*13*). The methods of preserving a railroad corridor are known as railbanking—the right-of-way is preserved as potential future use as railroad. Most of railroads do not own the land in which the tracks lie; rather they have easements over the land of adjoining property owners. Unless those easements are railbanked by converting them to a trail or other public use, they are extinguished (*13*).

Substantial deregulation of railroads through the Staggers Rail Act of 1980 accelerated the network downsizing trend that had been in progress since the close of World War I. In 1983, Congress reacted to the flood of abandoned lines by issuing amendments to the NTSA (*1*). Under this regulation, railbanking is a process by which the railroad negotiates with a qualified trail manager to assume financial and legal responsibility for the corridor during the interim trail use and holds all property rights intact for potential future rail reactivation (*5*). Thus, interim use of such corridors for bike and trail ways is permitted; however, permanent structures along the routes must be kept intact consistent with the potential restoration of rail-based transportation, and subject to any historical preservation or other environmental rules that are required by the STB (*1*).

Additionally, 49 U.S.C 10905 establishes that any abandoned line should be evaluated for public use. Under these circumstances, any agency can present a request to the STB requesting the conservation of the rail line instead of issuing the abandonment authorization.

Other corridor rail banking activities are often the product of voluntary negotiations between the original rail carrier and public or private groups (*1*). From the legal perspective, the important distinction between the NTSA corridors and other rail banked alignments is the federal preemption under the NTSA interim-use grant that effectively trumps the actions of groups seeking to block restoration of rail service by a prospective new operator.

The real boom of the rails to trails programs happened with the passage of the Intermodal Surface Transportation Act (ISTEA) in 1991 that mandated 10 percent of federal highways funds to be spent on transportation enhancements. This qualified rail-trails for federal transportation funding.

In the first five years of ISTEA spending, over 50 percent of enhancements funds (over $800 million) were spent on rail trails and bicycle and pedestrian facilities. The rail trail commitment was renewed in 1999 in the Transportation Equity Act of the 21st Century (TEA-21) (*4*). This was known as the Recreational Trails Program.

The Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005 continued the commitment to the Recreational Trails Program and also included funding for a Non-motorized Transportation Pilot Program, which distributed $25 million in each year to four communities to establish bicycle and pedestrian mode shifts on trails (*15*). However, rescissions of funding since the passage of SAFETEA-LU left the U.S. DOT requiring states to forfeit un-obligated enhancement funding, which has formed the bedrock of funding for trails programs (Rails to Trails Conservancy/National Trails Training Partnership).

Railbanking under the NTSA

When Congress adopted the 1983 railbanking act, there was already in place a process for converting an abandoned rail corridor to a recreational trail under the 4R Act (*5*). That process required the issuance of a Certificate of Interim Trail Use (CITU) or a Notice of Interim Trail Use (NITU) either before the certificate of abandonment was issued or within a one year deadline for filing the letter of consummation of abandonment. Table 6 explains what occurs if more than one year has elapsed.

Table 6. What if More than One Year Has Elapsed?

According to *Birt v. Surface Transportation Board* (1996), even if more than a year has elapsed, a trail group might approach the railroad to negotiate for a trail use, STB abandonment proceedings would be reopened and the corridor might be railbanked. However, many adjacent landowners feel that the STB should not reopen the abandonment if the railroad has *de facto* discontinued rail services. Nevertheless, the agencies have consistently held that until the strict terms of the regulations are met, federal abandonment has not occurred. Thus, corridors that have been actually discontinued are still being railbanked where the railroad initially had not followed the proper procedures to fully consummate their abandonment.

Source: (*16*)

If a qualified trail group requests time to negotiate with the railroad before the issuance of the final certificate of abandonment, then the NITU or CITU will be issued, allowing 180 days for negotiating with a trail group for conservation to a recreational trail (*5*). If negotiations are successful, the STB issues a rail banking order. Some negotiation periods have been extended by many years and there have been also times when the negotiations were proceeding but neither party sought STB extensions (*5*). Once the STB has issued the CITU or NITU, the clock starts running for landowners challenging the application of the law as a 5th Amendment taking under the Tucker Act.

The United States Court of Appeals for the Federal Circuit in Barclay v. United States, 443 F.3d 1368; 2006 U.S. App noted that the issuance of the original NITU triggered the accrual of a cause of action. The court held that the landowner's arguments that urged different triggers merely emphasized the correctness of the Caldwell rule since *"…the landowners' arguments led potentially to multiple takings of a single reversionary interest and endless litigation concerning the appropriate date for accrual, thus leaving landowners and the government in a great uncertainty as to their respective rights and obligations."* Table 7 explains that railbanking does not constitute abandonment.

Table 7. NTSA's Railbanking Does Not Constitute Abandonment Clause.

The 1983 NTSA amendments specifically provide that if the "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." The key to this amendment states that the interim trail use shall not constitute abandonment of easements or qualified fees during the period of railbanking, since the land is being preserved for possible future reactivation. Thus, the presumption underlying railbanking statutes is that a railroad has not abandoned tracks under its control unless the requisite administrative criteria have been satisfied (*12*). The discontinuance of railroad service, so long as the corridor is not permanently broken, is merely a period of inactivity that alone does not constitute abandonment of the railroad's property interest. The corridor is still under federal regulatory jurisdiction and continues as part of the rail network: the corridor is merely noted as "inactive." Railbanking formally separates abandonment of the property rights from the discontinuance of services that are regulated by the STB. Furthermore, railbanking also mandates that the railroads will retain a right to reactivate; presumably by retainer either a reverter interest, a right of first refusal, or a power of termination (49 CFR).

Sources: (*17*, *12*)

The establishment of the date on which the abandonment occurred, thus, removing federal jurisdiction over the corridor, was made much simpler in 1996, when the STB issued a notice of rulemaking to require a statement of consummation of abandonment to be filed within one year (*5*). Before this date, litigation on this specific issue was common, especially in the late

1980s and 1990s when a great surge in railbanking took place. Table 8 discusses the Preseault saga of cases.

Table 8. Summary of the Preseault Saga.

The history of the Preseault litigation is complex: its 20 year legal battle may be setting the most important legal precedent for the future of recreational trails across the country and could spell the end of the railbanking program (*17*). It entailed among its most important cases the Trustees of *Diocese v. State* (Vt, 1985) and *State of Vt. v. Preseault* (Vt. 1994). It also worked its way through the federal courts for nearly a decade in *Preseault v. ICC* (1988), *Preseault v. ICC* (1992), *Preseault v. United States* (2002).

The Preseaults' owned land in Burlington, Vermont. In 1899, the Rutland-Canadian Railroad Company acquired rights-of-way over a portion of this land, over which it laid rails and operated its railroad. The ownership of the railroad changed over the years, ending up in the hands of Vermont Railway. In 1970, the Vermont ceased using the rights-of-way for active transport, and in 1975, it removed the rails and other track materials from the portion of line crossing the Preseaults' property. Ten years later, in June 1985, the State of Vermont, which by then owned the Vermont Railway entered into a lease agreement with the City of Burlington by which it purported to lease the right-of-way over the Preseaults' land to the City for use as a bicycle and pedestrian path. It all started when the Preseaults' filed a petition with the ICC to block this action (*18*).

The railbanking statute was upheld by U.S. Supreme Court in 1990 when Paul and Patricia Preseault fought a federally railbanked rail line. The Court upheld the power of Congress to pass the act under interstate commerce, but declined to decide whether the particular application of the act to the Preseaults' land worked a taking. The Court specifically established that *"Congress did not distinguish between short term and long term railbanking, nor did it require the ICC to develop a specific contingency plan for reactivation of a line before permitting conversion"* (*5*). The Court remanded the question to the Court of Claims for determination of compensation under the Trucker Act (28 USC).

Sources: (*17*, *5*, *18*)

Since 1920, many railroads have failed to submit their notice of final abandonment, even though they have completed most of the steps necessary to consummate abandonment under agency rules (*5*). But, between 1984 and 1996, the ICC having discontinued the requirement to receive notice of consummation from the railroads, made the abandonment determinations during those years particularly difficult. Thus, if notice of consummation was not submitted, or abandonment was not consummated, the abandonment authorization was rescinded and the line restored to the rail network, even though rail service might actually have been discontinued (*5*).

Railroads might also begin their abandonment proceedings, remove tracks and ties, fail to consummate their abandonment and then sell the corridor to a trail group without the benefit of a railbanking order (*5*). In those instances, some adjacent landowners have attempted to initiate the final abandonment process to preclude transfer for trail purpose to no avail (see *Preseault v. ICC*, 1988). Other railroads may discontinue services; remove tracks and ties without informing the agency of their actions. In those cases, adjacent landowners may believe the corridor has been abandoned, but the lines have not been removed from the national rail register and it is still

actually available for railbanking or reactivation. These corridors are the easiest to railbank because federal jurisdiction has not lifted (*5*).

Railbanking regulations have come under attack from adjacent landowners claiming that it is an unauthorized interference with state-law property rights and therefore works as a taking under the 5th Amendment to the U.S. Constitution (*5*). Essentially, prior to 1983, if a railroad wanted to abandon its line and obtained abandonment approval from the ICC it would lose to adjacent landowners any interests in the corridor that it held as an easement or defeasible fee. This is because ICC abandonment of rail service obligations was deemed by many states to end federal oversight of the corridor and at this juncture state and common law regarding the underlying property rights now came into play (*5*).

Again a multitude of litigation surrounding deed construction took place during this time, with property rights groups and other individuals suing for *quiet title* and arguing that the deeds conveyed an easement and not a fee simple (see *Hash v. United States* 403 F.3d 1308; 2005 U.S. App.). With the enactment of the railbanking act, the property rights that would have terminated and most likely passed to an adjacent landowner remain intact for preservation purposes. Table 9 discusses a case between Hash and the U.S.

Table 9. Summary of Hash v. United States.

Hash v. United States deals with the property rights underlying the thousands of miles of railroad corridors that were granted directly to the railroads by the federal government out of public lands. The Court of Appeals for the Federal Circuit held that the government no longer had any interest in these lands, even though the railroads only received easements. This ruling effectively ordered that the application of the NTSA to federally granted corridors is a facial taking requiring compensation in all cases. However, the United States Supreme Court has never found that any federal law works a facial taking, and the Court upheld the railbanking act as permissible under Interstate Commerce. Yet, the effect of this case is to find a facial taking fifteen years after the Supreme Court said there was not one. The decision renders null a number of federal statutes enacted to dispose of these corridors and generally throws a wrench into the otherwise relatively stable jurisprudence of federal railroad property law. The case was remanded but if it remains valid, it might undermine nearly 200 years of federal support of transportation infrastructure.

Source: (*19*)

Other cases have also reviewed the time at which the 'taking' occurred. *Caldwell v. United States* (391 F.3d 1226, 2005) held that such a claim accrues for state-of-limitations purposes when railroad abandonment proceedings are suspended by the STB's issuance of a NITU. In *Caldwell*, the court held that '*the taking, if any, when a railroad right-of-way is converted to interim trail use under the Trails Act occurs when state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting…*"

Caldwell, 391 F.3d at 1233. *Caldwell* held that the abandonment is suspended and the reversionary interest is blocked when the railroad and trail operator communicate to the STB their intention to negotiate a trail use agreement and the agency issues an NITU that operates to preclude abandonment under the trails act. *Caldwell* held that "*the issuance of the NITU is the only government action in the railbanking process that operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right of way*" (id at 1233-34).

Following *Hash v. United States*, the United States Court of Appeals for the Federal Circuit has also decided two more cases: both surrounding 5th amendment taking claims. In the first case, *Barclay v. United States* (443 F.3d 1368; 2006 U.S. App., decided on April l1, 2006) affirmed the judgments of district and federal claims courts which held in this case that the appellants claims of a 5th amendment taking were time barred and that *Caldwell* governed in this instance. Applicants in this case argued that *Caldwell* was wrongly decided, *"insofar as it relied on federal rather than state law to determine when abandonment and reversion of railroad rights-of-way occur."* In this instance the court noted that "… *while state law generally creates the property interest in the railroad right-of-way, Preseault had found that 'the disposition of reversionary interest [is] subject … to the [STB's] 'excusive and plenary jurisdiction to regulate abandonments' of railroad rights of way."* The court held in *Barclay* that the issuance of the NITU is the *only* event that must occur to entitle the plaintiff to institute an action; accrual is not delayed until a trail use agreement is executed or the trail operator takes physical possession of the right-of-way.

In the second case, *Blendu v. United States* (79 Fed. Cl 500, 2007), the court noted the complexity in determining whether deeds conveying right-of-way granted an easement or fee simple property interest. Discussing this issue the court in *Blendu* noted the paucity of dispositive analysis out of courts on this issue for "at least a century" made it even more complex to certify this question.

Railbanking for Public Use Condition

Under 49 USC 10905, when the STB approves or exempts the abandonment of a line, it must determine whether the rail line is suitable for alternative public use such as highways, other forms of mass transit, conservation, energy production, or transmission and recreation. If the line

is suitable for such a public use activity, the STB may prohibit the railroad from selling or otherwise disposing of the rail corridor for up to 180 days after the effective date of the decision or notice authorizing abandonment (*13*).

During the 180 day period, interested parties may negotiate with the railroad to acquire the property for public use. The railroad's consent is unnecessary for the imposition of this negotiating period (*13*). If the parties fail to reach an agreement within this time frame, the STB must allow the railroad to fully abandon the line and dispose of its property—it cannot require the sale of the property for public use.

However, in accordance with 49 CFR 1152.28, the STB may impose a public use condition when it has received a request containing the following:

- Condition sought.
- Explanation of the public importance of the condition.
- Period of time for the condition (not to exceed 180 days).
- Justification for the period of time.
- "Certificate of Service" – a copy of the public use request has been served on the carrier seeking the abandonment.

Reinstating the Rail Service

A railroad or agency must be allowed to re-enter the banked corridor and allowance of an interim use is based on the legal theory that a right to re-enter is retained and that the state law property rights were held in the limbo on that ground (*5*). However, having preserved valuable rail corridors, the difficulty of restoring active train service may vary considerably depending on the type and intensity of use of adjacent land holdings, the duration of service abandonment and the nature of the new rail service being proposed (*1*).

Installing even the most basic rail track, ties, and ballast on a pre-graded route can cost on the order of $1 million per mile before any signaling, safety, or security features are involved (*1*). Still, the advantage of a preserved corridor when compared with a brand new alignment is clear—individual property negotiations are avoided, environmental processes are streamlined, and major structures will have been kept intact (*1*). For example, in the case of rail-trails, at least five railroads have reinstated rail service on previously railbanked corridors for which NITUs and CITUs had been issued (*5*).

Most successful restoration efforts have included a significant public agency role, well defined job impacts, and/or a depressed local economy that was in need of new economic activity (*1*). Rural freight rail restorations carry the dual advantages of less intensive land use along the rights-of-way and positive job impacts for clients to be served. Urban freight rail proposals typically face more problems (*1*).

Transit agencies are in a position of developing products that benefit the general traveling public: the use of the existing rights-of-way for transit is an essential element of forging cost-effective public transportation networks (*1*). Some public agencies develop specific programs that preserve a higher profile of future needs and possible used for dormant alignments, giving notice to adjacent landowners and the public generally that an interim period of low-impact or recreational use does not proscribe future development of active passenger or freight rail activity (*1*). However public outcry over the threat of losing popular trails can severely limit any inclination to reactivate (*5*).

ALTERNATIVES TO ABANDONMENT AND RAILBANKING

Users and interested parties, such as agencies, should consider alternatives to abandonment or railbanking at the first sign a carrier may be contemplating abandonment; the fact that a railroad believes the line is no longer economically viable does not always imply the line cannot continue operations under other arrangements (*13*).

Forced Subsidies and Sales

To encourage continued service, Congress and the STB have adopted procedures that make it possible to force the sale or subsidy of lines that are to be abandoned (*13*):

- *Lines already approved for abandonment*: 49 USC 10904 and 49 CFR 1152.27 establish a procedure of offer of financial assistance where any financially responsible party seeking to continue service on a line approved for abandonment may compel the railroad to sell or conduct subsidized operations. Each offer is reviewed by the STB to determine whether the offeror is financially responsible and if the offer is reasonable. Any state or local government is considered as financially responsible *per se*. If negotiations are successful, the parties enter into a purchase or

subsidy agreement resulting in continued rail service; STB dismisses the abandonment application.

- *Lines potentially subject to abandonment*: as an alternative to abandonment, Congress created under 49 USC 10907 and 49 CFR 1151 the "feeder railroad development program" by which shippers, communities, or other interested parties may acquire a rail line before an abandonment application has been filed. Thus, if a rail line has been listed on a carrier's system diagram as a category 2, a financially responsible party can compel the STB to require the railroad to sell the line. The price might be set by the STB or agreed by the parties. Basically, this program allows parties to save time and the expense of an abandonment procedure. However, this program has not had the expected success since it puts the railroad and potential owner into an adversarial position. Forcing the railroad to sell at a price it may not agree upon or have both competitors share the line has posed significant problems.

Voluntary Sales and Operations

Railroads should consider a voluntary sale of a line before starting the abandonment procedure (*13*). Furthermore, the STB has exempted from regulation the purchase of a line that might be otherwise abandoned. Special provisions have been adopted to encourage continued service on abandoned lines acquired by states. Voluntary purchases of lines subject to abandonment are almost always consummated under exemptions to the formal acquisitions procedures (*13*):

- *Class exemptions*: 49 USC 10901 applies only when a non carrier acquires a rail line or an existing carrier acquires an inactive rail line (already abandoned). Additionally, 49 USC 11323 establishes that carriers may acquire active rail lines including acquisition of a line that has already been approved for abandonment and would not constitute a major market extension, the acquisition of non connecting lines, or the acquisition of trackage rights.
- *Individual exemptions:* according to 49 USC 10502, where no class exemption applies, an individual exemption might be filed.

CHAPTER 4: TEXAS LEGISLATION AND POLICY

EARLY AND PAST REGULATION TO PRESERVE RAIL CORRIDORS

Nationally, the rail network at its zenith in the 1920s had approximately 270,000 miles of track (*9*); however, by the year 2000 network mileage had receded to an estimated 172,000 miles of track. Texas' trend proved no different than the rest of the country, with substantial abandonment's occurring throughout the latter part of the 20th century—especially after the passage of the Staggers Rail Act of 1980 (Staggers Act), which effectively de-regulated the railroads. As a consequence of the Staggers Act many railroad companies combined operations and networks and then abandoned or sold-off duplicative, redundant, and under-performing routes. In fact, the history of abandonments can actually be tracked over time, to a certain degree, in Texas, through a review of court cases discussing abandoned rail corridors and "actions of trespass to try title," as well as other related pleas regarding property rights.

Rural Rail Transportation Districts

In 1981, the Texas Legislature created Rural Rail Transportation Districts (RRTD). RRTDs can be created as a single county district or by multiple counties constituting a contiguous geographic area. This was codified in Vernon's Texas Civil Statutes (VTCS) 6550c §1. RRTDs are intended to help protect against abandonment of existing rail facilities, specifically in rural areas that were heavily dependent on agriculture for their economic survival and required their transportation for their continued economic vitality of these areas. Past studies of the role and formation process for RRTDs are discussed in a series of reports done by TTI between 2003 and 2005. The basics of these reports are also summarized within Appendix A of this report.

Governor's Executive Order AWR 93-4

Notwithstanding the creation of RRTDs, by the early 1990s Texas communities became concerned that many important rail corridors were still being lost and would continue to be lost. As a consequence, in 1993, Governor Ann Richards issued an executive order (AWR 93-4) to create the Interagency Abandoned Rail Corridor Committee (IARCC). The IARCC's objective was to ensure that all abandoned rail rights-of-way undergo a timely and thorough evaluation process for continued public use (*20*).

In its preamble AWR 93-4 notes, that "*once abandoned, these painstakingly assembled rights-of-way are fragmented and lost to public use [….] And no mechanism exists to ensure that the needs and concerns of all parties affected by railroad abandonment's are heard and considered; and whereas no central clearinghouse exists for the purposes of maintaining and providing information on the status of rail corridors, alternate uses, funding sources and legal procedures*." In essence, the IARCC provided the TxDOT and local officials time to react to and take the necessary steps to preserve low traffic density rail lines.

The IARCC was co-chaired by TxDOT and the Texas Parks and Wildlife Department (TPWD), and set forth the following goals for the committee:

- To preserve abandoned rights-of-way intact, at least long enough to give interested parties time to determine if the corridors have value for other uses.
- To improve the notifications process informing state agencies, local officials, and citizens of upcoming abandonments, their on-going status, and proposals for future uses.
- To develop a process to evaluate abandoned corridors for various uses, including railbanking for future rail service. To support rural communities in their efforts to enhance their economies and consider the interests of communities and adjacent landowners in determining future uses of abandoned corridors.
- To identify possible sources of funding for acquiring, developing, managing, and operating corridors.
- To develop appropriate management strategies for railbanked corridors that has been identified for needed current and future public uses (*21*).

The IARCC's membership comprised representatives of the General Land Office, the Office of the Attorney General, the Public Utility Commission, the Texas Department of Agriculture, the Texas Department of Commerce, the Texas Historical Commission, and the Governor's Office in addition to TxDOT and TPWD.

Once the IARCC was established, the executive order authorized TxDOT and TPWD to jointly file, upon recommendation of the committee, a Continuing Interim Trail Use/ Railbanking and Public Use Condition request with the ICC for every line proposed for abandonment within the state. Such requests required a study period of 180 days to provide the public with adequate time for notification and public input.

Despite the time that they provided for public sector action, IARCC requests also hindered the planning of railroads, since it triggered about a six month delay for abandonment of lines—often for insignificant lines or industrial leads that were not going to be ultimately desirable for preservation by the state. Moreover, the imposition of the action was highly unpopular for many railroad companies, particularly those that were trying to shed unprofitable lines in order to prevent further financial losses and, in several cases, avoid bankruptcy. While the IARCC review period was created to allow more time for the appropriate preservation of important abandoned rail corridors for both transportation and recreational use; it ultimately proved of limited effectiveness. Often not occurring during the biennial legislative session and lacking adequate time for other public fundraising/budgeting cycles, the 180-day period was often too short to effect the preservation of valuable corridors. When Governor Richards left office, the executive orders that promulgated the statutory language were no longer in effect under Governor Bush, thus the IARCC's operations ceased and the state-level, multi-agency cooperation regarding abandoned rail line preservation engendered by the IARCC dissolved.

TEXAS LEGISLATIVE ACTIVITIES

During the 77th Texas Legislature in 2001, S.B. 406 expressly authorized TxDOT to preserve rail facilities by acquiring rail lines and other rail facilities and leasing those facilities to other operators. The legislature found that transportation of raw materials and products was essential to the continued vitality of the state, particularly small town's in rural areas and that rail transportation systems in some areas were being adversely affected by abandonment and discontinuance proceedings that would cause cessation of rail service. The legislature noted that it was in the interest of all citizens that existing rail systems were maintained for the efficient and economical movement of agriculture products. The bill amended Chapter 13, Title 112 Revised Statutes by adding Article 6550c-2 of VTCS. The bill required TxDOT, upon receipt of the notice of intent to abandon from the railroad company, to coordinate the concerned municipalities, counties, or RRTDs that might be interested in the preservation of the line proposed for abandonment or discontinuance of service to assess if TxDOT should acquire the affected rail facility. Additionally, this bill provided that TxDOT could use monies from an "Abandoned Rail Account," funded by the State Highway Fund, for the preservation of rail service and railway corridors.

The bill also authorized TxDOT, subject to the Texas Transportation Commission's (Commission) approval, to acquire or to lease to any operator rail facilities on routes the commission had determined as viable for continued rail service. In case the facility was purchased, certain rules applied:

- TxDOT could to acquire by purchase, in the name of the state, any right-of-way or other interest in real property determined to be necessary or convenient to the department's acquisition of rail facilities.
- Any municipality, county, other political subdivision, or public agency could, without advertisement, convey the title or a right in property.
- TxDOT was also authorized to sell, convey, or dispose of any rights or interests in the facility that had been acquired when the Commission had determined the real property was no longer needed for TxDOT's purposes.

During the 78th (2003) and 79th (2005) Legislative Sessions, many portions of Texas transportation regulation was rewritten and re-organized in House Bills No. 3588 and 2702. All express authorizations and regulation surrounding the preservation of abandoned rail corridors in VTCS was repealed and these were integrated into Texas Transportation Code Chapter 91 (TC Chapter 91) and in 43, Texas Administrative Code, Section 7.22 (43 TAC §7.22) State Authority thus changing the previous provisions of Texas law related to preservation and reuse of abandoned rail corridors.

POWER AND AUTHORITY OF TXDOT

According to VTCS §6445, to the extent not preempted by federal law, TxDOT has power and authority over railroads, including suburban, belt, and terminal railroads. All powers and duties of the Railroad Commission of Texas (related to railroads and the regulation of railroads) were transferred to TxDOT.

Rail Facilities

Before analyzing further regulation applicable to TxDOT's powers and authority related to rail facilities, it is important to review a couple of definitions. First, according to the Texas Constitution Article 10, Section 1, railroads are declared and interpreted as public highways.

Thus, all regulation relative to TxDOT's powers related to highways is also applicable to railroad facilities.

Second, the Texas Transportation Code's Section 91.001 (TC §91.001) defines a rail facility as "*real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, high-speed rail, and tri-track*" (emphasis added). Additionally, this definition provides that the *"term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities."* This definition omits any issue related to rails-to-trails projects. Similarly, the 43 TAC §7.20 defines a rail facility as "*real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, and high-speed rail.*"

Abandoned Rail Facilities

Once a railroad begins the process to petition the STB for abandonment, STB will issue its decision within 110 days after the application is filed. It is during this period that STB will notify TxDOT regarding the abandonment. Texas Administrative Code, in 43 TAC §7.10, defines abandoned rail facilities as any rail facilities for which:

- A notice of intent to abandon or discontinue service has been filed with STB.
- An application for abandonment or discontinuance of service has been filed with STB.
- Abandonment or discontinuance of service has been authorized by STB.

According to TC §91.007, as soon as TxDOT is notified of the intent to abandon or discontinue rail service (notice served under 49 C.F.R. Section 1152.20), TxDOT must coordinate with all the concerned municipalities, counties, or rural rail transportation districts to determine if:

- TxDOT should "acquire the rail facility."
- Any other actions should be taken to provide for continued rail transportation service.

This section does not explicitly define rails-to-trails as a public use for which TxDOT could railbank the facility.

Express Authorization to Acquire an Abandoned Rail Facility

Texas Administrative Code in 43 TAC §7.22 expressly authorizes TxDOT to acquire abandoned rail facilities by establishing that the *"Transportation Code, Chapter 91, authorizes the department to acquire abandoned rail facilities."* Additionally it establishes criteria for TxDOT's acquisition of abandoned rail facilities, such as carrying out a study considering the local and regional economic benefit realized from the disbursement of funds in comparison to the amount of the disbursement. This rule establishes that TxDOT should follow the established policies and procedures for acquisition of abandoned rail facilities in addition to a process of public involvement.

Public Involvement Process for the Acquisition

Texas Administrative Code in 43 TAC §7.22 establishes that:

- On receipt of a notice of intent to abandon or discontinue service, TxDOT shall coordinate with the governing body of any municipality, county, or district in which all or a segment of the rail facility is located to determine if it should acquire the rail facility or any other actions should be taken.
- TxDOT should request that a municipality, county, or district to provide documentation concerning the local and regional economic impact of an abandonment or discontinuance of service.

However, if TxDOT determines that there is a need to preserve the rail facility for continued rail service, or to preserve the corridor for another public-use condition, it will merely notify the municipalities, counties, or districts, and will conduct one or more public hearings to receive public comment on the proposed acquisition. Under this situation, TxDOT will consider:

- The information contained in the notice of intent to abandon or discontinue service and any application for abandonment or discontinuance of service filed with the Surface Transportation Board with respect to that rail facility, including the extent of any service performed on the rail line.
- The information provided by a municipality, county, or district concerning the economic impact of an abandonment or discontinuance of service.

TxDOT must hold at least one public hearing within at least one of the counties in which the rail facility is located. It must file a notice of each hearing with the Secretary of the State for publication in the Texas Register.

Approval of the Acquisition of an Abandoned Rail Facility

In approving the acquisition of an abandoned rail facility, the Commission needs to consider the following factors according to 43 TAC §7.22:

- The service performed on the rail line in the 2 years preceding the date of the notice of intent to abandon or discontinue service.
- Any comments or other evidence in support of or opposition to the proposed abandonment or discontinuance of service.
- All alternate sources of transportation services available, including alternate sources of rail transportation service.
- The impacts of the proposed abandonment or discontinuance of service on the operation of the state transportation system.
- The local and regional economic impacts of the abandonment or discontinuance of service.
- The viability of the rail line for continued rail transportation service.
- The extent to which the monetary value of the economic benefits attributable to the acquisition exceed the amount of funds disbursed by the department to acquire the rail facility.

Acquisition of Rail Facilities

TC §91.004 provides that TxDOT has the general powers, subject to certain restrictions, to:

- Plan and make policies for the location, construction, maintenance, and operation of a rail facility or system.
- Acquire, finance, construct, maintain, and operate a passenger or freight rail facility, individually or as one or more systems.

- For the purpose of acquiring or financing a rail facility or system, accept a grant or loan from a department or agency of the United States, a department, agency, or political subdivision of Texas; or public or private person.
- Contract with a public or private person to finance, construct, maintain, or operate a rail facility (leasing).
- Perform any act necessary to the full exercise of the department's powers under TC Chapter 91.

Furthermore, in connection with TxDOT's acquisition of rail facilities, TC §91.032 provides that the Commission may authorize TxDOT to acquire an existing rail facility at a location and on a route the Commission determines as feasible and viable for rail transportation service. This section also authorizes TxDOT to enter into agreements with the owner of an operating railroad for the acquisition or use of a rail facility.

Additionally, under TC §91.033, the acquisition of any rail facility entails the performance and approval of environmental reviews related to the evaluation of the impacts of the construction, maintenance, and operation of the rail facility. Thus, TxDOT is not given any specific authority to railbank or work to achieve a rails-to-trail agreement.

Acquisition of Real Property

TC §91.091 establishes that the Commission can authorize the department to acquire right-of-way, or a property right, or other interest in real property determined to be necessary or convenient for the department's acquisition, construction, maintenance or operation of rail facilities. Acquisition of property can be by any method, including purchase and condemnation. TC §91.092 stipulates that property necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities includes an interest in real property, or a property right the Commission determines is necessary or convenient to provide for a rail facility, or future expansion of a rail facility.

Establishment of Rail Systems

Under TC §91.031, TxDOT may establish rail transportation services by jointly operating two or more rail facilities as one operational facility. It can also create a system of more than two rail facilities when there is an opportunity for this financial enterprise and has the power to create more than one system as well as finance, acquire, construct, and operate additional rail facilities

that add to the system as part of an expansion. However, any additions to the system must be consistent with providing the most efficient and economic ways to acquire and construct the rail system, and be beneficial to the system as a whole. It could be argued that rail-banking or pursing an interim use such as a rail trail could be an economic and efficient way of assuring a functioning rail system.

Leasing of Rail Facilities

TC §91.102, also authorizes TxDOT to lease all or part of a rail facility or system to a rail operator and to contract with a rail operator for the use or operation of all or part of a rail facility or system. TC §91.052 authorizes the department to enter into an agreement with a public entity, including a political subdivision of this state, to permit the entity, independently or jointly with TxDOT, to acquire, construct, maintain, or operate a rail facility or system.

Also, according to 43 TAC §7.13, TxDOT may lease an acquired or constructed rail facility to a public entity. So, if it is economic and efficient for the rail system as a whole TxDOT can lease an abandoned rail corridor that it has acquired. The lease agreement should include provisions related to TxDOT's monitoring of the rail operator's service and performance. In order to obtain private rail operators TxDOT is required to use a competitive process by publishing a notice in the Texas Register and in a newspaper of general circulation in the area in which the rail facility that is to be leased and operated is located. TxDOT should rank all proposals submitted using the following criteria:

- Qualifications and capability of the proposer to operate the rail facility.
- Proposer's experience in constructing and maintaining rail facilities.
- Financial capability of the proposer to operate and maintain the rail facility.
- Relative effectiveness of the proposer's management team and staff.
- Extent to which the proposal minimizes the department's financial obligations in acquiring or maintaining the rail facility.
- Proposer's plan for maintaining and improving equipment, track work, and right-of-way, including the planned schedule for carrying out the maintenance and improvements and planned funding sources.

- Proposer's planned operating rules and procedures for servicing markets served by the rail facility, including plans and proposed schedules for improving service and adding additional markets.

Under TC§91.004, TxDOT may contract with private entities to operate a railroad using facilities owned by TxDOT, provided that the department does not use its own employees to operate it. Thus, it can be concluded according these sections that TxDOT has authority to acquire an abandoned railroad, but the provisions within TAC and TC relate mostly to establishing new rail service on these corridors (as opposed to railbanking or creating rails to trails to hold the existing property rights intact).

RURAL RAIL TRANSPORTATION DISTRICTS

Creation

State legislation passed in 1981 (amended in 1997) allows for the creation of Rural Rail Transportation Districts. When the legislature enacted the enabling statute it found that:

- The state contains many rural areas that are heavily dependent on agriculture for economic survival.
- Transportation of agricultural and industrial products is essential to the continued economic vitality of rural areas.
- The rail transportation systems in some rural areas are threatened by railroad bankruptcies and abandonment proceedings that would cause the cessation of rail services to the areas.
- It is in the interest of all citizens of the state that existing rail systems be maintained for the most efficient and economical movement of essential agricultural products from the areas of production to the local, national, and export markets.
- Rural rail transportation districts are appropriate political subdivisions to provide for the continued operation of railroads, which are declared by Article X, Section 2, of the Texas Constitution to be public highways.
- The creation, re-creation, financing, maintenance, and operation of rural rail transportation districts and facilities acquired by the districts under this Act will help develop, maintain, and diversify the economy of the state, eliminate unemployment or

underemployment, foster the growth of enterprises based on agriculture, and serve to develop and expand transportation and commerce within the state under the authority granted by Article III, Section 52-a, of the Texas Constitution.

- Financing by rural rail transportation districts for the purposes provided by this Act is a lawful and valid public purpose (VTCS 6550c §1).

Eligibility

In order for a county to be eligible to form a RRTD there must be a:

- Rail facility located within that county in the process of being abandoned through bankruptcy court or STB proceeding.
- Line that carries less than 3 million gross tons per mile per year.

In addition to eligible counties, the Commissioner's courts of a county that met the requirement that the boundaries of a district created under this section are the boundaries of the county in which the district was created could also create a RRTD for the purpose of developing, financing, maintaining, and operating a new subdivision of the state that exercise a public and essential government function and have the powers "necessary or convenient" to carry out the purposes of this act.

Power and Authorizations

RRTDs have express authorization and procedures, in accordance with VTCS §6550c. Under VTCS 6550c §5 (d), RRTDs are given the authority to grant, purchase hold, use sell, lease, and dispose of real and personal property and interests necessary, convenient or useful for the full exercise of its powers under the act. VTCS 6550c §5 (e) authorizes RRTDs to plan, acquire, construct, complete, develop, own, operate, and maintain rail facilities inside or outside the district.

They are also authorized to condemn through eminent domain any land that is necessary for the provision of rail facilities. This includes land in fee simple or an interest less than fee simple, and includes right-of-way and easements (VTCS 6550c §5 (f)). Additionally, RRTDs are authorized to utilize the procedures provided by Chapter 271 of Local Government Code, to finance rail facilities except that a district cannot levy or collect *ad valorem* taxes (VTCS 6550c §6A (a)).

Request to Abandon a Rail Facility

RRTDs may not abandon a rail line of the district with respect to which state funds have been loaned or granted unless the abandonment is approved by the Commission. Texas Administrative Code at 43 TAC §7.21 provides than a RRTD may apply for and obtain approval to abandon a rail line of the district. According to statute, to request approval of the abandonment of a segment of rail line with respect to which state funds have been loaned or granted, a district shall submit an application to TxDOT's director of the Transportation Planning and Programming (TPP) Division. At this junction the multi-modal section the TPP Division will notify the affected TxDOT district to discuss the appropriate course of action by the department (*22*).

Local TxDOT districts should then evaluate the rail corridor to determine the possibility of future use. An evaluation report is created and submitted to the Systems Planning Section. It will outline any future use and make recommendations regarding the corridor. TPP will make recommendations to the district. The formation of the TxDOT Rail Division in late 2009 now shares these responsibilities with TPP regarding the rail system of the state. The application needs to be submitted no later than 45 days after the filing of the STB notice and should include, among others, a copy of documentation under which the district obtained state funds for the rail line, the notice, and the federal application relating to the rail line.

Public Hearings

Additionally, if TxDOT finds that the application meets all the requirements, it will notify the district of its findings and will conduct one or more public hearings to receive public comment on the proposed abandonment. TxDOT must hold at least one hearing within at least one of the counties of the district and file notice of each hearing with the Secretary of the State for publication in the Texas Register.

Approval of the Request

In approving a request to abandon a segment of rail line, the Commission will consider:

- The service performed on the rail line in the two years preceding the date of the notice of intent to abandon or discontinue service.

- Any comments or other evidence in support of or opposition to the proposed abandonment or discontinuance of service.
- All alternate sources of transportation services available, including alternate sources of rail transportation service.
- The impacts of the proposed abandonment or discontinuance of service on the operation of the state transportation system.
- The impacts of the abandonment or discontinuance of service on the communities served by the particular rail line.
- The viability of the rail line for continued rail transportation service.

However, the final decision of abandonment of a rail line is subject to the STB's permission pursuant to federal law and as described previously in this report.

INTER-MUNICIPAL RAIL DISTRICTS

Creation

In 1992, the 72nd Texas Legislature provided for the creation of Inter-municipal Commuter Rail Districts (ICRD) to provide commuter rail service between two municipalities that have a population greater than 450,000 and that are located no more than 100 miles apart. A district is created on passage of a resolution favoring the creation of the district by the governing body of each creating municipality and the governing body of each county in which a creating municipality is located. The following political subdivisions may also become a part of an ICRD:

- A county located adjacent to a county in which a creating municipality is located.
- A municipality that has a population of more than 18,000 and is located in a county that is adjacent to a county in which a creating municipality is located.

Powers and Authorizations

According to VTCS 6550c-1 §4, ICRDs, are authorized, among other powers, to:

- Acquire, construct, develop, own, operate, and maintain intermodal and commuter rail facilities inside or connected to political subdivisions within their district (VTCS 6550c-1 §4 (d) and (e)).

- Acquire though eminent domain proceedings any land that is necessary for the provision of commuter rail facilities—lands in fee simple and any interest less than fee simple in, on, under, or above lands, including easements, rights-of-way, and rights of use of airspace or subsurface space. However, the latter does not apply to land under TxDOT's or MTA's jurisdiction or a rail line owned by a common carrier or municipality.
- Execute agreements with any other public utility, private utility, communication system, common carrier, state agency, or transportation system for the joint use of facilities, installations, or properties within or outside the district (VTCS 6550c-1 §4 (g); and
- Lease the commuter rail facilities or any part to, or contract for the use or operation of the commuter rail facilities or any part by, any operator. However these must not exceed 20 years (VTCS 6550c-1 §4 (m)).

This is, however, subject to the provision that the district shall *to the extent possible, use existing* rail or intermodal transportation corridors for the alignment of its system (VTCS 6550c-1 §4(f). Therefore, ICRDs can utilize abandoned corridors to facilitate their objective to provide rail service. Currently there is only one ICRD: the Austin-San Antonio ICRD; however, the Gulf Coast Rail District in the Houston-Galveston area and the Lower Rio Grande Valley area are also potential areas meeting the statute's criteria to form or create an ICRD should they chose to do so.

FREIGHT RAIL DISTRICTS

Creation

In 2005, TC Chapter 171 authorized the creation of Freight Rail Districts (FRD) for counties with a population above 3.3 million and counties adjacent to such a county. FRDs are authorized to exercise the power of an ICRD but are narrowly tailored to provide freight rail facilities. As of 2010, Texas has had one FRD—the Gulf Coast Freight Rail District (GCFRD) in the Houston-Galveston area. In 2009, the GCFRD changed its name to the Gulf Coast Rail District (GCRD) when it also took on the responsibility of planning for the area's future passenger rail in addition to its freight responsibilities.

Powers and Authorizations

FRDs have the same transportation project powers as Regional Mobility Authorities (RMAs), i.e., they can study, evaluate, design, finance, acquire, construct, maintain, repair, and operate freight transportation systems (TC §171.151); however, under TC §171.155, if property to be condemned is located in the corporate limits or one or more municipalities, the district may only exercise its eminent domain powers to condemn property if the municipality in which the property is located consents to this exercise of power. FRDs cannot impost *ad valorem* sales or use taxes (TC §171.253).

Before a FRD can undertake a freight or commuter rail project that might materially affect tracks, facilities, or other property of a railroad that owns track in this district, the district and railroad *must* enter into a written agreement regarding the scope, operational impact, financing, and other elements of the project (TC §171.201). This can also include the railroad's financial participation in the project according to the benefits it may derive from the project. Any projects that are developed must also be *conducted only in a manner that preserves the existing rail industry regulatory structure and ownership rights* and do not change the existing competitive relationship between and among railroads (TC §171.202 & 203). Under TC §171.204 the district cannot undertake a project has negatively affects a railroad's present *or future* ability to provide consistent service to its customers, although TC §171.205 authorizes the district to allow multiple freight railroads to operate on its facilities. However TC §171.254 restricts the FRDs ability to impose fees or other charges without the railroad's consent.

REGIONAL MOBILITY AUTHORITIES

In 2003, TC Chapter 370 authorized the creation of RMAs, which allow regions of the state the authority to plan, capitalize, and construct infrastructure improvements (including rail infrastructure). To date, toll roads have been the main focus of the RMAs that have been formed. Abandoned rail corridors could serve as the corridor for either rail or road infrastructure that could be developed by the RMA.

Creation

RMAs are political subdivisions created by counties. An RMA may be formed by a single county, or one or more adjacent counties may jointly create an RMA (TC §370.031).

Special rules apply to certain cities in the border region, or municipalities with a population of 5,000 inhabitants or less (TC §370.0311).

RMAs are formed to undertake particular transportation projects contained within state and local transportation plans. A transportation project can include a turnpike project, a system, or a passenger or freight rail facility (TC §370.003 (14) (c)). Establishing an RMA provides more local control over transportation planning and project development (*23*). Counties wishing to create an RMA are required to have approval from the commissioners' court of each county that wishes to form the RMA (TC §370). They subsequently have to obtain the approval of the Transportation Commission in order to be created.

Powers and Authorizations

Among the primary powers of an RMA is the ability to:

- Adopt rules for the regulation of its affairs.
- Study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects.
- Enter into contracts or operating agreements with a similar authority, another governmental entity, or an agency of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States (TC §370.033).
- Finance projects through bonds, private equity, public grants, government or bank loans, and/or revenue generated from existing transportation facilities (TC §370.111).
- Enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with a public or private parties.
- Provide mass transit services except when there is another transit provider in the service area that has taxing authority. In these cases, before providing public transportation or mass transit services in the service area of any other existing transit provider, the RMA must first consult and enter into an agreement with that transit provider (TC §370.033 (15) (p)).
- Impose tolls, fees, fares, or other charges for the use of its transportation projects, or different parts of sections of these projects (TC §370.172 (1)).

RMAs have the same authority as the Commission for acquiring property (TC §370.162) and also relating to condemnation and acquisition of property associated with a tolled transportation project (TC §370.163). Regarding rail projects, TC §370.186, establishes expressly that a RMA may not construct, maintain, or operate a passenger rail facility within the boundaries of an ICRD (as those boundaries existed on or after September 1, 2005) unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken. RMA's must also request the approval of the Transportation Commission for projects that will connect to the state highway system or to a department rail facility (TC§370.187).

ADVANCED TRANSPORTATION DISTRICTS

Creation

In 1999, the 77th Texas Legislature authorized the creation of Advanced Transportation Districts (ATDs) (*24*). TC §451.701 (1)(c) establishes that an ATD is a governmental unit created by an election process related to a specific proposition. The creation of an ATD and the imposition of a sales and use tax for advanced transportation and mobility enhancement within the district (at the rate to be set by its own governing body) are aimed to achieve advanced transportation and mobility enhancement.

In 2003, during the 78th Legislature S.B. 404 redefined an ATD to include "*light rail, commuter rail, fixed guide ways, […] passenger amenities, transit centers, stations, […] and coordination systems, monitoring systems, and other advanced transportation facilities, equipment, operations, systems, and services, including planning, feasibility studies, operations, and professional and other services in connection with such facilities, equipment, operations, systems, and services.*" In 2009, the San Antonio/Bexar County Transportation Task Force proposed that the Alamo RMA and Via Metropolitan Transit should be consolidated to create a more functional ATD (*25*).

Powers and Authorizations

For a transit authority in which the sales and use tax rate is 0.5 percent and in which the principal municipality has a population of more than 700,000, the rate of the sales and use tax

that may be imposed by the ATD for advanced transportation and mobility enhancement purposes and can be set at 0.125 percent, 0.25 percent, three-eighths of 1 percent, or 0.5 percent.

The governing body of an ATD is required to:

- Use ½ of the sales and use tax proceeds for advanced transportation purposes, which can include a debt service requirement and other elements including issuance of obligations by the district relating to purchase, design, operations, systems and services in connection with the facilities, equipment, operations, systems and services (TC §451.702 (f)).
- Remit ¼ of the proceeds to each participating unit in proportion to the amount of the proceeds collected by that unit (TC §451.702 (g)).
- Place ¼ of the proceeds into an account to provide to the TxDOT the local share of a state or federal grant for advanced transportation or mobility enhancement purposes in the territory of the district (TC §451.702 (i)).

For such local share projects, the governing board is required to obtain recommendations from the appropriate metropolitan planning organization, prioritize projects, and consider the geographic location of other state or federally funded transportation projects so as to foster geographic equity in planning and developing projects (TC §451.702 (j)).

OTHER TRANSIT AUTHORITIES

There are also several different types of regional authorities and special districts that are authorized to operate transit systems in Texas. The Transportation Code creates three types of regional transportation authorities, that all have the same range of powers to provide for public transportation in their applicable region:

- Metropolitan Rapid Transit Authorities (MRTAs).
- Regional Transportation Authorities (RTAs).
- Coordinated County Transportation Authorities (CCTAs).

The powers of these authorities are highlighted in Table 10. According to Loftus-Otway, et al., (*26*) the major differences between these three regional transportation authorities are in their locations and composition, rather than their respective regulatory powers.

Table 10. Powers of Transit Authorities.

Common Powers of MRTAs, RTAs, and CCTAs
• May acquire, construct, own, and operate a transit authority system. They possess all powers *"necessary or convenient"* to operate a transit authority system. This includes the authority to exercise eminent domain to condemn property. • Powers limited to mass transit, which is defined as the transportation of passengers; this includes any means of mass transport, including rail, but does not include freight rail. • Can acquire property under trust agreements or contracts. • Rural or urban transit districts may form partnerships with other governmental agencies or a private individual to create contracts for transportation projects.

Metropolitan Rapid Transit Authorities

MRTAs are authorized in Chapter 451 of Transportation Code. Originally, these entities could only be created only by cities with a population of 1.2 million or more. These principal cities had to have created an authority by the end of 1985. However in 1993, the statute was amended to allow adjacent, alternate cities within the metropolitan area of the principal city, to create authorities in areas not previously covered by an authority. At present, principal cities are no longer allowed to form MRTAs. There are many instances of transit authorities purchasing abandoned rail corridors to provide transit, rail-to-trails, and other public uses. Dallas Area Rapid Transit (DART) for example purchased abandoned corridors throughout the 1980s and 1990s and these helped to form the backbone of their system. Similarly the Capital Metropolitan Transit Authority in Austin acquired an abandoned rail right-of-way upon which it began a new commuter rail system in 2010. Freight rail service is also operated over the corridor at night, continuing the service contracted by Capital Metro prior to beginning commuter rail operations.

Regional Transportation Authorities

RTAs are authorized by TC Chapter 452. These are similar to MRTAs, except that they can be created in less populous areas. RTAs can be created by principal municipalities having a population of 350,000 or more, by the county in which a principal municipality is located, or both.

Coordinated County Transportation Authorities

Finally, the Commissioners Courts of counties that are adjacent to a county with a population of one million or more, and whom are not otherwise part of a RTA, may create a Coordinated County Transportation Authority (TC §460).

MUNICIPAL AUTHORITY

Cities and counties should also be considered as partners in assuring that abandoned railroads are identified, and preserved where appropriate. There are two types of cities in Texas: general law and home rule cities. In *Tex. Dep't of Transp. v. City of Sunset Valley* courts established that general law cities have many of the same powers as home rule cities, but their powers are limited rather than absolute. Texas Local Government Code divides general law applicable to municipalities into three types, distinguished primarily by the size of the community at the time of incorporation. The distinction allows the legislature to pass laws that affect only a certain class of municipalities.

Home Rule and General Law Municipalities

Municipal power for abandoned rail corridor acquisition or preservation will arise out of municipal regulation over their transportation asserts. Both general law and home rule cities have the same powers with respect to the provision of transportation facilities and preserving rail corridors.

Texas Local Government Code (LGC) §51.015 authorizes municipalities to hold, purchase, lease, grant, or convey property located in or outside the municipality. LGC §273.001 (c) (10) establishes that a municipality can use their powers to promote and develop new transportation facilities. Municipalities are authorized to exercise their police powers in acquiring property separately or jointly with another municipality. Property acquired through police power, can be located inside or outside the municipalities' corporate limits; however, it must be within the jurisdiction of the county where the municipality is located. Local Government code also identifies in this section, that the properties acquired using police powers must be used for public purpose. Therefore two municipalities could join together to purchase or acquire an abandoned corridor that crosses their jurisdictions. LGC §251.001 also grants municipalities the power of

eminent domain for acquiring property for a public purpose. Table 11 provides an overview of the municipal powers in Texas.

Table 11. Municipal Powers in Texas.

- **Property Acquisition**: All municipalities are authorized to hold, purchase, or convey property located in or outside the municipality, if doing so carries out a municipal purpose. Providing for a transportation project would safely fall as a municipal purpose.
- **Extraterritorial Jurisdiction (ETJ)**: The ETJ of a municipality is the unincorporated area contiguous to the boundaries of the municipality. The definition and size of the ETJ varies (half to five miles) as does the extent to which city authorities transfer to the ETJ.

County Powers

County power for rail corridor preservation arises out of a county's authority over public roads and highways. The Commissioner's Courts have the power to exercise general control over all roads and highways in a county. Table 12 provides an overview of the county powers in Texas.

Table 12. County Powers in Texas.

- **Public Roads and Highways**: A county may establish, change, discontinue, close, abandon, or vacate public roads and highways
- **Eminent domain:** A county has the right to exercise eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or library, or for another narrowly defined public purpose authorized by law

According to Loftus-Otway et al., (*26*) county authority in regards to whether their powers extend to rail corridors is not clear; the answer is dependent upon whether rail facilities are considered the equivalent of public roads within the meaning of the statutes. For example, the Texas Constitution states that, "[r]*ailroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways...*" While this language could suggest that railroads are encompassed in the statutes associated with county roads, no court has interpreted this provision as a county's authority to regulate public roads to cover regulation of railroads.

Power to Acquire Property

Texas Local Government Code is not specifically instructive regarding authority of counties powers to acquire an abandoned rail corridor. For example, LGC §615.101 requires the comptroller to distribute to counties monies appropriated for the special county road assistance program; however, the funds are restricted to be specifically spent on purchasing right-of-way

for lateral roads, farm-to-market roads or *state highways*, constructing and maintaining lateral roads or paying principal and interest or sinking fund requirements during the fiscal year on bonds or other legal obligations incurred to finance activities. Thus, it is necessary to review whether a railroad could be labeled as a state highway and afforded their construction under the Texas Constitution as noted earlier in this report. Texas counties have not been granted the power of eminent domain. Rather, eminent domain powers are assigned to counties to serve particular purposes. There is no specific (direct) grant of authority to condemn property for purposes of acquiring a railroad right-of-way or protecting an existing rail corridor. The general grant of eminent domain power, for counties, is located in Local Government Code section 261.001. This provides that "[a] county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or library, or for another public purpose authorized by law."

According to Loftus-Otway et al. (*26*), it is possible that this provision could be interpreted to convey eminent domain power for purposes of protecting rail corridors when read in conjunction with certain provisions of the Transportation Code. For example, section 91.002 of the Texas Transportation Code establishes the "*acquisition, financing, construction, operation, and maintenance of a rail facility*" as a "*public and governmental function, exercised for a public purpose and matters of public necessity*." So it suggests that activities undertaken to continue use—or establish—a rail corridor by the county would be considered a valid public purpose. The question, then, is whether this action is "authorized by law."

While the majority of Chapter 91 of the Transportation Code relates to the authority of TxDOT over the state's rail system, two sections instruct counties to cooperate with the department and allow counties to convey title to property that is deemed necessary and convenient for rail facility provision. TC §91.006 states that *"[w]ithin available resources, an agency or political subdivision of this state shall cooperate with and assist the department in exercising its power and duties under this chapter.*" This includes the acquisition of property, or other interest in real property, for example an easement, that is necessary and convenient for the provision of rail facilities. TC §91.004 provides that counties may "*convey title to or a right in property determined to be necessary or convenient by the department under this chapter*."

In spite of this provision, Loftus-Otway et al. (*26*) noted that it is unclear, whether a county may act of its own volition in acquiring an abandoned rail corridor for future rail service or for another use such as creating a recreational rail-trail. This is because Sections 91.006 and 91.004 seem to limit the participation by political subdivisions to situations where TxDOT has already taken the lead by coordinating a corridor project. A county that seeks to acquire property for a rail corridor without the consultation of TxDOT may open itself to a legal challenge on the grounds that it is not acting within a power expressly granted by the Texas Constitution or by statute.

Limits of County Power

In sum, Texas counties are not as privileged in purchasing powers and are far more constrained than municipalities. Moreover, with the multiplicity of rail districts and transportation authorities that are authorized under Texas law, it may, in fact, make better sense for these entities to undertake policy actions regarding preservation of current and potential abandoned rail corridors.

CHAPTER 5: OTHER STATE'S LEGISLATIVE AND POLICY BEST PRACTICES

This chapter provides input regarding best practices undertaken by other states related to identify and preserve abandoned rail corridors. The legal statutes and policy actions of the states of North Carolina and Washington are described in greatest detail as the most exemplary. Several other states' policies are also reviewed and highlighted in the remainder of the chapter. Relevant sections of several of the states' governing statutes and policies are also included in Appendix D.

NORTH CAROLINA

North Carolina has particularly robust legislation enabling the purchase of abandoned rail corridors for preservation of the right-of-way. According to the North Carolina Department of Transportation's (NCDOT) Rail Division the state has lost miles of corridors since the 1920s to abandonment. Once they are lost, it is usually impossible to reconstruct the right-of-way (*27*). Leaders in the NCDOT Rail Division state that the high cost of highway construction and maintenance are one of the driving reasons behind the need to preserve rail rights-of-way for potential future use. In North Carolina, preserving and revitalizing railroads could be a viable option in some cases to roadway construction due to their active freight and passenger programs (*27*). The NCDOT's Rail Division also assists other entities, like local governments and economic development groups, in the purchase rail corridors to preserve freight rail service to customers on light density lines (*27*).

Consequently, in 1988, the North Carolina General Assembly passed the Rail Corridor Preservation Act giving NCDOT the authority to purchase railroads and preserve rail corridors for "future rail use and interim compatible uses." In 1989, the General Assembly amended the act to declare it a public purpose for the NCDOT to reassemble critically important lost portions of rail right-of-way. Since the inaction of this legislation NCDOT has purchased more than 100 miles of rail (*27*).

On January 9, 1998, the NC Secretary of Transportation signed the "Resolution to Facilitate the Protection of Rail Corridors Preserved by the Department of Transportation and Other Public Bodies in North Carolina." This resolution protected NCDOT's right to purchase abandoned rail right-of-way, as well as its ability to protect from encroachment on that right-of-

way. In October 1998, NCDOT developed an in depth rail corridor preservation policy. The development of the policy was mandated by North Carolina General Statute 136-44.36A, which gave the department the authorization "to preserve rail transportation corridors and permit interim compatible uses of such corridors" provided that the integrity of the right-of-way be maintained. NCDOT developed a systematic approach to oversee requests to use the right-of-way for purposes other than active rail or transportation. While the NCDOT does not have an active "rails to trails" program, the legislation governing the purchase of abandoned rail in the state and this policy allow right-of-way to be used for trails and other public uses in the interim (*28*). Appendix D includes relevant portions of the North Carolina General Statutes addressing abandoned rail corridor preservation.

WASHINGTON STATE

Washington State also has a robust rail and rail corridor preservation program that goes back many years. In conjunction with the federal government's Local Rail Freight Assistance Program, now expired, it has been actively working to preserve rail infrastructure since the federal deregulation of railroads under the Staggers Act led to increased abandonments in the 1980s (*29*). According to the Washington State Rail Plan, "When a rain line is abandoned, it is critical that the integrity of the right-of-way be maintained." The rail plan cites the difficulty of reconstructing the right-of-way, and the possibility to use the right-of-way for highways as the principal reasons for maintaining the integrity of the line (*29*). The state has supported several short line rail road improvements by providing funding to upgrade existing rail line capacity, recognizing some of the funding constraints for short line railroads. The state rail plan also recognizes that even lines of marginal economic viability may have a compelling reason for state support, such as reducing truck traffic and maintaining jobs (*29*).

Washington State has successfully purchased several rail lines. An example of the success of their program is its preservation of the Palouse River and Coulee City Rail System. The state purchased the rights-of-way and rail on this three branch system in two separate acquisitions, the first in November 2004 and the second in May 2007. The state then contracted with private railroads to operate the three branches. WS DOT provides continued oversight of the infrastructure. The system provides local rail service to grain shippers and other businesses in four Washington counties. Public ownership allowed the rail option to be economically viable

for shippers to use and also provided necessary funds for rehabilitation of the lines. Continued rehabilitation of the lines by the state is expected to make the system more efficient (*29*).

Washington also has a railbanking system for lines that could become economically viable within a 10-year period. The state allows for their purchase, and the right-of-way can be used as a trail on an interim basis; however, changes made to the banked line to make it suitable for use as a trail must not affect the ability to use the line for a railroad in the future (*29*). In 2008, the Washington State Legislature passed ESHB 2878, Section 10, Chapter 121, Laws of 2008, which required WS DOT to issue a call for rail projects. Under this law the Governor and Legislature provided $2.5 million dollars for the Freight Rail Investment Bank program during the 2007–2009 biennium, and the legislature is expected to approve an additional $5 million for Rail Bank projects in 2008–2011. The legislature mandated that projects be considered according to the following aspects, in order of importance (*30*):

- Economic, safety, or environmental advantages of freight movement by rail compared to alternative modes.
- Self-sustaining economic development that creates family-wage jobs.
- Preservation of transportation corridors that would otherwise be lose.
- Increased access to efficient and cost-effective transport to market for Washington's agricultural and industrial projects.
- Better integration and cooperation within the regional, national, and international systems of freight distribution.
- Mitigation of impacts of increased rail traffic.

One example of railbanking's potential long-term effectiveness in Washington State is the planned reactivation of portions of the Milwaukee Road rail corridor. The Milwaukee Road Corridor was acquired by Washington State in the 1980s after this multi-state route was abandoned. Since that time it has been managed by the Washington State Parks and the Department of Natural Resources as a trail. In 2006, WS DOT entered into a franchise agreement for a rail line over portions of the Milwaukee Road Corridor to begin service by July 1, 2019 (*29*).

Washington State also has a Freight Rail Assistance Program. Under this program WS DOT can provide grants to support branch lines and light density rail lines, provide or improve rail access to ports, maintain adequate mainline capacity, and preserve or restore rail corridors

and infrastructure. Projects to preserve rail corridors are accepted projects to receive benefits under this program. Appendix D includes relevant portions of Washington code.

OTHER STATE ABANDONED RAIL INITIATIVES

Abandoned rail initiatives for several additional states were also performed during this research. The following sections describe these states.

Indiana

In Indiana the Transportation Corridor Planning Board (Planning Board) oversees rail corridor preservation policy. Created by the Indiana State Legislature, the Planning Board examines the most efficient and beneficial reuse of abandoned rail corridors. The legislation allows the Planning Board to look at four possible strategies for abandoned corridor use (*31*):

- As future freight rail.
- As future passenger rail.
- As pedestrian trail.
- As an underground utility corridor.

The Indiana Department of Transportation (INDOT) Railroad Section coordinates board activities and has developed a Master Plan for rail preservation in the state. The Master Plan, first developed in 2003, provides a framework to allow the board to prioritize the future use of abandoned corridors (*31*). Interestingly, a 2003 study done for INDOT suggests revising the role of the Planning Board, stating that the current system is too slow to react to possible abandonments, and that there is sufficient expertise within INDOT to operate without the planning board's approval (*32*). Appendix D includes relevant portions of Indiana Code creating the Transportation Corridor Planning Board.

Kentucky

Kentucky has a state policy in place to preserve railroad corridors for future railroad use. Under state code any tax exempt 501(c)(3) organization, state government agency, city agency, or political subdivision of a city government can take action to preserve right-of-way for future rail use while utilizing the right-of-way in the interim for public recreational use. The state recognizes that the salvage of tracks and other equipment does not constitute an abandonment or

intent to relinquish property rights. Any holder of a corridor held by easement can file a "Preliminary Declaration of State Railbanking" with the Secretary of State and the Kentucky Transportation Cabinet (similar to the Texas Transportation Commission). The document can be withdrawn by the filing entity at any later point, and while the document is on file the corridor will not be considered abandoned, regardless of the conclusion of any federal regulatory proceeding or the condition of the track. In other words, while the document is on file, even land held in easement will not revert to former ownership. However, while the document is on file the land can only be used for public, non-motorized recreational use. One specific exception to this is public utilities use of the right-of-way if it is allowed in another section of law (*33*). The full text of the relevant Kentucky code for railbanking is available in Appendix D.

Michigan

Michigan has a Rail Loan Assistance Program (MiRLAP) that provides non-interest bearing loans for up to 90 percent of a total project cost. MiRLAP is primarily for rehabilitation projects such as rebuilding railroad grade crossings, rehabilitating railroad track and rail bridges, and replacing collapsed bridges. Though MiRLAP funding is not specifically dedicated for use purchasing track mileage that is in danger of abandonment, the loans can be used for such purposes (*34*).

Railroads, local governments, economic development corporations, and current or potential users of freight railroad services are eligible to apply for MiRLAP funds. Loans are for a maximum of $1,000,000 per project/applicant and the work on the project must be scheduled for completion within one year. All loans must be approved by the State Transportation Commission and the State Administrative Board (*34*).

New Hampshire

New Hampshire has several relevant sections in its 2001 New Hampshire State Rail Plan. One of the stated goals of the Statewide Rail Plan and Rail Program is to preserve abandoned railroad corridors that have potential future uses, including transportation uses and other public uses. According to the plan many of the rail lines that have been purchased by the state for preservation purposes are currently being used as trails (*35*).

The state considers three criteria when determining whether or not it should purchase an abandoned rail corridor:

- *Historical statistics*: review of car and shipper/receiver usage of the line.
- *Future potential*: review of the line with regard to future potential uses, continued rail use, rail banking, or other public uses.
- *Potential adverse impacts*: examination of the impact on customers and the community should abandonment occur.

It is important to note that the state specifically provides for consideration of potential uses outside of continued rail use, as encapsulated by the "other public uses" statement (*35*). Appendix D includes relevant sections of the New Hampshire.

South Carolina

The South Carolina Department of Transportation sets aside Transportation Enhancement Funds that can be used for abandoned rail preservation. These federal monies are typically used for non-traditional transportation related activities, including the preservation of rail corridors (*36*). The funds allotted to rail preservation can be used to purchase abandoned railway corridors for public use, including bicycle and pedestrian use. Enhancement funds cannot be used to preserve an abandoned rail corridor strictly for future uses as an active rail line or for potential highway uses (*36*).

Virginia

Virginia's Rail Preservation Policy considers rail corridors as important elements of the state transportation system. Funds for projects deemed important elements of the transportation system are available for the purchase of abandoned rights-of-way for transportation purposes. The state provides money from its general appropriations for the purchase of abandoned rail corridors. General appropriations money can be disbursed in the form of grants or loans. Purchased properties can be leased to outside parties for continued rail use, but the state cannot disburse funds to support general railroad operations. In allocating funds, the state considers cost in relation to prospective use, line capacity, and public benefit. The state will also consider potential future public uses and does not specify that these must be rail uses (*37*).

Virginia also sets aside Transportation Enhancement funds for 12 specific project areas, including preservation of abandoned rail corridors. Projects that can be considered for the funds

must develop a public use trail that is not restrictive. Though not as specific as South Carolina's language, the guidelines for access to Transportation Enhancement funds in the state of Virginia specifically states that the acquisition of railroad right-of-way must preserve and protect a rail corridor but that activity is not sufficient to justify the use of Transportation Enhancement funds for the project. It will allow for the use of Transportation Enhancement funds if a trail is to be built alongside a rail line, but with the rail line left intact (*38*). Appendix D includes relevant portions of the Virginia Rail Preservation FY 2007 Program.

Wisconsin

The Wisconsin Department of Transportation administers two rail assistance programs, the Rail Infrastructure Improvement Program and the Freight Rail Preservation Program. The Freight Rail Preservation Program provides grants to local unites of government, industries, and railroads to preserve essential rail lines. The program grants up to 80 percent of the cost of a project for the following purposes (*39*):

- To purchase abandoned rail lines in an effort to continue freight service, or for the preservation of the opportunity for future rail service.
- To rehabilitate facilities, such as tracks or bridges, on publicly-owned rail lines.

Relevant sections of the Wisconsin code are included in Appendix D.

New York

New York law grants the state transportation commissioner a preferential right to acquire abandoned rail properties on behalf of the state of New York for future transportation purposes. The code does not specify if future transportation uses must be rail uses or if the right-of-way could be used for highway or other transportation related activities (*40*). According to the New York Department of Transportation, under this law and under federal railbanking provisions, several corridors in New York have been preserved and used in the interim as trails (*41*). Appendix D contains applicable sections of New York law governing acquisition of abandoned rail corridors.

California

California's state rail plan recognizes the important role that rail infrastructure plays in the state's economy. According to the plan, maintenance of the current freight rail system is

extremely vital. The plan also calls for corridors that are not currently active but may one day return to active service to be preserved (*42*). In 2005, CALTRANS released a study on right-of-way and abandoned corridors that stressed the importance of maintaining abandoned right-of-way for future transportation uses. The study discussed some of the successes California has had using active and abandoned freight right-of-way for commuter light rail (*43*).

Florida

Florida was in the process of developing a new state rail plan during the research project. The policy recommendations, adopted in March 2009, recognize that significant investments are required to address rail needs in the state. The plan discusses rail abandonment, stating that there have been several cases since 2004 of abandoned corridors being preserved for future rail use and other public uses. The plan recognizes the importance of preserving existing passenger and freight rail corridors and rights-of-way for future use (*44*). The plan lists one related Florida Department of Transportation long-range objective to "preserve, maintain, and modernize the rail system when public benefit can be demonstrated." The plan also lists the following key implementation strategies for this objective (*44*):

- Continue to invest in rail system infrastructure and service, such as the current financial assistance for short line railroads to achieve 286,000-lb rail car weight standards, as well as other track and signal improvements, where appropriate.
- Continue to identify and support rail bridge replacements and improvements, where appropriate.
- Continue to support the modernization of the rail system for better and more efficient service such as promoting the use of intelligent transportation and other system management strategies and technologies.
- Encourage the long-term preservation of existing passenger and freight rail corridors and rights-of-way for future appropriate use.

CHAPTER 6: CHALLENGES OF ABANDONMENT AND CONVERSIONS

IN THE FEDERAL CONTEXT

Adjacent Landowners

As has already been noted, almost since their inception, rail conversions and specifically rail-to-trail conversions have been challenged primarily by landowners living adjacent to the corridors who expected that upon permanent discontinuance of service by the railroad the lines, the easements would revert to the original owner (*5*). However, (i) because of the case law that has accrued since the mid 1980s along with statutes connected to rails to trails and (ii) resultant incentives provided to railroads, many railroads have sold or donated their abandoned corridors for trail, highway, or utility uses.

The legal issues involved in rail conversions are complex and ever-changing (*5*). Ownership of the actual rail corridor land involves issues of state law governing corporations, state constitutional law, state property law, federal pre-emption, interstate commerce, and federal transportation policies. A major issue for example, might be that the land might have been acquired by state law, or via federal land grants; thus, a single line or corridor might have acquired the land in multiple ways.

As an example, in *Hash v. United States*, the court divided the action into categories based on the different mechanisms and legal forms whereby the railroad had acquired the various segments of the 83.1 miles of right-of-way. There were initially 14 categories in this case. Category 1, for example was for landowners who obtained their land pursuant to the Homestead Act, after the Railroad had acquired its right-of-way traversing then public land pursuant to the 1875 General Railroad Right of Way Act, which was codified at 43 U.S.C. § 934-939 and was repealed in part in 1976 (Pub. L. 94-579, title V II §706(a), 90 Stat. 2793 (1976)).

This meant that for the category 1 lands, the United States held a reversionary interest in the rights-of-way (16 U.S.C. §12348(c)). The other categories related to landowners who already owned the land before the railroad obtained a right-of-way traversing it, but where the multiple deeds conveyed (i) an easement, (ii) a fee simple with right of reverter, and/or (iii) a fee simple absolute.

Land Acquisition

Railroads received government subsidies in the form of federal land grants, government bonds, state land grants, tax abatements, favorable legislation, and eminent domain powers (*4*). One must trace the history of state and federal regulation of railroad property rights through changing political contexts in order to determine if a particular piece of corridor land is suitable for conversion or whether its legal status renders the land vulnerable to the wide variety of legal challenges (*5*).

Railroad Authority to Acquire Land under State Law

Since railroads started mostly as intra-state lines, their charter would often refer to the state's general corporations law that governed shareholders, fiduciary responsibilities, the types of property that could be acquired, and the activities in which they could engage (*5*). Additionally, many charters granted the railroad company eminent domain power for the construction of this line so that the land acquisition could proceed without a landholder standing in the way of progress. Interpretation of railroad property rights must therefore be constructed utilizing state railroad property law, and a set of varied rules related to deed construction, the regulation of types of interests, and the mechanisms of acquisition for railroad corporations.

Interpretation of Railroad Grants

Depending on the interest acquired, the railroad may or may not be able to transfer that interest to an agency, private, or trail owner, or the railroad may lose the interest in the process of transferring it or discontinuing railroad services. To determine the interest acquired, one must look at the original granting documents, as well as subsequent transfers of the grantor's land to determine what interests, if any might have been retained (*5*).

In general, three important questions should be kept in mind when engaging in any deed interpretation (*5*):

- How was the land obtained? Through eminent domain, government grant, private negotiations?
- Does the deed under consideration date from the early days of railroad development in that state or was it instead drafted at a time when numerous interpretive precedents

existed and the parties were sophisticated, bargaining well-understood customs and precedents?

- What does the underlying dispute involve?

Table 13 provides the general principles for integrating railroad deeds' language.

Table 13. General Principles for Interpreting Railroad Deeds' Language.

Deed Element	Language Favoring Fee Simple Finding	Language Favoring Easement Finding
Purpose for Conveyance	Grant of land to railroad	"For a railroad right-of-way"
Nature of Land or Right-of-Way	More conventionally shaped plot of land or right; notable resale value independent of surrounding land	Long, narrow right-of-way; of little use to anyone other than the railroad at time of conveyance
Consideration	Substantial consideration, presumably near market value	Little or nominal consideration
Bargaining Strength	Grantor's capable of arm's length bargaining with railroad	Railroad with superior drafting sophistication and grantor with less bargaining strength

Source: (*45*)

Additionally, according to Wright (*5*) on interpreting private deeds, most courts have adopted a general rule that where the deed conveys "land" without limitations, then a fee simple is conveyed and where a "right" only is conveyed then the issue is about an easement. The granting clause is the most important element of the deed, indicating what is being conveyed and how. The interest conveyed in the granting clause may be limited through a reverter or other future interest, but the better legal opinion is that it cannot be reduced to an easement (*5*). Hence:

- If land is conveyed according to the statutory language of the state's fee simple statute, then it may be limited to a defeasible fee, but it should not be interpreted as an easement.
- If only a right-of-way or right of use is conveyed in the granting clause, then an easement and not fee ownership generally will be deemed to have passed.

Dual Meaning of Right-of-Way

When reading a deed one must be aware to give its correct interpretation to the term right-of-way (*5*). The first way it may be interpreted is as a "right of passage or a right to come

onto somebody else's land." The second meaning could be linked to a railroad or street corridor (*46*).

Judges, scholars, and commentators have since cited the term's dual meaning as the leading cause of ambiguity and litigation in railroad property cases. Because many deeds only used the term right-of-way and did not use either the term "fee simple" or "easement," courts must continually attempt to deduce intent.

The United State Courts of Federal Claims in *Blendu v. United States* (79 Fed. Cl, 500, 2007) noted that "The question of whether a deed conveying land to a railroad and also containing the term 'right-of-way' conveys a fee simple or a mere easement has bedeviled the courts for at least a century and has never, as far as this court can discern, been the subject of a dispositive analysis." The *Blendu* court discussed the issue of the phrase right-of-way in both the habendum clause, and the granting clause of the deed, noting that numerous cases from other states expressed the view that conveyances can be limited by language in either the granting or habendum clauses.

The difference between both relies in that whereas a granting clause contains the words of transfer of an interest, a habendum clause defines the estate granted and declares the extent of the interest conveyed. In this instance one category of deeds being disputed contained the term right-of-way in the habendum clause and was held by the *Blendu* court to "unambiguously reflect an intention to convey an easement, and overcame Idaho's statutory presumption that favored fee simple."

Statutory Rules Affecting Railroad Property Interests

The possible effects, according to state regulation, of statutory rules can be classified as provided in the following table (see Table 14).

Table 14. Statutory Rules Affecting Railroad Property Interests.

Marketable Title Acts	A railroad interest could have become a fee simple absolute even if the grantor conveyed a fee simple determinable (thus, retaining the possibility of a reverter) as the result of a Marketable Title Act.
Statutes Creating Presumptions	For example, rail-trail or public use statutes may provide that easements remain intact even during a period of inactive rail use, thus preventing the termination of the easement and return of possession.
Non-Transferability of Reverters and Termination of Stale Conditions	It is necessary to review other title statutes aimed at cleaning up outstanding future interests. Hence, a statute prohibiting transfers of reverter interest would, presumably, prohibit the transfer of the grantor's possibility of reversion to successors-in-interest.
Common Law Termination of Conditions	Another way future interests may terminate is through common law rules extinguishing conditions, limitations, and other restrictions on land after a sufficient passage of time. These rules might terminate the conditions having a simultaneous effect of extinguishing the future interest that accompanied the condition.
Centerline Rule	Some states have common law principles giving the land to the adjacent landowner from the centerline of the abandoned rail corridor in the absence of another party with better title. This common law rule, referred to as the centerline rule, applies with regard with regard to highways and other public access routes and rests on the assumption that the grantors intended to transfer all they could. Note that Texas also utilizes the strip and gore practice.
Statutes of Limitation	These statutes represent potential barriers to the enforcement of future interests or railroad abandonments.
Standard Property Rules vs. Special Railroad Exceptions	Courts normally are in a dilemma: either they might apply standard rules of deed construction (generally favoring railroads) or follow anti-railroad precedents. Now that railroads are selling their property interests to trail groups, state and local governments, and utility companies for other uses such as trails and fiber optics, the tension between standard property rules and special exceptions has become greater.

Source: (*5*)

Class Action Challenges against Rail-Trail Conversions

In the early 1990s, a number of law firms began filing class action challenges against rail trail conversions, not so much because their clients opposed the program, but because landowners adjacent to defunct rail corridors were unhappy that they were not able to absorb the land into their own property holdings (*47*). These class actions began initially as suits against the railroads, claiming that the railroads did not have property rights to their corridors that they sold to trail groups, state agencies, or perhaps even offered for sale to these adjacent landowners.

As class action litigation matured in state courts, many landowners turned against the telecommunications industry and against the federal government and presented takings challenges to the railbank act (*5*). However, all of these newer avenues of litigation ultimately

come back to questions of resolving the property rights of each individual landowner under state law.

Shifting Public Uses and the Telecommunications Challenges

Railroad easements consist of the right to use another's land for the purpose of operating a railroad (5). Courts in some states have regularly allowed railroad easements to be shifted to other public transportation uses like highways, for example under shifting public use doctrine. Courts have also allowed incidental uses, ancillary to the primary easement use, such as telephone or electricity lines.

In order to justify the shift in use occurs, courts have used the following rationale (5):

- To the use of a new technology (steam locomotive to diesel locomotive) that would have been unknown at the time the easement was granted—where the courts have found that the scope of the easement has not been altered.
- A new use—where in some cases the courts have questioned the change in the use of the easement justifies its retention.

In *Preseault v. United States* (1990), the Supreme Court determined that holding the railroad easement intact for future reactivation is within the scope a of a legitimate railroad use. Presently, the most contested issue is to determine whether railroads, agencies, or trail groups can authorize communications or other utility uses in rail corridors when the utilities are not necessary for operating trains (5). For example, the courts are split on the rights of railroads to authorize fiber optic utility uses in railroad rights-of-way. For example, in *re AT&T Fiber Optic Cable Installation Litigation*, 2001 U.S. Dist, 2001 WL 1397295 (S.D. Ind. 2001, unpublished) the court held plaintiff must prove as part of case-in-chief that the railroads had no right to grant easements to telecommunications company to lay fiber optic cables on property.

In *Mellon v. Southern Pacific Transport Co.* (1990), Texas has held that it is not beyond the railroad's authority to allow fiber optic uses in corridors. In this case Southern Pacific owned a right-of-way in the form of a railroad easement and entered into an agreement with a telecommunications company (MCI) granting the latter an easement for the installation of fiber optic cable. The fiber optic cable's purpose was not only to serve for Southern Pacific's communications needs but also to provide telecommunications capacity for other uses. The landowner objected but the Court held that:

- The right-of-way use must be consistent with the purpose for which the right-of-way was granted.
- A fiber optic line is authorized as an incidental use, which is not inconsistent with railroad uses and does not burden the plaintiff.

In general, because the construction of rail entails a modification of the rail bed several feet below the surface, the burying of shallow cables has been seen as consistent with the scope of use originally granted to the railroad.

Rails-to Trails and the IRS

As an incentive for railroads to railbank their corridors, Congress passed 16 USC 1246(k), which creates possibility of a charitable deduction for the contribution of railroad rights-of-way (*5*). The statute facilitates the deduction by stating that such contributions will be deemed to "further a Federal conservation policy" and "yield a significant public benefit."

BACKGROUND TO STATE REGULATION RELATED TO ABANDONMENT

General Rules

According to property law mere non-use does not constitute abandonment: the traditional rule of abandonment of property right is consistent across the states and requires both (*5*):

- Intent to abandon.
- Actions consummating that intention.

However, most easement deeds contemplate that the railroad has received its property rights in its corridor land on the premise that the land will be used for a particular purpose (*5*). The rights granted are co-existent with the use, so cessation of rail services could trigger a state law abandonment case as long as the railroad intends to give up the services indefinitely.

By Type of Interest

Rules surrounding abandonment will also vary dependent upon how the land was acquired. Table 15 shows the basic tenants of how deed construction regarding abandonment should be reviewed.

Table 15. Abandonment under State Law.

Defeasible Fee Interests	The deed will contain a clause indicating that the land will revert to the grantor, for example, upon (*i*) abandonment, (*ii*) failure to build the line in a designated time period, (*iii*) if the train no longer runs, (*iv*) discontinuation of services, or (*v*) if the covenants are breached. If a state does not terminate the condition that the property be used for railroad use only because the condition has been satisfied after many years of rail operations, the deed language must be examined carefully to determine if the condition has been met. All reverter interest in deeds granting defeasible fees to the railroads must be analyzed in light of state statutes and common-law rules that terminate limitations and conditions.
Easements	Easement analysis has more imbrications because states have different approaches to interpret "intent." Also, many states fail to maintain the distinction between STB abandonment (determination of public necessity and convenience underlying a decision to discontinue offering rail services) and abandonment under state property law. So if a state focuses on "railroad use," the conversion of the railroad line to non-rail use is an impermissible extension of a railroad easement. Or, as established by the *Chevy Chase Land Co.* case, some states require evidence that the holder of the easement intends to permanently (vs. temporarily) cease using the easement for the purpose to which it was limited. It is important always to consider if the state has a statutory definition to lessen risks involved with the purchase of a corridor (*5*).
FGROW	Two step process: - Obtain STB abandonment authorization. - Abandonment of property rights controlled by federal regulations. 43 USC § 912 provides that federal rights-of-way are deemed abandoned only by virtue of a judgment by a court of competent jurisdiction or an act of Congress. In the first case, only federal courts' decisions have been deemed as appropriate (*vs.* any other agency resolutions). These rules are also applicable to Indian lands.

Source: (*5*)

TEXAS

Table 16 presents the definitions and interpretations state courts and regulation have given to terms that had already been reviewed previously in this report.

Table 16. Texas Legal Definitions.

Adverse Possession	Principle of law where an actor who uses land of another for an extended period of time may be able to claim title to the land. To prove adverse possession the person claiming the ownership must show that its possession is actual, open, notorious, exclusive, hostile, under cover of claim or right and it must be continuous and uninterrupted for the statutory period. In other words, the other party must be proven to have knowledge of the use and, as a result of their own inaction, acquiescent.
Easement	Allows another person to use land for a specific purpose. Easements are widely used to acquire a railroad right-of-way.
Prescriptive Easement	A prescriptive easement results when an actor gains access where someone uses part of the owner's property without permission. It must be acquired through open, notorious, continuous, exclusive, and adverse use of someone else's land for an uninterrupted statutory period. The length of time required to generate standing varies by state but is, at a minimum, seven years of continuous use. This concept has been used for both private sector and public sector claims, for example, public beach access.
Railroad Easement	A type of easement that resulted from the particular land use needs associated with railroad activity. Railroads needed a property interest that was more substantial than a regular easement and that included exclusive control over the land, fencing, tunneling and drainage, ditches, alteration the elevation, and modification of the subgrade. In this sense, the expansive nature of railroad easements makes them close to fee simple possession so long as the easement is active. Railroads may lose their easements through abandonment because, unlike fee simple title, which cannot be abandoned even when the owner does not want the land, an easement is merely a right to use and occupy land that is deeded to another party.
Fee Simple Absolute	Today most property is sold as a *fee simple absolute,* which places few conditions on the use of the land except when "commons" issues come into play.
Defeasible Fees	A *fee simple determinable* or a *fee simple subject to a condition* imposes a condition for the use of the land; an uncertain future event that, if it occurs, may cause the fee interest to automatically terminate and revert to the grantor, his heirs, or assigns (the grantor who initially imposed the limitation on the land's use). By creating a fee simple determinable or subject to a condition, the deed also creates a "possibility of reverter" in the grantor.
Fee with Condition Subsequent	Creates a fee simple estate with a condition attached to the conveyance, which if violated creates a non-automatic right to the original grantor to re-enter and take possession of the land.
Fee Simple Determinable	Creates a fee simple estate with a condition attached to the estate. If this condition is violated the property automatically reverts back to the grantor.
Fee On Limitation	This is often called a fee simple determinable and creates an estate with language such as "To A for so long as," or "To A during," or "To A Until."
Remainderman Interest	An estate in property that follows upon termination of a prior intervening possessory estate.

Land Grants in Texas

One of the biggest issues that has surrounded abandonment of railroads has been the underlying issue of ownership of property. As discussed earlier, when railroads were being developed in the late 19th century grants of land were given to the railroad companies to encourage development. During the 19th century, Texas granted 36,214,878 acres of its public lands to encourage various internal improvements, specifically in transportation—almost 90 percent of the land granted went to railroad companies (*48*). In the early 1850s, the Legislature responded by chartering several railroads to encourage rapid construction; each charter granted eight "sections" of public land for every mile of track laid. Very little mileage resulted, however, so in 1854 a general law doubled the sections granted per mile (*48*). This legislation, plus a measure passed in 1856 authorizing the loan of state funds to railroad companies, increased railroad construction until the beginning of the Civil War.

Soon after the war, the legislature liberalized the law regarding public lands, but the Constitution of 1869 prohibited further grants to railroads. An amendment in 1873 allowed grants but adverse situations in the state discouraged construction. The Constitution of 1876 authorized legislation granting 16 sections per mile constructed (*48*). The legislature passed this authorization in the same year. This constitution of 1876 also required that all railroads pass within 3 miles of the county seat. This law, coupled with economic recovery, stimulated renewed railroad construction. In 1882, the legislature upon learning that little un-appropriated land remained repealed the law.

Altogether, 43 companies received 32,153,878 acres of the state's public land during the three decades that the granting process was operative decades (*48*). Although, as might be expected, this transfer of a large portion of the public domain into private hands involved a degree of political manipulation and fraud, the grants played a significant role in hastening railroad construction in Texas. Actually, according to Heftman (*49*), the most problematic incidents concerning the use of railroad's rights-of-way were in regard to private acquisitions of rights-of-way. These subsequent acquisitions happened mostly because of the cessation of condemnation authority and the ceasing of governmental and state grants. Private entities negotiated deeds creating most of the current problems: railroad expansion continued to happen through private negotiation of rights-of-way easements or fees (*49*). The language of the granting

clause itself largely determines the nature of the property conveyed; however, there is a lack of uniformity in deed interpretation, even among Texas courts.

Railroad Authority

VTCS lay out the general grants of powers to the railroads themselves, including powers of eminent domain.

- *Article 6341* notes that railroads corporations shall be able to purchase hold and use all such real estate and other property as may be necessary for the construction and use of its railways and to convey the same when no longer required for the use of such railway.
- *Article 6339* establishes that right-of-way was secured through condemnation shall not be construed to include the fee simple estate in lands either public or private. Additionally this article establishes that a right-of-way that a railway company acquires by condemnation is not lost on forfeiture or expiration of the railway company's charter. Thus, the right-of-way remains subject to an extension of the charter or the grant of a new charter and a new condemnation of the right-of-way is not required.
- *Article 6351* expressly authorizes the power of eminent domain by railroad companies and declares that all property acquired or condemned by railroads must be declared for and charged with public use.

In *Stevens v. Galveston H. & S.A. Ry. Co* (Civ. App.) 169 S.W.644 (1919) the court held that a railway company can acquire by purchase or donation fee simple title to lands for its right-of-way. Multiple cases were litigated regarding the conveyance of land, for example, *Crowell & Conner v. Howard* (Civ. App) 200 S.W. 911 found that a conveyance to railroad company in the usual form of general warranty deed held to give title to the property and not a mere right-of-way.

Railroads could also take, hold, and use voluntary grants of real estate and other properties and convey these when no longer required for the uses of the railway, in any manner that was not inconsistent with the terms of the original grant. Deeds that convey property to a railroad company, on condition that the property be used exclusively for railroad purposes, or so

long as it shall be used for such purposes convey the fee and not merely the easement according to *Stevens v. Galveston.*

Red River, T & S Railway Co et al. v. Davis 195 S.W. 1160 (1917) held that when the railroad abandoned the use for which it was taken, the land reverted to the grantor. Here the deed that conveyed the land to the railroad, was to be used for railroad purposes only. The land was never used for railroad purposes. The court in reviewing the deed found that the deed imported a condition subsequent. Thus the failure of the railroad to use the land for railroad purposes meant it forfeited its easement created by the deed and the land returned to the grantor. Of course, this case predated the modern construction of highways and other uses that have been substituted for rail use in the recent past.

TEXAS CASE LAW

Why is it important to ensure that Texas transportation agencies and authorities have legislative support, or a public policy announcement, for acquiring abandoned rail corridors? Mostly because in reviewing the history of abandoned rail corridors throughout the U.S., the most important issue that may occur once a railroad is in the process of abandonment is that the surrounding property owners, in many cases, will want to take back their reversionary, contingent, or remainderman interests in the underlying property.

There are also many cases that have argued 5th Amendment takings surrounding railbanking activities. This in turn has led to a plethora of litigation surrounding rails to trails activities. As has been seen in the *Preseault* cases, litigants have had strong support from property rights groups, and cases have dragged on for many years. This had led some state legislatures to actively create a public policy regarding railroad corridor abandonment.

If the formal federal process for abandonment has not taken place, or has been damaged in some way, a question that may arise is *"once the federal process for formal abandonment has taken place, who owns the land under Texas Law?"* For this reason the balance of this chapter will review some of the U.S. and Texas case law regarding abandoned rail corridors and the litigation has arisen to produce a picture of the uncertainty, that can arise, around property ownership rights, easement or fee simple issues, and the remainderman issues where land was deeded as a fee simple with limitation or a fee simple with condition subsequent or fee simple determinable. Additionally, attacks against rails to trails conversions will be reviewed.

Underlying Issue of Land Ownership

There have been many cases that have surrounded who owns the property, and whether the railroads took merely an easement and not fee simple ownership. These cases often take the form in original suit as a form of action of trespass to try title. Other cases have reviewed whether title was acquired by adverse possession. In most instances, courts will review the original conveyance documents and deeds to determine the parties' intent.

As each case will be determined by the deed that is being reviewed, it cannot be claimed with any certainty what way a case may turn. This issue has been long-standing with court decisions nationally and here in Texas dating back to the late 19th century and throughout the 20th century. As an example, in *Olive, Sternenberg & Co. v. Sabine & East Texas Railway Co.* 11 Tex.Civ. App. 208; 33 S.W. 139 (1895) the railroad sought review from a judgment in district court regarding an action of trespass to try title by the landowner who wanted to recover from the railroad its right-of-way across land that the landowner alleged the railroad had entered upon and ousted the landowner from. The facts of the case were that the owner of the fee simple had eructed structures on portions of the 200 ft easement adjacent to the railroad. The decision turned on the correlative rights of the owner of the fee and the owner of the right (railroad easement), noting that, "*it cannot be held that an exclusive possession of a portion of the land and charged with the easement by the owner of the fee is consistent with the rights of the person entitled to the easement to put the land to the uses so mentioned."* The court held in favor of the railroad noting that the presence of the structures, instead of being a benefit to the railroad, was inconsistent with the right-of-way privilege and was an unjustifiable interference with its exercise.

Deed Construction

Easement or Fee Ownership?

Many cases have surrounded who owns the property, and whether the railroads took an easement or a fee simple ownership. The Texas Supreme Court in *Texas Elec. Ry. Co. v. Neale* stated that:

- There are cases, such as *Right of Way Oil Co. v. Gladys City Oil Co,* 106 Tex. 94, where courts have interpreted that even when deeds contain all elements to grant land, if the words "right of way" are present it shall be construed as an easement.

- There are other Texas cases, such as *Calcasieu Lumber Co. v. Harris* 77 Tex. 18, 13 S.W.453, where wording regarding right-of-way was present but the interest was interpreted as a fee.

Thus, title examiners must exercise care in the examination of instruments purporting to cover roads, streets, railroads rights-of-way, or other strips of land to verify whether such conveyances are a fee or an easement. Is it a "right-of-way Deed" or does it "convey land"?

Texas courts have long held that owners of fee title to property burdened by a railroad right-of-way have no right of passage over the ground burdened by the easement because the railroad has exclusive rights of use to the surface to the exclusion of the owner. The railroad rights-of-way do not have the attributes of a typical easement because the railroad has a possessory interest in the right-of-way to the exclusion of others, including the titleholder of the property (*State v. Beeson* 232 S.W. 3d 265; 2007 Tex. App). Railroads have been held to have the exclusive use of the surface of the land on which right-of-way is located and thus a right-of-way is more similar to a fee interest than a typical easement.

Abandonment of an Easement Equals Non-Use?

Whenever rail companies stop using their rail corridors the issue then turns on whether the corridor and thus the easement has been abandoned or not. In many instances, courts will review the original conveyance to determine the party's intent. Deed construction by the courts has reviewed whether the original granting instrument conveyed land upon limitation or a condition subsequent to determine ownership. One of the early seminal cases on this issue in Texas is *Stevens v. Galveston* cited earlier.

In *Stevens*, the court held that a deed conveying property for *"so long as it should be used as a railroad right of way"* conveyed it upon limitation and not a condition subsequent. Any right to recover the land for breach of condition passed through any quitclaim deeds that were given by the grantor to third parties. *Stevens* noted that a deed that conveyed property to a railroad *"on the condition that it be used exclusively for railroad business, and if such premises shall cease wholly to be used for such purposes the property would revert to the grantors on cessation of such use"* was a condition subsequent. Stevens held that a condition subsequent requiring the land to be used for specific railroad purposes, and which has been in continuous service (in this instance 30 years), does not free the land from the condition.

Red River v. Davis held that where land is deeded to a railroad on a condition subsequent, forfeiture of the easement created by the deed would be the effect from permanent abandonment of such use. Other cases have also reviewed whether the railroad has abandoned the corridor. *Scott v. Missouri, O. & G. Ry. Co* (Civ App.) 151 S.W. 578 held that a railroad that graded its right-of-way, paid taxes, and never ceased trying to use it for railroad purposes, and finally succeeded in doing so could not be held to have abandoned it.

In 1950, the Court in *Adams v. Rowles* 149 Tex, 52 228 S.W.2d 849 defined abandonment of an easement when the use for which the property is dedicated becomes impossible to execute, or the object of the use wholly fails. Additionally, in *Toal – v. Smith* 54 S.W. 3d 431 (Tex. App. – Waco 2001, pet. denied) the Court established that mere non use (or delay beginning its use) does not ordinarily constitute abandonment.

Adjacent Landowner Ownership Rights

Texas follows the "strip and gore" doctrine in which a conveyance of land bounded by a railroad carries with it the fee to the center of the railroad, unless the contrary intention is expressed in provisions of the grant (*Reagan v. Marathon Oil Co*., 50 S. W. 3d 70 (Tex. App-Waco 2001). *Cox v. Campbell* (135 Tex. 428, 143 S.W. 2d 361 (1940)) noted the adjacent landowners own property up to the centerline of the railroad *unless a contrary intention is expressed in plain and unequivocal terms*.

State v. Fuller 407 S.W.2d 215 (1996) held that adjoining landowners 'become the owners, subject to the easement' of their respective halves of the right-of-way by virtue of the deed conveying the adjoining property to them. The Dallas Court of Appeal interpreted Fuller in *Auberbach v. Dallas Area Rapid Transit* 1996 Tex App and characterized an adjoining landowner's interest prior to abandonment as a fee simple interest subject to an easement, not a conditional or contingent interest fee simple. The court has held that words that define the property as extending only to the boundary of the highway, or *"save and except the road"* or *"not including the road"* do not expressly rebut the presumption. There was an exception to the doctrine if the grantor owned lands on both side of the road (*Rio Bravo Oil Co. v. Weed*, 121 Tex. 427, 50 S.W. 2d 1080 (1932) but this is no longer favored.

Soncy Road Property Ltd et al. v. George Chapman, Karen Corp and City of Amarillo 259 F. Supp. 2d 522 (2003) reviewed the sale of an abandoned corridor by BNSF to Chapman,

Karen Corp and City of Amarillo. In this instance Chapman wanted to purchase a portion of the corridor that abutted his property, but BNSF preferred to sell to a government entity and it offered the entire corridor to the City. The city only wanted to acquire the eastern section of the corridor (about 3.5 miles) for development of a park and BNSF was not willing to sell just this portion. The city then published a request for proposal to create a joint venture to purchase the corridor in its entirety with the city proposing to only keep ownership of the eastern part of the corridor. No proposals were submitted by the Plaintiffs in this case (Soncy Road Property, Amarillo Cottonseed Hull Co, Golden Spread Energy Inc, City Machine & Welding Inc, Krause Landscape Ind, and Lane Plunk) who all owned land adjacent to the corridor. However, Chapman submitted a proposal in which he would take title to the entire corridor and convey the eastern section to the City. After negotiation the city and Karen Corp signed a real estate purchase and sale agreement and Karen Corp secured two cashier's checks, one was payable to BNSF and one to the City. BNSF then deeded the western corridor to Karen Corp and the eastern portion to the city.

The plaintiffs contended that the city had sold or exchanged its interests in the corridor for less than market value in violation of statute and held the land in a constructive trust for the plaintiffs. The case turned in part on Texas Statutory Law on how a city could dispose of property—Texas Local Government Code §272.001 (a) which established that the city must provide notice to the general public of the offer of land for sale. However, sub-section (b) noted that some specific types of lands could not be conveyed or sold for less than market value *unless* the transaction was with one or more abutting owners who owned the underlying fee simple.

The statue then described these types of lands that were narrow strips of land, or land that because of its shape, lack of access to public roads or was such a small area that cannot be used independently under current zoning rules. The land or interests described in this subsection *may* be sold to abutting property owners if land has been subdivided, or abutting property owners in proportion to their abutting ownership. The section notes, however, that the sub-section does *not require* the political subdivision to accept any bid or offer or to complete a sale or exchange.

The court found that there were no Texas cases construing the interest, if any, that abutting landowners had in parcels of land to which the sub-section applied. This left the court to review if the sub-section applied, and that the city had acquired an interest and sold it for less than market value. The court noted that to establish a substantial due process violation the

petitioners would have to establish the existence of a property right. In this case the court held that the plaintiffs did not have the constitutionally protected interest because the 14th Amendment protects only property rights a person has already acquired and not those to which it had expectancy. In this case the court held that the plaintiffs could not have more than a mere expectancy in the western corridor. This was because sub-section (b) gives the city the option to sell to abutting landowners in proportion to their ownership, but the city is *not compelled* to sell at all or in piecemeal fashion, and it could also sell to another purchaser for fair market value.

State v. Beeson (2007) is also instructive for the purposes of reviewing the ownership of land beside an abandoned railroad right-of-way. In this case the landowners owned small tracks of property north of a railroad right-of-way, and a public highway ran along the southern boundary of the right of the railroad right-of-way. These tracks had a common source of title and trial court had condemned an easement for the railroad in 1893. This was a 100 ft right-of-way and it bisected the landowners' tract into two tracks.

The case at issue surrounded the use of the right-of-way by adjoining property owners after it had been abandoned by the railroad company. The landowners contended that they possessed an easement by necessity, or alternatively, a prescriptive easement to cross the railroad right-of-way in order to access a public road that runs along the opposite of the railroad right-of-way. The court held that the state's dedication of the right-of-way to public use when it acquired the property from the railroad prevented the state's interest from being impaired by a prescriptive easement once the railroad abandoned the right-of-way. The adverse possession by the landowners prior to the abandonment by the railroad of the right-of-way (if any), the court held "simply ran against the railroad's possessory interest and not against the state's pre-abandonment interest."

Continuing Issues of Federal Jurisdiction

Baros v. Texas Mexican Railway Company 400 F.3d 228 (2005 U.S. App) provides an excellent example of a federal appeal surrounding an alleged abandoned railroad and the abutting landowners' suit arguing that the railroad was abandoned as a matter of law and that the STB no longer exercised jurisdiction over the line. In this instance the landowners sought a declaration that portion of a railroad right-of-way that abutted their property had been abandoned and that therefore the land reverted to them as matter of law. The case, in this instance, turned upon

whether the STB still exercised jurisdiction over the line. In October 2003, district court found that the conditional nature of the abandonment exemption given by the STB to Southern Pacific was 'dispositive' in this case. It held that that when an abandonment exemption is conditional, the STB retains jurisdiction over a railroad right-of-way until it has been abandoned pursuant to the conditions established by the agency, and the agency retains exclusive and plenary jurisdiction to determine whether there has been an abandonment sufficient to terminate its jurisdiction. The court held that STB retained jurisdiction and the landowners' suit was an improper collateral attack on the STB decision precluded by the Hobbs Act.

On appeal, the Court again held that because the abandonment authorization initially granted was conditional the STB retained exclusive and plenary jurisdiction. The Court of Appeals distinguished the Supreme Court's decision in *Preseault*, (494 U.S. at 5 n.3), which held that once a rail carrier abandons a line, the line is no longer part of the transportation system and STB's jurisdiction terminates. Thus, in proceedings in which the STB imposes *no conditions* on abandonment, the STB's decision to authorize the abandonment will end its jurisdiction over the line. In contrast, the Court of Appeals noted "…*where an abandonment is conditional, the STB retains jurisdiction over a railroad right of way until it has been abandoned pursuant to the conditions* imposed by the agency."

Finally, the Court of Appeals noted that the landowner's argument that abandonment would automatically take place upon termination of the 180 days public use negotiation period would place the agency in a position to be unable to reopen or extend the period for negotiations. The court noted that the STB had also changed its practices to require that rail carriers file a letter confirming consummation of abandonment because "… *critically no such public filing requirement would be necessary if the STB's jurisdiction over a rail line ceased automatically as a matter of law on the expiration of the 180 day period imposed by a NITU. To the contrary, this filing requirement implicitly recognizes that the decision actually to abandon a line rest with the carrier.*"

CHAPTER 7: LEGISLATIVE AND POLICY GAP ANALYSIS

INTRODUCTION

Current Texas administrative code gives TxDOT the ability to acquire abandoned rail facilities for possible future rail use or other *public use condition*. While Texas Transportation Code and/or Texas Administrative Code have thus far been sufficient to meet TxDOT's needs in acquiring abandoned rail facilities, there are some potential changes that could give TxDOT increased flexibility when acquiring abandoned rail corridors for purposes other than future rail use.

FUTURE ABANDONMENTS

Most of the major abandonments in Texas have already occurred. Based on recent researcher conversations with TxDOT, BNSF, and Union Pacific Railroad (UP) the track mileage currently in place in Texas is relatively stable, and the potential for substantial abandonments is small. That said abandonments are still occurring in the state, some of which may be of interest to TxDOT either for preservation of rail service or for alternative uses.

According to Gil Wilson (*50*) the track mileage being abandoned varies greatly from year to year, but most abandonments, are of short industrial spurs. According to researcher conversations with the Class I railroads, most rail lines do not go through the full abandonment process if there is an interested buyer, as it is in the rail company's best interest to find a way satisfy the existing customers on the line, even if the rail line is not profitable. If rail service on a spur is discontinued then the rail company may lose that business to trucks all together.

Furthermore, during the researcher's meetings with BNSF officials they pointed out that some abandonments are actually at the request of the customer. For instance if a lumber yard wants to expand, which would require shortening the spur, then part of that track will be abandoned even though the yard is still being serviced (*51*).

CURRENT CODE

Texas administrative code provides sufficient authority to acquire abandoned rail facilities for possible future continued rail use. Currently Title 43 Part 1 Chapter 7 Subchapter C rule 7.22 of the Texas Administrative Code grants that "if the department determines that there is

a need to preserve the rail facility for continued rail service *or to preserve the corridor for another public-use condition under 49 C.F.R. 1152.28*, it will notify the municipalities, counties, or districts in which all or a segment of the rail facility is located , and will conduct one or more public hearings to receive comment on the propose acquisition." This wording suggests that TxDOT could acquire rail segments for uses other than future rail use. However, public use is not defined in 43 TAC §7.20, which lists the definitions associated with the Abandoned Rail chapter.

TxDOT would potentially have more flexibility in acquiring abandoned rail facilities for other uses if this section delineated some specific uses outside of continued rail use. For example use of the right-of-way for roadways, commuter rail, electricity transmission, hike and bike trails, or parks.

Also in 43 TAC §7.22 of the under subsection c "Criteria" it states that in "approving the acquisition of an abandoned rail facility the commission will consider" the following:

1. Service performed on the rail line in the two years preceding the date of the notice of intent to abandon or discontinue service.
2. Comments or other evidence in support of or opposition to the proposed abandonment or discontinuance of service received from interested parties.
3. Alternative sources of transportation services available, including alternate sources of rail transportation service.
4. Local and regional economic impact of the abandonment or discontinuance of service.
5. Viability of the rail line for continued rail transportation service.
6. The extent to which the monetary value of the economic benefits attributable to the acquisition exceed the amount of funds disbursed by the department.

This section could be augmented in the following ways to give TxDOT increased flexibility. First, subpart 5 should be expanded to include the viability of the rail line for uses outside of continued rail transportation services, for example, the use of the right-of-way for other transportation uses, such as roadways, future transit operations, redevelopment of rail facilities, e.g., into lofts and other housing and retail/commercial activities, and the possibility to use the facility for truck-only highways or other toll facilities. There is also the potential to use some right-of-way for power line transmission. Other public uses such as hike and bike trails and

parks should also be included to allow TxDOT to consider alternative uses other than rail transportation.

Subsection 6 should also be more specific. In practice the assessment of the line's value is only the land value and any existing rail infrastructure still at the site. This section should be expanded to include the value of economic benefits outside of the physical infrastructure. Additional economic impact assessment should be done to determine the actual value of such acquisitions. Completing such economic impact assessments for various uses, such as hike and bike trails or transmission right-of-way, has the potential to change the economic valuation associated with a particular abandonment and therefore TxDOT's interest in the project.

However, even if Texas Transportation Code and/or Texas Administrative Code was changed to be more specific, STB ultimately has the authority to determine if a rail line is suitable for other public use under §1152.28 Public use procedures. §1152.28 Public use procedures states:

(a) (1) If the Board finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, *the Board will determine if the involved rail properties are appropriate for use for other public purposes*.

(2) A request for a public use condition under 49 U.S.C. 10905 must be in writing and set forth: (i) The condition sought; (ii) The public importance of the condition; (iii) The period of time for which the condition would be effective (up to the statutory maximum of 180 days); and (iv) Justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(3) For applications filed under part 1152, subpart C, a request for a public use condition must be filed not more than 45 days after the application is filed. A decision on the public use request will be issued by the Board or the Director of the Office of Proceedings prior to the effective date of the abandonment. For abandonment exemptions under part 1152, subpart F or exemptions granted on the basis of an individual petition for exemption filed under 49 U.S.C. 10502, a request for a public use condition must be filed not more than 20 days from the date of publication of the notice of exemption in the Federal Register in the case of class exemptions under subpart F of this part, or not more than 20 days from the date of publication of notice of the filing of the petition for individual exemption in the Federal Register.

(b) If the Board finds that the rail properties are appropriate for use for other public purposes, the railroad may dispose of the rail properties only under the conditions described in the Board's decision.

Therefore the decision as to whether or not a former rail facility can be used for other public purposes ultimately lies with STB. Changing Texas Transportation Code and/or Texas Administrative Code would still give TxDOT greater flexibility in the process to pursue the purchase of abandoned rail lines for purposes other than continued rail use.

OTHER ISSUES

The System Diagram Map/Notification to Abandon

One of the issues raised by TxDOT to researchers was the time that TxDOT has to react to abandonments and decide if they should seek to purchase the line. The earliest indication that a railroad intends to abandon a line comes from the carrier's system diagram map. STB regulation requires a rail carrier to maintain a map of all its rail lines. For system diagram map purposes a narrative report can also be submitted; however, the carrier must identify separately (*13*):

- Any line for which it expects to file an abandonment application within the next three years (category 1).
- Any line that it considers a potential candidate for abandonment (category 2).

A carrier must publish its system diagram map or narrative in a newspaper of general circulation in each county containing a rail line in category 1 and any subsequent changes to the latter. An application for abandonment of a line that has not been catalogued in category 1 for at least 60 days will be rejected by STB. This requirement gives shippers, local and state governments, and any interested citizens the possibility to oppose the abandonment or consider alternative means of continuing rail operations by the current railroad or another operator (*13*). Category 2 lines, however, do not need to be listed for a pre-established amount of time.

In practice, the STB can grant exceptions and allow rail companies to abandon lines not denoted on their system diagram maps. This can sometimes have the effect of not allowing TxDOT enough time to react to potential abandonments. While this is primarily an issue with STB regulation and not an issue with Texas Transportation Code and/or Texas Administrative Code, TxDOT could address this issue through regular meetings with the class one railroads. Establishing regular lines of communication to the class one railroads could make TxDOT more aware of their operations and open lines of communication if an abandonment is going to occur

that is not listed on the system map. North Carolina's DOT utilizes this process for its successful abandonment program. Officials at the North Carolina DOT have noted that the regular meetings also allow their Railroad Division to discuss other pressing matters and to keep up-to-date with critical events that are occurring from the railroad's perspectives.[1]

GAP ANALYSIS CONCLUSION

Based on researcher conversations with TxDOT and other interested stakeholders, Texas's code has thus far been sufficient to allow TxDOT to acquire abandoned rail facilities. However, changes recommended in the previous sections of this chapter would allow TxDOT increased flexibility to acquire lines not necessarily intended for future rail use, but for other transportation alternatives as well.

[1] Based on discussions between Researchers, and Paul Worley and Steve Head at FRA Railroad Crossing Conferences in 2008 and 2009.

CHAPTER 8: LEGISLATIVE AND POLICY (PART I) CONCLUSIONS

This review analyses the regulatory framework at the federal and local level applicable to abandonment, conversion, or discontinuance of service of rail corridors. Additionally, it encompasses a detailed analysis of possible Texas public entities or districts that have powers and authorities to purchase an abandoned rail corridor. The last part of this document comprises the major challenges and a legal analysis, at the federal and state level, that railroad companies and public entities have been facing while acquiring these corridors.

During the 1800s and early 1900s, the United States witnessed a boom in railroad development; by 1920, there were 270,000 miles of rail track in the country. However, after this period, the development of roads and highways and the preference for the latter, provoked the decline and crisis of the railroad sector, especially after the second half of the 20th century. Federal and selected state authorities, in an effort to preserve valuable rights-of-way, started enacting regulation to save the corridors that were being abandoned and lost by bankrupt or distressed railroad companies. Currently, the most efficient way federal regulation has found to preserve these corridors has been through abandonment and railbanking procedures.

In the federal arena, Title 49 CFR 1152, in accordance with 49 U.S.C. 10903, establishes strict filing and procedural requirements for a "STB abandonment" to be declared. In addition, this federal entity offers to rail companies the possibility to re-enter and reuse their corridor through the railbanking process. The latter allows either recreational or public use of the corridor creating a legal fiction by which the easements do not revert to the original owner of the land.

In the case of Texas, the sole tailored attempt to regulate the preservation of rail corridors in the state has been rescinded. Although current Texas transportation policy seems to be directed to preserve these valuable rights-of-way, few statutory provisions in the Transportation Code and ancillary regulations deal directly with preservation and abandonment issues; they mostly focus in granting powers to different authorities to acquire rail facilities for transit or freight purposes.

Although abandonment authorizations and railbanking regulations have come under attack, they provide protection against adjacent landowners seeking to claim the reversion of the property. The main issues disputed are the types of interest and methods of land acquisition the original railroad company possesses of the right-of-way lands. With this respect, courts at the federal level have generally respected the railroads' property interests. In the case of Texas,

limited case law related to shifting uses of rail corridors for public use have been found. Some cases could result analogous to a potential suit by an adjacent landowner in these situations. The lack of clear regulation in the state might pose a threat and unnecessary expense for TxDOT or related entities that acquire rail corridors.

Although current Texas law explicitly allows for TxDOT purchase of abandoned rail corridors only for the purpose of continued freight rail operations, there is sufficient legal precedent and authority to allow TxDOT to purchase and/or use other legal means to preserve abandoned rail corridors for alternative transportation uses. Legislative clarification of specific goals for rail corridor preservation by TxDOT, while favorable for consideration in future legislation, is not required for TxDOT to actively preserve and redevelop abandoned rail corridors statewide.

The research team also determined that lengthy rail corridor abandonment by the large, Class I railroads, while common in Texas during the 1980s and 1990s in the early years after deregulation and following several major rail industry mergers, is unlikely to occur again in the near future. The remaining risk of rail abandonment comes mainly from smaller, underutilized branch lines of the Class I's and the lines of marginally capitalized "short line" or Class III railroads. Many of these lines serve fewer carloads per year and are more vulnerable to economic downturns or policies that would increase the use of heavier trucks on state roads.

PART II: INFRASTRUCTURE ANALYSIS

CHAPTER 9: TEXAS ABANDONED LINES

This chapter provides an overview of the development and decline of the railroad system in Texas. The current rail network in Texas is then compared with the abandoned rail lines identified throughout the state. Finally, the results of several field observations are presented to demonstrate common condition and uses of abandoned rail rights-of-way throughout Texas.

HISTORICAL OVERVIEW OF TEXAS RAIL LINES

Texas Rail Line Development and Decline

Texas ranks first in the U.S. with 10,743 miles of rail track, according to the Association of American Railroads (AAR), and is tied for second with 44 railroads (*52*). The AAR *Freight Railroads in Texas, 2008* fact sheet indicates that there are three Class I railroads and 41 freight railroads in Texas classified as non-Class I railroads (short line or regional railroads) (*53*). Including trackage rights, the freight railroads in Texas operate on 14,962 miles of track.

The first railroad constructed in Texas was the Buffalo Bayou, Brazos and Colorado Railroad in 1853—a rail line that stretched approximately 20 miles between the Port of Harrisburg and Stafford's Point in present day Houston. Rapid growth in the decade of the 1880s grew the rail system over 6,000 miles, which tripled the previous length. By 1905, Texas had more miles of railroad than any other state. Construction of new rail line in Texas continued to grow until 1932, some 16 years after the U.S. construction peaked. In 1932, Texas had over 17,000 miles of track (*54*). The historical review of the rail system in Texas is contained within Table 17, which shows the miles of rail lines constructed and abandoned by decade.

Table 17. Texas Rail Line Construction and Abandonment by Decade.

Decade	Miles Constructed	Miles Abandoned
1850	273	0
1860	386	173
1870	1,972	18
1880	6,085	39
1890	1,322	106
1900	3,700	292
1910	2,856	44
1920	1,338	584
1930	532	893
1940	34	789
1950	56	921
1960	105	974
1970	4	1,017
1980	0	1,145
1990	0	1,637
2000*	0	457
Grand Total	**18,663**	**9,090**

*documents 2000–2008

Overall, there have been over 18,600 miles of track constructed in Texas and over 9,000 miles of track abandoned in Texas. Figure 2 shows the cumulative mileage of constructed and abandoned rail line since the inception of rail service in the 1850s. Little construction occurred after the 1930s and consistent abandonment occurred starting in the 1920s.

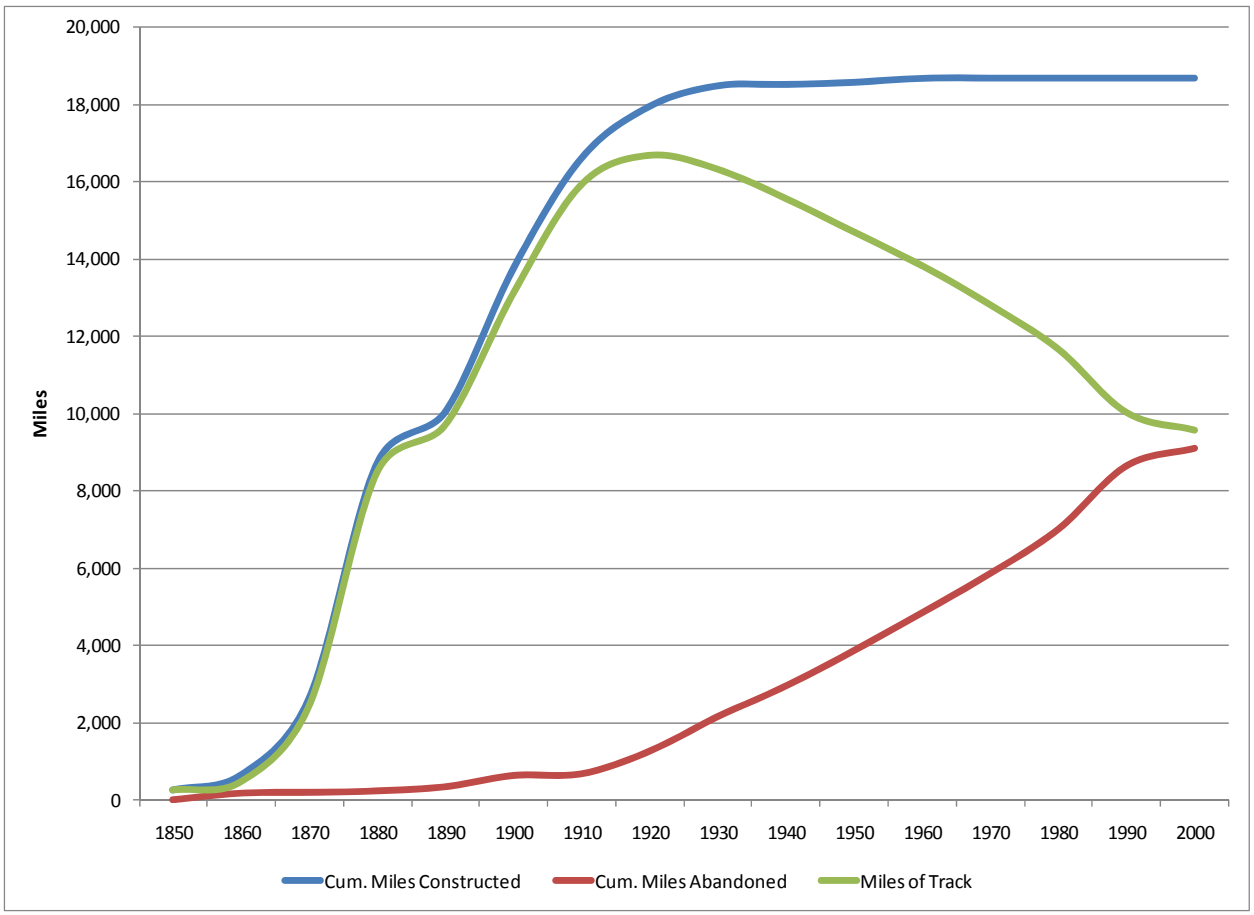


Figure 2. Historical Review of the Texas Rail Line System.

Investigating the recent abandonment applications submitted to the STB revealed that there were almost 30 rail line abandonment submissions within the state of Texas between 2000 and 2008 as shown in Table 18. Not all of the applications were approved by the STB. Also, submitting an application does not mean the rail line was officially abandoned. Combined, the total length of proposed abandoned rail line between 2000 and 2008 equaled over 450 miles.

Table 18. Texas Rail Line Abandonment STB Submittals since 2000.

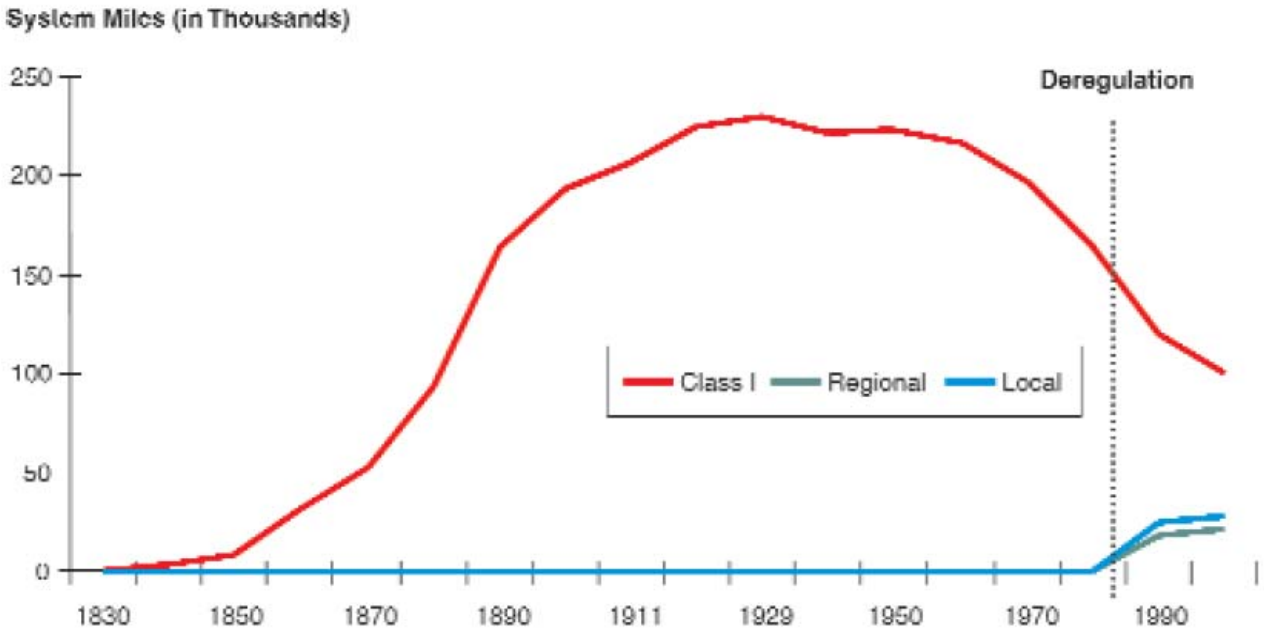
Line Description	Location	Year	Length (mi)	Approved	Reason
UP-Line over Oakland Avenue Spur	Dallas	2000	0.45	No	OFA filed
DART & UP-line from Malcom X Blvd to Fletcher St	Dallas	2000	1.59	Yes	
UP-Orange Industrial Lead	Kilowatt	2000	0.75	Yes	
UP-Bellaire Subdivision	Houston	2000	49.42	No	Trail Use
UP-former Texas Central RR	Waco	2000	0.43	Yes	
UP/Alamo Gulf Coast RR Co.-Kerrville Subdivision	Leon Springs	2000	3.49	Yes	
UP	New Boston	2001	1.20	Yes	
UP-Gatesville Industrial Lead	Waco	2001	0.70	Yes	
West Texas & Lubbock RR Company, Inc.-University Ave	Lubbock	2002	1.10	Yes	
Mid-Michigan RR, Inc, Texas Northeastern Division	Denison	2003	10.51	Yes	
UP-Bonham Subdivision	Paris	2003	33.50	Yes	
DART - Westmoreland Road	Dallas	2003	11.45	Yes	
UP-Columbia Tap Industrial Lead	Houston	2003	0.90	Yes	
BNSF	Bay City	2004	20.89	Yes	
Texas North Western Railway Co- Capps Spur	Capps	2004	21.90	Yes	
UP-Main Switch	Brownsville	2005	2.20	Yes	
UP-Waxahacie Industrial Lead	Waxahachie	2005	4.57	No	Trail Use
DART	Plano	2006	8.85	Yes	
UP-Tyler Industrial Lead	Troup	2006	7.25	Yes	
Timber Rock RR, Inc.	Silsbee	2006	116.00	Yes	
Timber Rock RR, Inc.	Dobbin	2006	54.72	Yes	
UP-Kerrville Subdivision	Bexar County	2007	2.74	Yes	
Southwestern RR Company, Inc.	Spearman	2007	85.30	Yes	
UP-Trinity Industrial Lead	Dallas	2007	4.10	Yes	
UP-Huntsville Industrial Lead	Huntsville	2007	1.67	Yes	
UP-Chesterville Industrial Lead	Chesterville	2008	8.30	Yes	
UP-Port Arthur Industrial Lead	Port Arthur	2008	1.21	Yes	
UP-Sinton Industrial Lead	San Patricio County	2008	1.52	Yes	

Appendix E provides a table providing a historical identification of rail line construction and abandonments in Texas from the 1850s up to 2008.

National Comparison

Figure 3 displays the U.S. rail system miles until around the year 2000 and shows the entire nation, including Texas, experienced tremendous growth in rail miles in the late 1800s before leveling off for many years. A decline in Class I railroad mileage began in the 1960s, with drastic declines in the 1970s and 1980s. The Staggers Act of 1980 led to the formation of

many new short line rail operators. As a result many of the Class I miles shifted to Class III mileage as many lower-traffic branch lines were abandoned and/or transferred to local railroad operations.



Source: (*55*)

Figure 3. Miles of Rail Line in the United States.

From its peak in the 1930s, the reduction of the Texas rail network is attributed to several reasons, most as a result of the same conditions experienced elsewhere throughout the U.S. In fact, Texas has fared far better than many states in terms of the percentage of rail lines abandoned throughout the state. The State of Kentucky released a report examining rail line abandonments in which the rail system miles difference between 1920 and 2001 for every state was examined. Between 1920 and 2008 the entire U.S. rail system mileage reduced from 252,843 miles to 139,887 miles, equaling a reduction of approximately 45 percent. Texas experienced a 33 percent decline in rail miles over that period as can be determined by using the 1920 miles from that report and utilizing 2008 data as shown in Table 19. Forty-five other states experienced at least that level of decline in mileage, but Texas ranks third in actual miles lost, with 5,382 miles.

Table 19. 1920 and 2008 Rail Mileage by State.

State (A–M)	1920 Miles	2008 Miles	% diff.	State (N–Z)	1920 Miles	2008 Miles	% diff.
Alabama	5,378	3,271	−39%	Nebraska	6,166	3,215	−48%
Alaska	n/a	506	n/a	Nevada	2,160	1,192	−45%
Arizona	2,478	1,679	−32%	New Hampshire	1,252	415	−67%
Arkansas	5,052	2,780	−45%	New Jersey	2,352	993	−58%
California	8,356	5,200	−38%	New Mexico	2,972	1,835	−38%
Colorado	5,519	2,663	−52%	New York	8,390	3,528	−58%
Connecticut	1,001	330	−67%	North Dakota	5,311	3,478	−35%
Delaware	335	218	−35%	North Carolina	5,522	3,250	−41%
Florida	5,212	2,874	−45%	Ohio	9,002	5,318	−41%
Georgia	7,326	4,720	−36%	Oklahoma	6,572	3,240	−51%
Hawaii	n/a	0	n/a	Oregon	3,305	2,155	−35%
Idaho	2,877	1,591	−45%	Pennsylvania	11,551	5,139	−56%
Illinois	12,188	7,306	−40%	Rhode Island	211	87	−59%
Indiana	7,426	4,448	−40%	South Carolina	3,814	2,289	−40%
Iowa	9,808	3,925	−60%	South Dakota	4,276	1,675	−61%
Kansas	9,388	4,849	−48%	Tennessee	4,078	2,641	−35%
Kentucky	3,929	2,558	−35%	**Texas**	**16,125**	**10,743**	**−33%**
Louisiana	5,223	2,789	−47%	Utah	2,161	1,365	−37%
Maine	2,295	1,151	−50%	Vermont	1,077	590	−45%
Maryland	1,472	759	−48%	Virginia	4,703	3,205	−32%
Massachusetts	2,106	952	−55%	Washington, DC	n/a	23	n/a
Michigan	8,734	3,735	−57%	Washington	5,587	3,209	−43%
Minnesota	9,114	4,528	−50%	West Virginia	3,996	2,232	−44%
Mississippi	4,369	2,618	−40%	Wisconsin	7,554	3,503	−54%
Missouri	8,117	4,078	−50%	Wyoming	1,931	1,860	−4%
Montana	5,072	3,179	−37%	***Totals***	***252,843***	***139,887***	***−45%***

Source: (*56*, *53*)

Common reasons for the reduced rail mileage throughout the U.S. and Texas include:

- *Financial Performance* – Many railroads, especially up through the 1970s, were experiencing significant financial problems. Unable to generate sufficient revenue to maintain infrastructure, along with poor financial practices, resulted in the bankruptcies of several major railroads and for railroads to examine ways to shed unprofitable line segments.

- *Mergers/Acquisitions/Consolidations* – The Texas rail system included 11 Class I railroads in its 1978 State Rail Plan. Today, that number has been reduced to only three Class I railroads operating within the state (*57*). Many companies merged or were acquired forming larger rail companies in order to offset the financial problems, gain market access, and other reason. One result of combining companies is redundancy in their networks that made some rail lines redundant.
- *Modal Competition* – The rail network expanded to accommodate virtually every shipping need due to the lack of options. Truck transportation quickly gained market share throughout the U.S., especially with the development of the interstate highway system. Many areas that were previously only served by rail were now able to ship via truck. Particularly, shorter distance movements are now mostly shipped by truck.
- *Regulation* – The most notable regulation change was the Staggers Act in 1980. In an effort to improve the financial health of the railroads after a rash of bankruptcies, the Staggers Act provided the railroads greater freedom in rate negotiations and abandonments. The Staggers Act resulted in greater financial stability and the shedding or selling of unprofitable line segments from their system. In many cases the lines to be abandoned were sold and operated by short line railroads. The termination of the ICC and the creation of the STB in 1995 also reduced the regulatory barriers to abandonment resulting in more shedding of routes by Class I railroad companies. By 2008, 560 short line and regional railroads operated in the U.S. (*57*).

ABANDONED RAIL LINES IN TEXAS – MAPS AND FIELD OBSERVATIONS

This section highlights the research team's effort to comprehensively identify the abandoned rail lines in Texas and also presents several field observations that chronicled current conditions and uses of abandoned rail rights-of-way.

Abandoned Rail Line Maps

One of the goals of this project was to develop a comprehensive map of abandoned lines within the State of Texas. To accomplish this goal, the research team utilized several existing Geographic Information System (GIS) files, along with review of several historical maps of

Texas rail lines, old reference books, topographic maps, and a railroad atlas that contains abandoned rail lines. The GIS files utilized include one provided by TxDOT; an old Railroad Commission of Texas GIS file; the Bureau of Transportation Statistics National Transportation Atlas Database (NTAD) 2008 Rail Lines file; and U.S. Geological Survey Topographic maps. Figure 4 shows a comprehensive rail map of Texas showing the abandoned rail lines identified during this research project.

The combined GIS file displayed in Figure 4 includes 6,725 miles of abandoned and 12,950 miles of active rail lines. As mentioned previously, Texas currently has 10,743 miles of track. The discrepancy between the actual number, as reported by the AAR, and the GIS file could be the inclusion of spur lines, sidings, and yard lines in the GIS file compared to a strictly mainline calculation. The difference in the peak track miles and the current active rail mileage level is approximately 6,300 miles. The calculated value is slightly higher than this value but may also include non-mainline track miles.

Figure 5 and Figure 6 show regions of the state in greater detail. The maps show that almost all areas of the state have been affected by rail line abandonment in Texas. The Northeast Texas area (see Figure 5, Map A) shows several abandoned lines into and out of the Dallas-Fort Worth area. Additionally, there is a major abandoned corridor along the Texas-Oklahoma border. Figure 5, Map A also shows significant abandoned rail lines around the Waco area, south of Dallas-Fort Worth. Both map images show a cluster of abandoned rail lines in East Texas. These rail lines were most likely associated with a timber industry that experienced a lessoned need for rail into the forests with the increased use of trucks. Figure 5 Map B shows several abandoned corridors into and out of both San Antonio and Houston.

Figure 6 Map C shows a significant amount of abandonments that occurred in the area bounded by U.S. Highway (US) 287 to the north, Interstate Highway (IH) 20 to the south, and IH 27 to the west. Most of those lines were used for seasonal farming and other agricultural purposes. Figure 6 Map D again shows the abandonments into and out of San Antonio, along with a major corridor that runs parallel to the active line between Corpus Christi and Brownsville to south Texas.

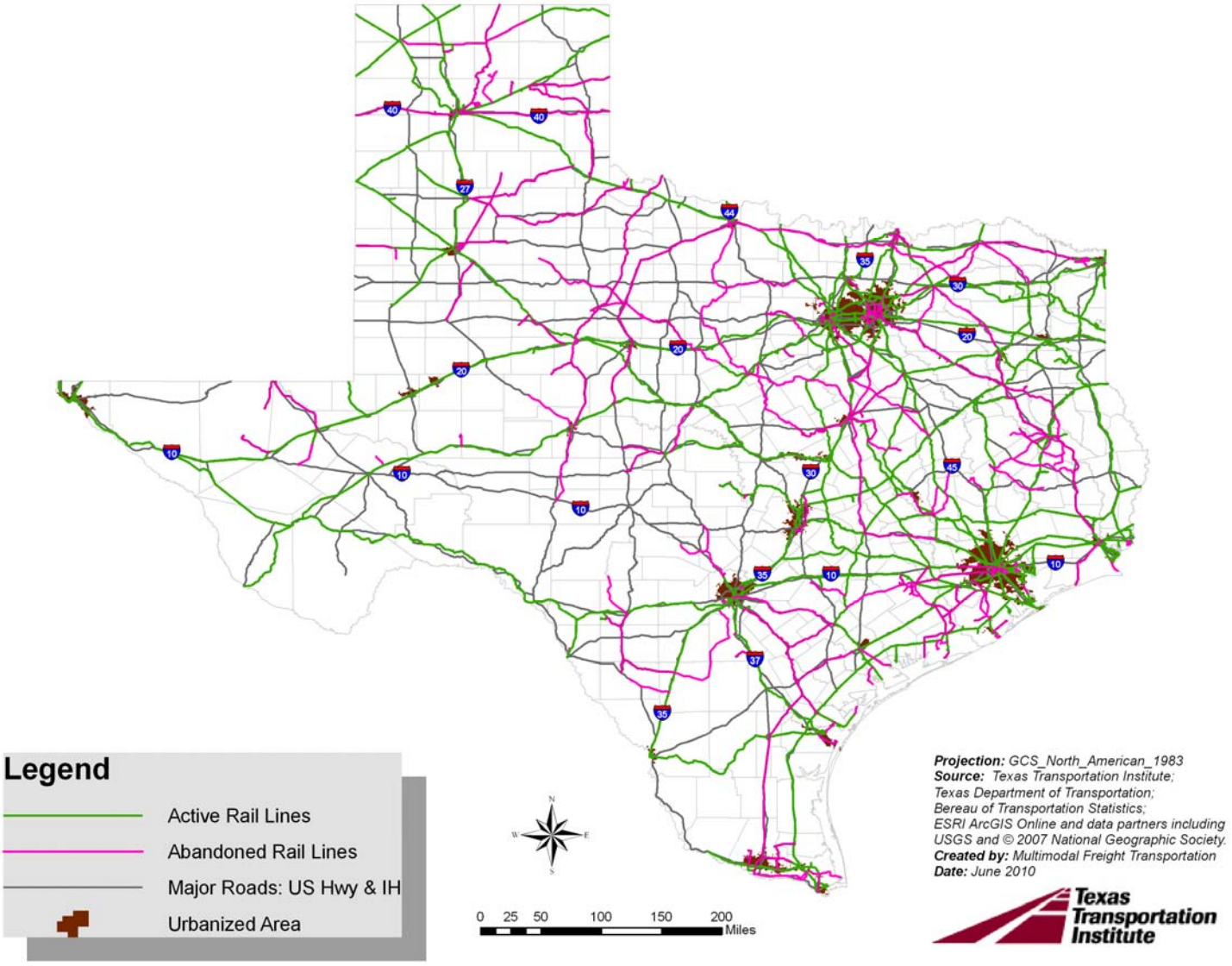


Figure 4. Comprehensive View of Texas Abandoned Rail Lines.

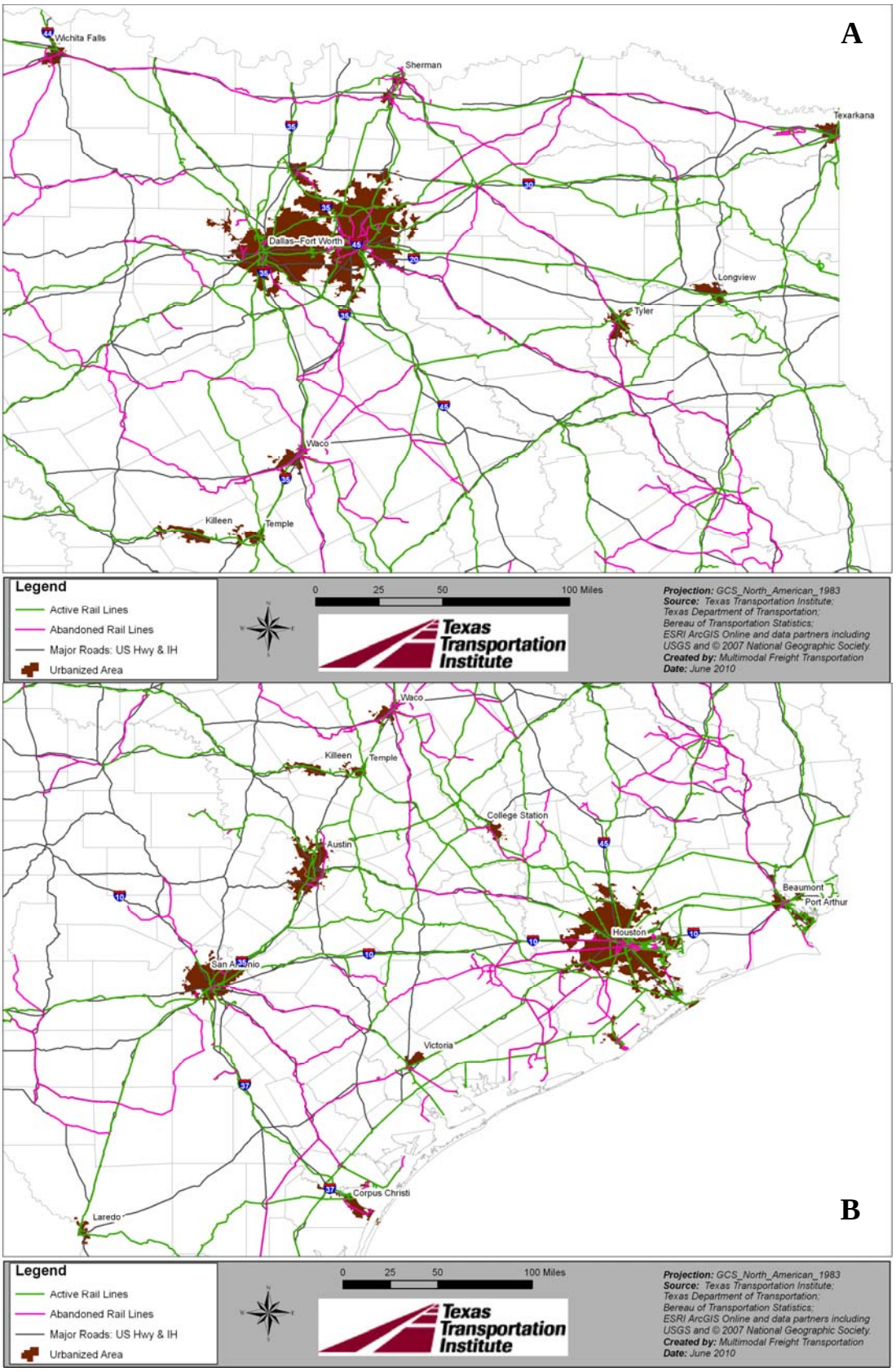


Figure 5. Texas Abandoned Rail Lines – Northeast and Southeast Texas.

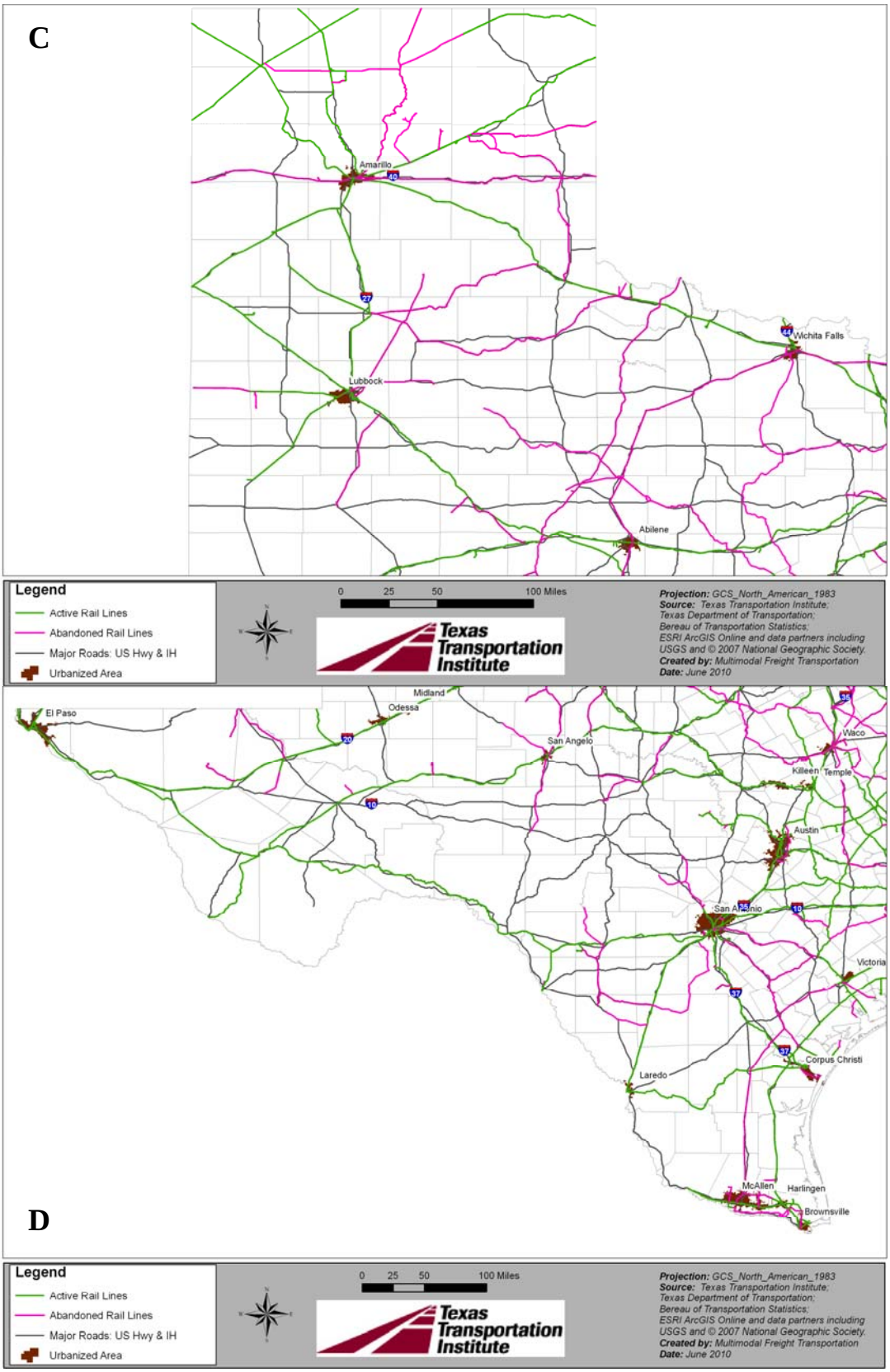


Figure 6. Texas Abandoned Rail Lines – North, West, and South Texas.

Field Observations

Over the course of this project, the research team attempted to make field visits to gather specific, current information related to a broad cross-section of abandoned rail corridors throughout the state. These visits were not meant to thoroughly investigate each possible abandoned line but were meant to catalog typical uses and conditions of abandoned rights-of-way and to identify locations where the corridors have been successfully repurposed.

Figure 7 through Figure 10 portray images taken during the field visits around the state. Major examples where abandoned corridors have been repurposed are discussed in more detail in Chapter 11. Figure 7 shows old infrastructure located along abandoned rail corridors seen during the field visits. Many small towns still maintain the old train station where rail once served the community. Located southeast of Dallas off State Highway (SH) 34, the old train station in Rosser is located along Railroad Street (Main Street on some maps). The figure also contains three examples of bridge infrastructure remaining in place after decades of abandonment, including two examples of continuous stretches of concrete bridges on former San Antonio & Aransas Pass (SA&AP) Railroad right-of-way.

Figure 8 contains images of reuse of abandoned corridors as minor roads or private drives. In Giddings former rail right-of-way is now part of the city road network, with the city posting signs naming the road "Railroad R.O.W." Many Texas towns have such "Railroad Streets" or comparable name, where either the railroad once ran parallel or the road is situated on the old rail right-of-way. Most instances of finding old abandoned rail right-of-way include reuse by private property owners as private drives on their property, as seen in the other three images in Figure 8.

Figure 9 shows four images of rail rights-of-way that mostly remain open. In many occurrences, the abandoned rail right-of-way remains vacant. On more than one occasion it was observed that the former right-of-way, most likely due to the elevated nature allowing for water run-off, was useful for hay storage once the corridor reverted to private property use. Images B and C show generally open spaces with formerly rail-served businesses along the right-of-way. Image D shows an opportunistic use of the former right-of-way by horse owners. Finally, Figure 10 shows that in several instances the right-of-way property was consumed and utilized for commercial property, including a grocery store that was constructed over the abandoned rail line of the Galveston, Harrisburg, San Antonio (GHSA) Railroad in Wharton.

A. Rosser Train Station – located Southeast of Dallas along SH 34

B. US 77 Corridor between Giddings and Waco

C. Waco-Corsicana Corridor along Farm-to-Market 308 outside Mertens

D. US 77 Corridor between Hillsboro and Dallas outside Milford

Figure 7. Field Observations – Old Infrastructure.

A. Giddings – Re-use as public roadway in town

B. US 290 Corridor between Hempstead and Giddings

C. Waco-Corsicana Corridor

D. South of Sweetwater

Figure 8. Field Observations – Drives/Roads.

A. US 290 Corridor between Hempstead and Giddings

B. US 77 Corridor between Giddings and Waco

C. South of Sweetwater

D. Waco-Corsicana Corridor

Figure 9. Field Observations – Open Space.

A. Giddings

B. Corsicana

C. Portland

D. Wharton – GHSA line

Figure 10. Field Observations – New Structures in Rights-of-Way.

CHAPTER 10: POTENTIAL ABANDONMENTS

As stated in Part I of this report, railroads interested in officially abandoning rail line segments must participate in a legally prescribed process for approval through the U.S. Surface Transportation Board. Until it is officially constituted within the STB process, the public may not have any advance knowledge of potential abandonment actions by a railroad company. Typically, railroads only seek abandonments on lines that are no longer economically viable to operate as part of their system. Given the long history of abandonments in Texas and the current high utilization rate of the existing rail network by the major Class I railroads and short line and regional railroads, the possibility of a long corridors of rail line being proposed for abandonment is not as likely as years past. Most abandonment actions are expected to be shorter spur tracks or business tracks under current economic conditions; however, even these shorter segments could be useful to TxDOT and/or local planners for alternative transportation uses. It remains important to investigate the rail system to identify potential abandonment corridors within the system. This chapter addresses reasons why rail lines may become abandoned and evaluates several methods to estimate the potential for a rail line to become abandoned.

LIGHT-DENSITY LINES

The primary concern for abandonment is financially low performing lines. One way of estimating low performance is low traffic density. Figure 11 shows the rail line density of all the active rail lines in Texas from the BTS 2009 NTAD showing rail line density for 2007. One aspect of this map is that all short line and regional railroads have no associated value, most likely due to a lack of required reporting. Examining rail line density may provide an overview of the level of use a line may receive; however, it does not necessarily indicate the importance of the line to the railroad company. Figure 11 shows a map of rail traffic density of rail lines throughout the state of Texas. Low-activity lines shown on the map do not necessarily translate which rail lines may be abandoned.

The legend shows that the rail density is categorized into seven density groupings from 0.1 to 4.9 million gross ton miles per mile (MGTM/Mi) per year to greater than 100.0 MGTM/Mi. A review of the map shows the lowest estimated density category (0.1 to 4.9 MGTM/Mi) only at a few short rail line segments, including several lines serving port

facilities along the coast. Despite lower densities, rail service remains very important for port facilities. Several longer segments in the state are classified in the 5.0 to 9.9 MGTM/Mi category. These include the line segment between Corpus Christi and Brownsville, the segment between San Antonio and Corpus Christi, and two line segments in the Houston area. At one time, both the segment between San Antonio and Corpus Christi and the segment from Corpus Christi to Brownsville each had parallel route rail lines that are now abandoned—concentrating rail traffic service and increasing maintenance needs on each of the remaining routes.

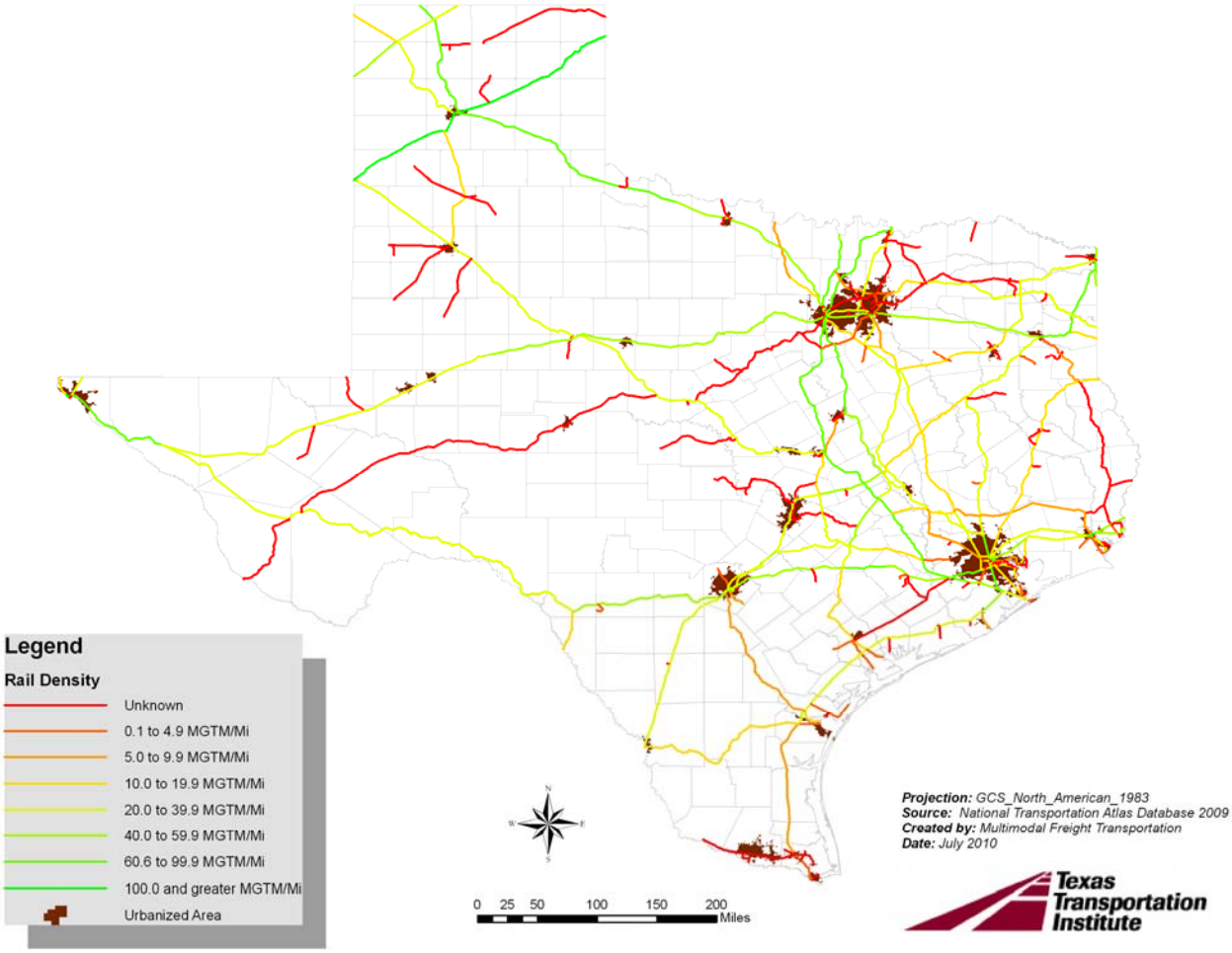


Figure 11. Texas Rail Line Density from the 2009 NTAD.

Figure 11 also shows that Texas has many corridors with substantial levels of traffic, including several corridors that make up major transcontinental movements between the West Coast and major rail centers, such as Chicago where eastern and western Class I railroads interchange railcars.

SHORT LINE AND REGIONAL RAILROADS

As described above, Figure 11 does not include data for the short line and regional railroads. If data were included, most would fall into the lowest density categories. This does not mean that all the short lines may be in danger of abandonment; however, many short lines are operating on former Class I track that were in poor physical condition due to low financial viability. Lower profit margins also generally leads to deferred maintenance and slower speeds on these lower traffic density lines.

The U.S. Department of Agriculture reports that since 1995 "an increasing proportion of rail abandonments have been by short line and regional railroads," due in large part to operations over low-traffic branch lines that did not generate enough income to pay for the maintenance of the track (*58*). The same report also shows concern that most short line and regional railroads do not have the capital needed to upgrade their lines. Despite these challenges, short line and regional railroads remain a pivotal component of the freight transportation network and act as a lifeline for rural communities throughout the country.

Texas Short Line and Regional Railroad Evaluation

Short line and regional railroads are a valuable component of the Texas economy. The American Short Line and Regional Railroad Association (ASLRRA) reported the following statistics for Texas short lines in a 2004 summary of the national rail system (*59*):

- 42 Class II/III railroads.
- Miles Operated: 2,613.
- Percentage of total miles in state: 21%.
- Total cars handled: 577,283.
- Estimated truck equivalent: 1,750,000.
- Pavement damage savings: $48,000,000.
- Employment numbers: 1,126.
- Federal tax paid: $11,936,651.
- State/local tax paid: $4,073,336.
- Customers: 747.

TTI performed an additional study at about the same time that examined the Texas short line railroads using data acquired for a study commissioned by the ASLRRA entitled, *The Short Line and Regional Railroad Survey*, which represented the short line railroad industry for the year 2002. That study examined several of the major challenges for short line railroads. These include the significant challenge of accommodating 286,000 lb railcars on their systems, deferred

maintenance, capital investment needs, and infrastructure funding. The analysis performed in the study for the 286,000 lb railcars found that more than 600 miles of Texas short line track consists of lightweight rail (less than 90 lb per cubic yard). The approximate cost to upgrade the lighter track with rail replacement was estimated to be up to $410,000 per mile. Those estimated costs greatly reduce to only $60,000 if the rail is adequate and only the other track infrastructure components need upgrading. Total short line investment needs in Texas are calculated in the report to be up to $250 million (*60*).

Utilizing the density of the railroads as an indicator in the survey, the analysis categorized the Texas short lines into three density levels: low, middle, and high. The analysis indicated that 1,516 miles (51 percent) of Texas short lines have an excellent chance of success according to the density parameters; however, 1,387 miles (47 percent) of Texas short lines were assessed as not being able to handle the 286,000 pound railcars. From these 1,387 miles:

- 713 miles (51 percent) have low traffic density and account for 66 percent of the investment needs ($166 million).
- 305 miles (22 percent) have medium traffic density and account for 17 percent of the investment needs ($41 million).
- 369 miles (27 percent) have high traffic density and account for 17 percent of the investment needs ($43 million) (*60*).

Finally, the study provides several conclusions regarding short line operations, viability, and importance to Texas:

- *The Relationship with the Class I Railroads is Vital* – The reality for most short lines is that shipments do not originate and terminate on their line, which means they have to interchange with another railroad, usually a Class I railroad. So despite what the short line does on its line, the interchange and relationship with the Class I railroad may be the most important aspect.
- *Short Lines are Adapting to Maintain and Grow Business* – Short line railroads focus on value-added services to meet shipper needs. This customer-focused approach benefits the shipper by adding services that improve operations, reduce transportation costs, and potentially expand their business. This, in turn, increases services for the short line railroads. These services may include working with shippers to better manage rail car availability and turnaround, which reduces demurrage charges and

more effectively manages inventory, or developing transload or warehouse storage facilities.

- *Texas Short Lines Positively Benefit the State* – The findings show that by removing trucks off highways the short line railroads operating in Texas increase safety on the roadways, reduce emissions, and extend the life of roadways, especially those in rural areas. The estimated $35 million in annual pavement savings acts as an increase in funding that can be spent on other transportation needs around the state. Short lines also employ a significant amount of people throughout the state; pay considerable amounts of local, state, and federal taxes; and provide an economic development tool critical to many parts of the state. According to the survey, short lines now serve 76 new customer facilities, with an additional 81 industrial development locations planned (*60*).

OTHER POTENTIAL ABANDONMENT CONDITIONS

The previous section highlighted some of the major reasons for rail line abandonment in the U.S. and Texas, including financial conditions, mergers, modal competition, and regulations. This section highlights the examination of light-density rail line segments in the state, and the vulnerability of short line and regional railroads. Several other considerations may also need to be examined in order to predict potential abandonments or the need to provide public assistance. Below is a list of several additional considerations:

- *Loss of major customer(s)* – A rail line segment may depend heavily on a select couple of major customers, if not just one major customer. The loss of a customer in that instance could greatly affect the economic viability of operating that particular line segment.
- *Natural or man-made disasters, such as fire and flooding* – Of particular concern for short line operators, a significant loss of an infrastructure component may result in the heavy investment to repair that item. If located on a low-density line, the investment may not be seen as a financially viable option for that segment.
- *'Better' use of infrastructure/assets* – Land and/or assets may be worth more than earnings from operations, thus making it more profitable to sell the assets.

- *Class I railroads* – For short line railroads the relationship with the Class I carriers is critical. Interchange rules, rates, and operational restrictions all maybe cause for concern for short lines. However, the short line railroads provide reasonable levels of traffic to the Class I railroads, so it is beneficial for them to work closely with the short lines to overcome potential obstacles.

CHAPTER 11: CURRENT AND POTENTIAL USES OF ABANDONED RAIL LINES

There are numerous possible uses for abandoned rail rights-of-way. Not all options will make sense for every given opportunity. This chapter provides an overview of the potential uses and how a corridor could be evaluated. Additionally, the chapter provides discussions on several case studies of corridors that were repurposed after abandonment.

POTENTIAL USES

This section briefly provides a listing of possible uses of abandoned rail right-of-way and some considerations to determine the best use of a corridor if the opportunity arises to repurpose an abandoned rail corridor.

Suitability Analysis

Evaluating the potential uses of an abandoned rail right-of-way consists of understanding the catalogue of potential uses of abandoned rights-of-way; evaluating the characteristics of the corridor; and performing a suitability assessment of the particular right-of-way. The wide array of potential uses for abandoned rail lines varies from maintaining a linear open space to using the corridor to construct new transportation infrastructure. Grouped into four categories, Table 20 shows that there are several broad areas of potential uses for abandoned rail rights-of-way, including recreation, transportation, utility, and other.

Table 20. Possible Uses for Abandoned Rights-of-Way.

Recreation	Transportation	Utility Uses	Other
• Special use trails • Hiking/jogging trails • Backpacking trails • Bicycle trails • Equestrian trails • Excursion trains • Linear park	• Freeways • Arterial streets • Scenic parkways • Collectors • Local streets/roads • Busways • Truckways • Fixed rail • Bikeways	• Electric power transmission lines • Electric power distribution lines • Above ground communication lines • Buried communication lines • Oil and gas pipelines • Water and sewer pipelines	• Conservation • Open space

Adapted from: (*54*).

Cataloging the corridor characteristics involves characterizing the facility in a detailed manner so that a thorough suitability analysis can take place. Table 21 provides some of the characteristics that should be characterized. The broad areas of interest include cost indicators, physical indicators, and demand indicators. Each indicator is further segmented into categories with sub-categories or appropriate measures.

Table 21. Abandoned Rail Right-of-Way Suitability Characteristics.

	Category	Sub-Categories/Measures
Development/Maintenance Cost Indicators	Title	• Fee simple • Easement or other
	Bridges	• Condition • Number • Location
	Presence of Track Infrastructure	• Y/N
	Presence of Flooding Issues	• Y/N
Physical Indicators	Length	• Miles
	Width	• Feet
	Adjacent Land Use	• Prairies/grassland • Sensitive ecosystem • Forest • Recreation land • Agriculture • Mining • Residential • Commercial • Industrial
	Topography	• Plains • Hills • Mountains
Demand Indicators	Interest Expressed	• Y/N
	Points of Interest	• Natural • Historic • Cultural • Recreational
	Accessibility	• Distance to highway

Adapted from: (*54*).

The final suitability assessment involves determining the best use of the corridor given its characteristics. It may be determined that the corridor is not suitable for further public

involvement. In such cases, private entities may be interested in purchasing or maintaining the corridor through a public-private partnership or cooperating with the public sector to place the corridor into railbanking/interim trail use status. The procedures for doing so are described elsewhere in this report.

CURRENT USES OF ABANDONED RAIL CORRIDORS IN TEXAS

There are many possible uses for abandoned rail corridors including, the resumption of freight or passenger rail service or combination thereof, trail use, re-development and environmental/land use options. The preferred future use of a rail corridor may not always be evident at the time of abandonment when public agencies may become initially interested in preserving the corridor. It is important to ensure that the broadest coalition of interests are brought together when determining the value of preserving an abandoned rail corridor and its range of future uses—recognizing that the same corridor may serve several future purposes as the land use patterns and needs of the population and economy change.

While the overall rate of abandonment has slowed in recent years, rails-to-trails and rail banking initiatives are an accepted option and have sometimes been suggested to communities preemptively by railroads when announcing an intention to abandon. In a rail banked line, it is possible to remove the obsolescent rail infrastructure components (i.e., old, unused rail, and ties) that may interfere with trail activity but keep in place the permanent structures such as bridges and trestles in order to allow continued use of the corridor for alternative transportation purposes. Current uses for abandoned rail corridors in Texas include:

- Utilization for freeway/highway development or expansion.
- Resumption of commuter and/or freight rail service.
- Trails/park uses.
- Re-adaptive use of stations/yards for multi-family and commercial use.
- Environmental use.
- Utility and pipeline easements.
- Tourism activity.

The sections below describe the various uses for abandoned railroad through a series of short case studies. This is not an exhaustive or exclusive detailing list of all evident uses of abandoned corridors. It highlights the most prevalent uses and to give the reader an idea of how

the different uses came about, including a brief historical review of any problems and other issues encountered along the way to each corridor's current utilization.

Recreational Trails

One of the more prevalent uses for abandoned railways in Texas is that of recreational walking/hiking/biking trails. Table 22 shows examples of former rail corridors that have been converted to trail use (i.e., rail trails) in Texas, with the list divided into the trails that are more discussed as case studies in this section and additional rail trails identified throughout the state. Rail trails are found in both urban and rural areas.

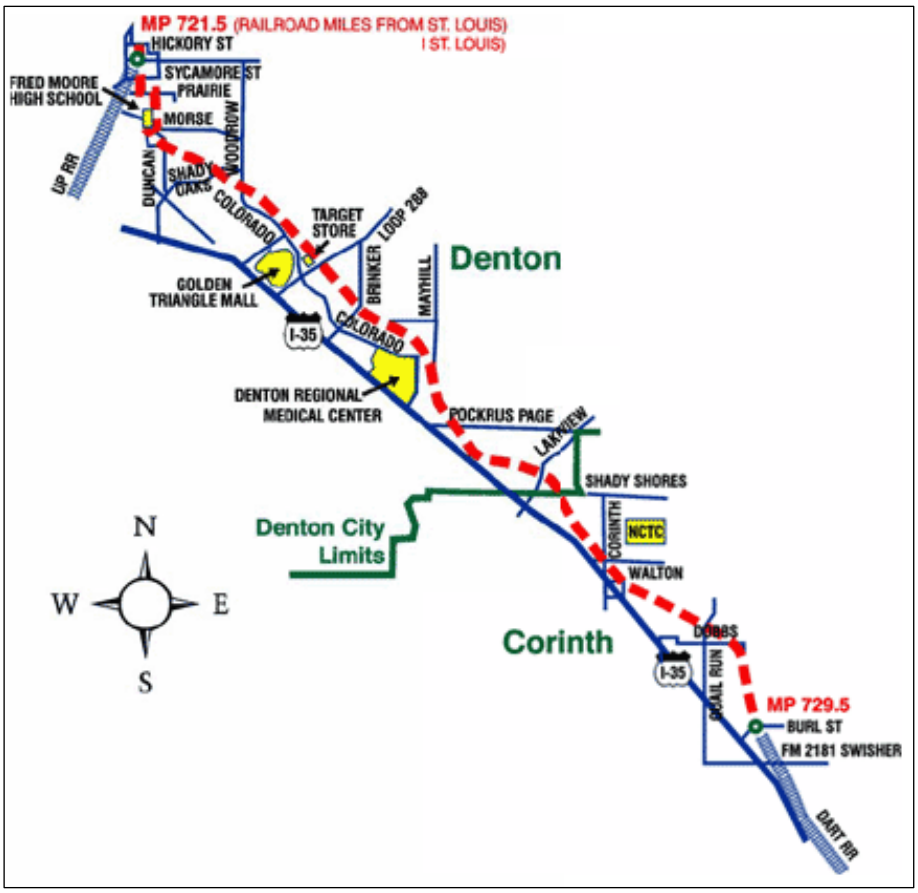
Dallas-Fort Worth – Denton Rail Trail

The City of Denton completed an 8-mile rail trail as part of the Trinity Trails System. It passes through the southeastern part of the City of Denton to the City of Corinth as can be seen in Figure 12. Figure 12 also shows that the route runs largely parallel route to IH 35 through both multifamily residential and commercial areas.

According to the City of Denton's website, seven railroad trestles were converted to pedestrian bridges and 18 highway grade crossings were constructed for safe bike and pedestrian crosswalks and public access points. The city acquired a grant for trail surfacing for $50,000 in 1998, from Texas Parks and Wildlife as part of the National Recreational Trails Grant Program. The city then provided the matching labor to this grant to construct and install the trail surface of a fine crushed limestone. Figure 13 shows a part of this trail.

Table 22. Examples of Rail Trails in Texas.

Name	Location	Length (miles)	Original Railroad
Rail Trails Discussed Below			
Denton Branch Rail Trail (part of Trinity Trails System)	Denton to Corinth	8	Missouri Kansas Texas RR
Katy Trail	Dallas	3.74	Missouri Kansas Texas RR
Columbia Tap Rail Trail	Houston	4	Columbia Tap RR (became Union Pacific)
Harrisburg and Sunset Rail Trails	Houston	2	Union Pacific RR
MKT/SP Rails-to-Trails	Houston	5	Missouri Kansas Texas/Southern Pacific
Portland	Portland	1	San Antonio and Aransas Pass RR
Wharton	Wharton	0.8	Gulf, Colorado and Santa Fe RR
Other Rail Trails			
Caprock Canyons State Park Railway	Estelline to South Plains	64.20	Fort Worth and Denver RR
Cargill Long Park Trail	Longview	2.5	Port Bolivar Iron Ore Rail (Santa Fe RR)
Chaparral Rail Trail	Farmersvillle to Paris	56.5	Chaparral Railroad
Four C Hiking Trail	Davy Crockett National Forest	20	Central Coal and Coke Company RR
Lake Mineral Wells State Trailway	Mineral Wells to Weatherford	20	Mineral Wells and Eastern RR
New Boston to Dekalb	New Boston to Dekalb	14	Texas and Pacific RR
Old No. 9 Greenway	Boerne	1.4	San Antonio and Aransas Pass RR
Piney Creek Horse Trail	Davy Crockett National Forest	54	East Texas Railroad & Central Coal & Coke Company RR
Rock Island Rail Trail	Amarillo	4	Rock Island Line RR
Sawmill Hiking Trail	Angelina National Forest	5.5	Follows old tramways used to haul logs to sawmills
Trail de Paris	Paris	2.58	Missouri Pacific RR
Trinity River Trails Fort Worth	Fort Work Stockyards to Benbrook	35	Missouri Kansas Texas RR
Waxahachie Creek Hike & Bike Trail	Waxahachie	6	Missouri Kansas Texas RR
West White Oak Bayou Trail	Houston	5	Missouri Kansas Texas RR
White Rock Creek & Lake Trails Dallas	Valley View Park to White Rock Lake	18.20	Missouri Kansas Texas RR
White Rock Lake Trail	Northwest Highway	10	Missouri Kansas Texas RR
Wichita River Trail	Wichita Falls	6	Fort Worth and Denver RR



Source: (*61*)

Figure 12. Denton Rail Trail Route.

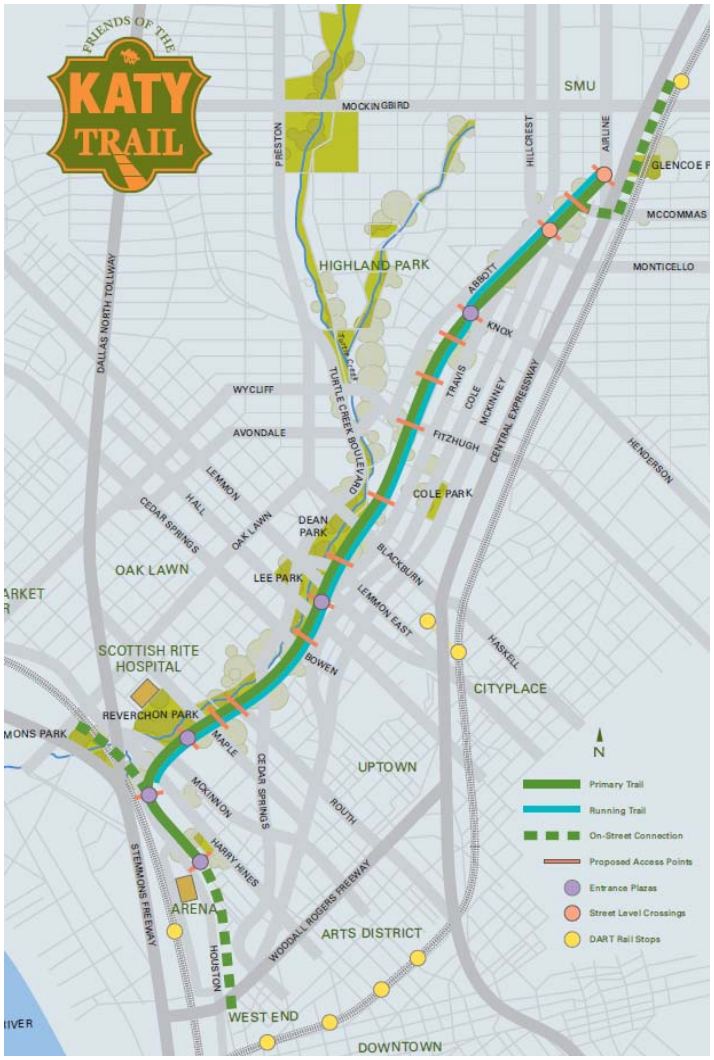
Source: (*61*)

Figure 13. Image of a Portion of the Denton Trail.

The trail is free and is open to the public (although horses are not allowed on the trail), and the trail can be accessed from 18 street intersections along the route. The Denton Branch Rail Trail compliments another section of the Trinity Trails System that also runs through Denton. The 12-mile Elm Fork Greenbelt Trail extends north from US 380 east of Denton to the Lake Ray Roberts Dam. A master plan is being conducted to connect these two trails via a 6-mile connection in the future (*61*).

Dallas-Fort Worth – Katy Trail

The Katy Trail is an inline skating, bicycling, and hiking path that runs from the Oak Lawn area of downtown Dallas to Highland Park following the path of the former Missouri Kansas Texas Railroad (MKT). Figure 14 shows the route of the Katy Trail. The corridor of the Katy Trail formed the major east-bound rail route through Dallas on the former MKT Railroad (*62*). Union Pacific Railroad (UP) purchased the MKT, which had ended operations in the late 1980s and UP donated this corridor to the City of Dallas in 1993 (*62*). Dallas residents, businesses, and city and county officials proposed the restoration of this route to create an urban park as part of the national Rails-to-Trails Conservancy Program. The initial funding for conversion into a trail was channeled through Dallas County and state grants. In 1997, a non-profit organization was created called the Friends of Katy Trail. This non-profit group was able to raise $11 million from government sources and $12 million from private funding and land donations to begin the process of creating a master plan and developing the trail (*62*). According to the Friends of the Katy Trail website, *"the Katy Trail is intended to provide an effective way of connecting the various city parks running from White Rock Lake to the planned park system along the Trinity River."*

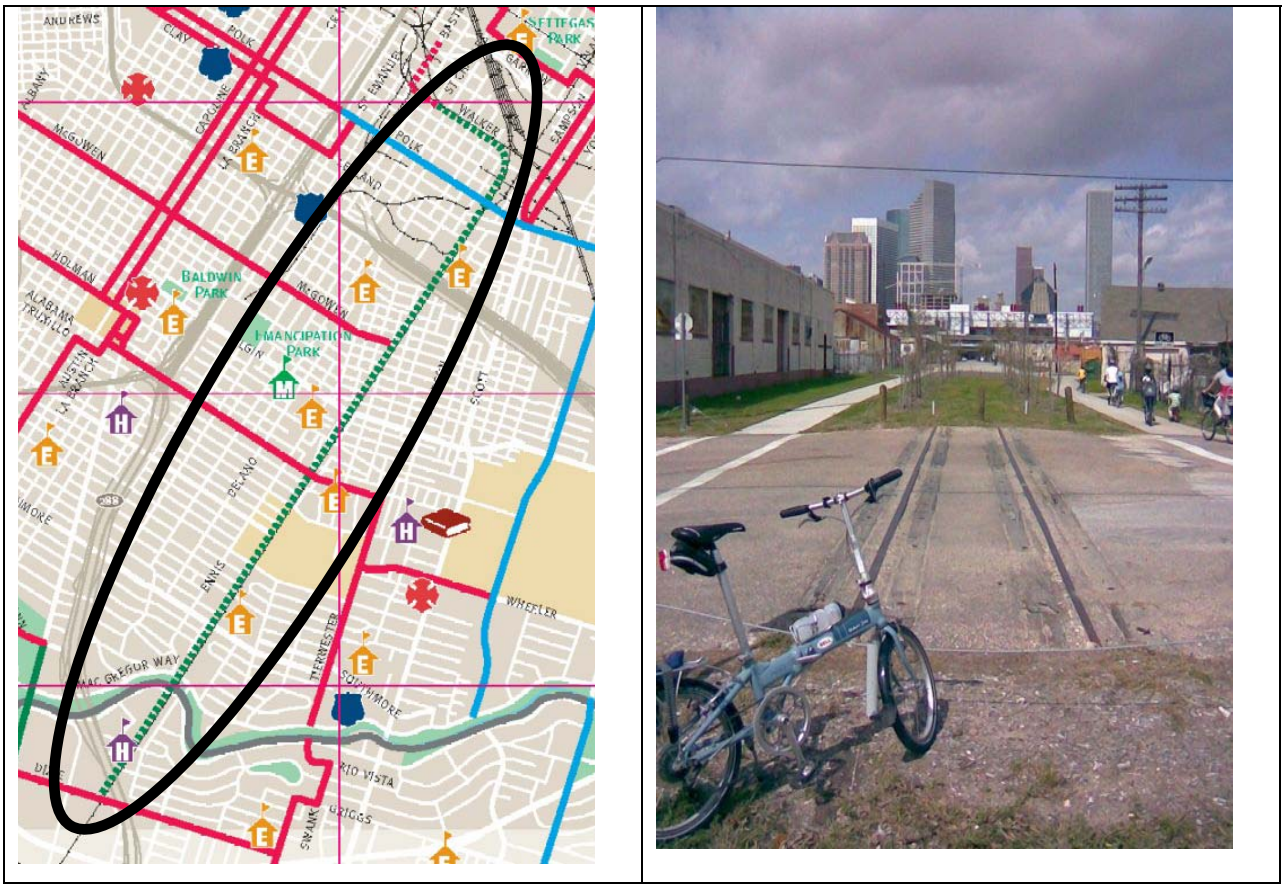


Source: (*62*)

Figure 14. Route of the Katy Trail.

Houston – Columbia Tap Rail-to-Trail

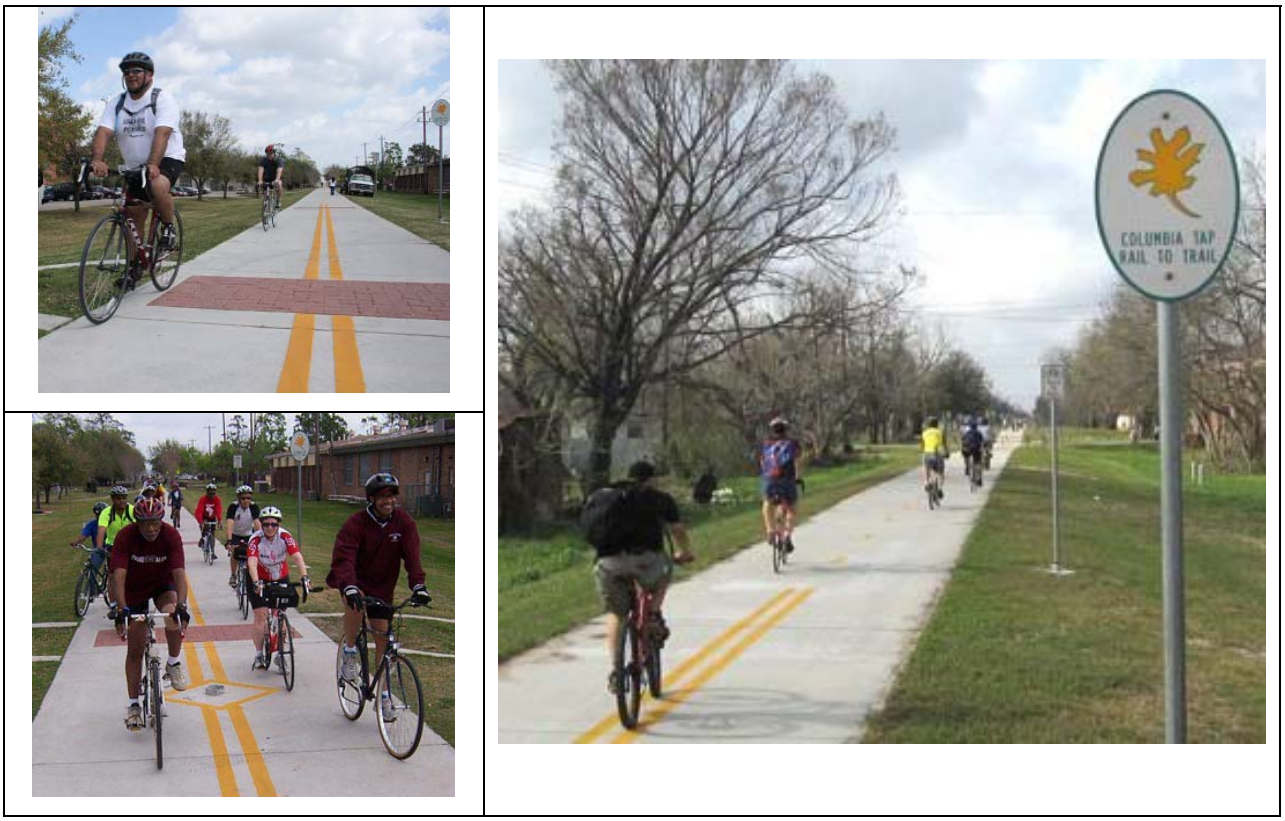
The Columbia Tap Rail-to-Trail was completed in 2008 and consists of over 4 miles of a 10-ft wide concrete multi-use hike and bike trail (*63*). Figure 15 contains the map of the Columbia Tap Rail-to-Trail and an image of a portion of the trail. Notice that the old rails remain embedded in the road pavement in the section shown in the photo.



Sources: (*63*, *64*)

Figure 15. Columbia Tap Rail-to-Trail Map.

Constructed using federal Statewide Transportation Enhancement Program, City of Houston, and Harris County Metropolitan Transportation Authority (METRO) funds, the trail connects neighborhoods along the tap with existing and planned bikeway networks that will offer improved mobility and connectivity to major attractions. Figure 16 portrays several images of the typical 10-ft wide concrete trail during the trail's grand opening celebration.

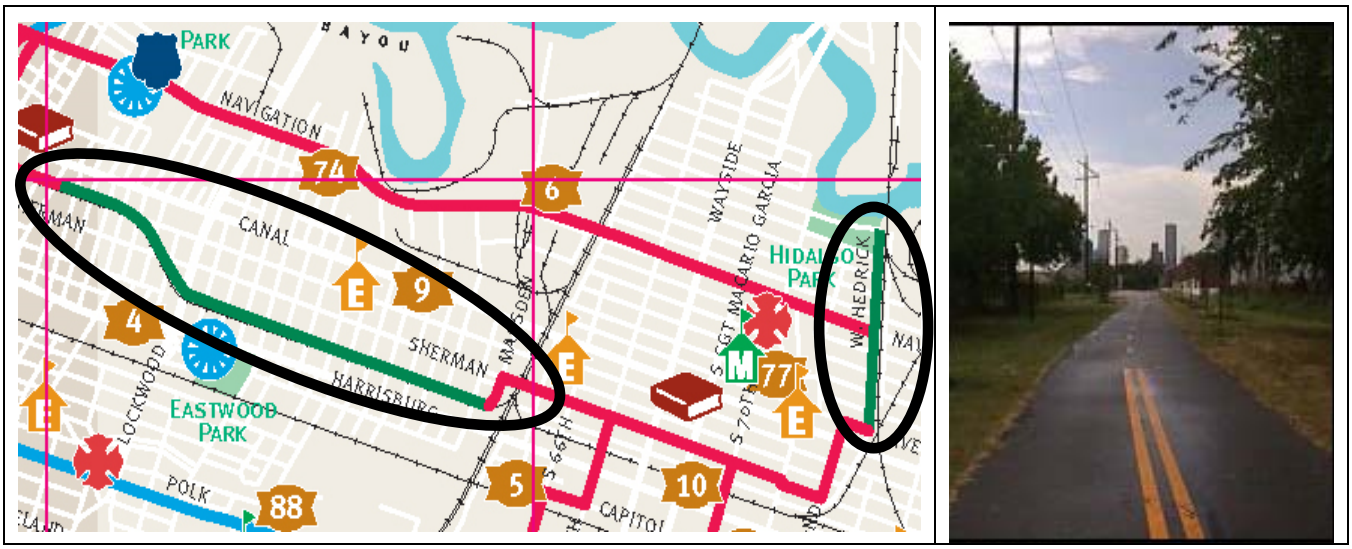


Sources: (*63*)

Figure 16. Columbia Tap Rail-to-Trail Images.

Houston – Harrisburg and Sunset Rail Trails

The Harrisburg and Sunset Rail Trail was created by the City of Houston on an old UP right-of-way that is just east of downtown Houston. The route is a 10-ft wide asphalt trail that connects to exiting on-street bikeways and has a proposed connection to the Brays Bayou Trail (*65*). It was completed in two sections between 2000 and 2003, with Statewide Transportation Enhancement Program, City of Houston, and METRO funds (*66*). Figure 17 shows a map of this trail (green on the map) and a photo of a representative trail section.

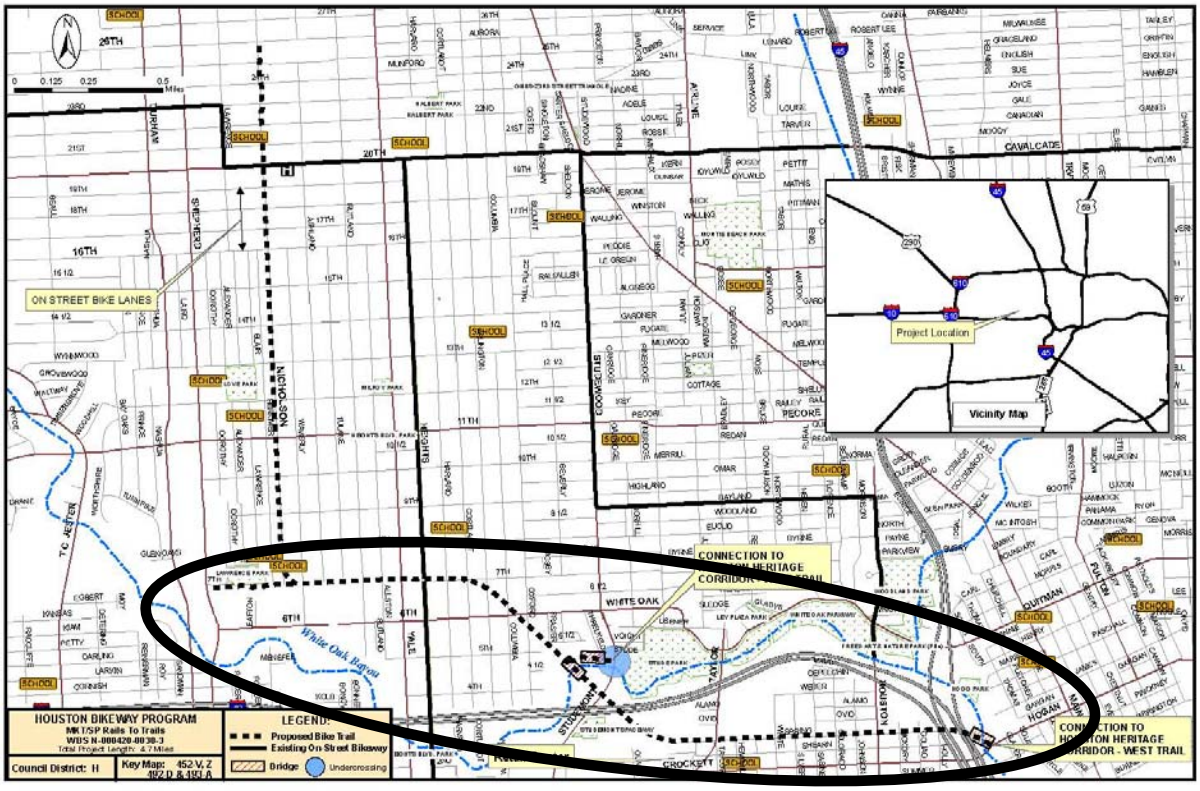


Source: (*66*)

Figure 17. Harrisburg and Sunset Trail Map and Visual.

Houston – MKT/SP Rails-to-Trails

The MKT/SP Rails-to-Trails is a 4.62 mile, 10-ft wide concrete multi-use hike and bike trail over former MKT and Southern Pacific (SP) railroad right-of-way (*67*). The trail travels through the Heights area and connects to the Heritage Corridor West Trail providing connection to the University of Houston and other downtown bikeways and destinations, according to the City of Houston website. It was completed in December 2009 at a cost of $5.1 million through a combination of federal Statewide Transportation Enhancement Program, City of Houston, and METRO funds (*67*). Figure 18 shows the route of the MKT/SP Rails-to-Trails corridor going east-west and its connection to the Heritage Corridor West Trail going north-south near its west end.



Source: (*67*)

Figure 18. Houston MKT/SP Rails-to-Trails Map.

Portland – Sunset Lake Park

According to the City of Portland, Texas, the Sunset Lake Park, which opened in 2000, provides a broad range of outdoor activity. Included in the park is a 2-mile hike and bike trail located on the former right-of-way of a historic roadway known as the Reef Road and former right-of-way of the San Antonio and Aransas Pass Railroad (*68*). A nearby Texas Historical Marker indicates the Reef Road was the shortest and most favored route across Corpus Christi Bay and was only passable during low tides. The marker also indicates the road's usage faced decline when the railroad was constructed in 1887 and when the first causeway across the bay was constructed in 1915 (*69*). Figure 19 provides a photograph of the linear, paved trail in Sunset Lake Park in Portland, Texas.

Figure 19. Sunset Lake Park Linear Paved Trail in Portland, Texas.

Wharton – Gulf, Colorado and Santa Fe RR

Wharton has two abandoned sections of rail lines that went through town. A section of the former Gulf, Colorado and Santa Fe Railroad (GCSF) corridor has been redeveloped into a paved, linear trail. This nicely repurposed trail includes benches, covered picnic areas, and a water feature. It runs through a neighborhood and adjacent to a school. Figure 20 shows some of the features along the trail in Wharton. It appears the community was heavily involved in the creation of the trail and amenities. Many of the features indicated donations from individuals or community civic organizations. (The other former rail right-of-way through Wharton has been redeveloped into commercial business parking as discussed in Chapter 9.)

Figure 20. Wharton, Texas, Linear Paved Trail on Former GCSF Right-of-Way.

Highway Development and Expansion

In many instances abandoned rail right-of-way has been utilized for subsequent highway development and/or expansion. Many major roads in urban areas as well as existing intercity highway routes have expanded onto adjacent abandoned or surplus rail rights-of-way.

Dallas – North Central Expressway/US 75

The North Central Expressway (US 75) in Dallas utilized abandoned rail right-of-way of the Houston & Texas Central Railroad (H&TC) from Bryan Street to Mockingbird downtown.

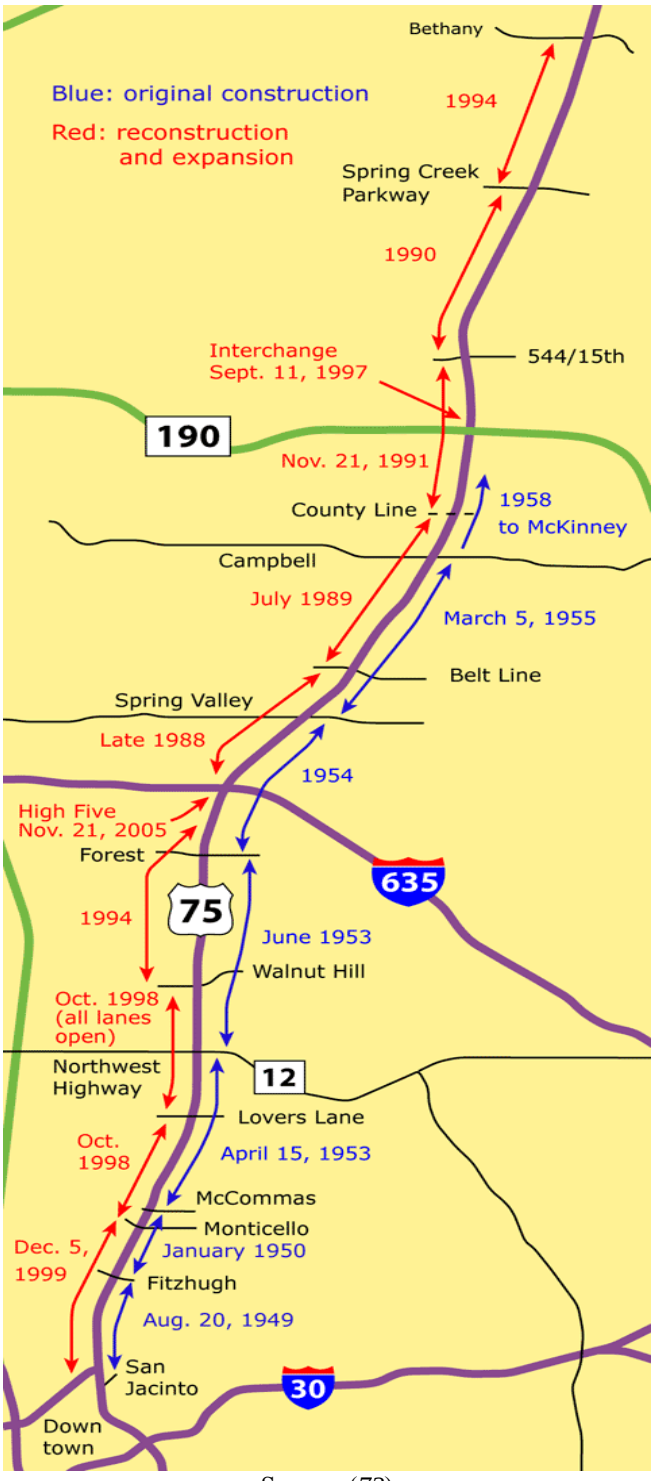
Figure 21 shows part of this old railroad in 1946. The H&TC, which began as the Galveston, Houston & Henderson Railroad (GH&H), was started in 1854 (*70*) and was renamed in April 1861 (*71*).

Source: (*72*)

Figure 21. Houston & Texas Central Railroad.

US 75 was first proposed by a Dallas city planner in 1911 but the project only began to come to fruition in the 1920s and was mentioned in the Dallas Morning News in December 1924. The city undertook a survey in 1934 to ascertain what would be necessary for a 50-ft road along the tracks of the H&TC. By 1936, things had moved to a head and the city council passed an ordinance to require SP (who now owned the railroad) to remove tracks at street intersections based upon 'safety-concerns.' The city imposed a $100-a-day penalty for non-compliance. This led to the city attorney arguing that the city had failed to produce evidence to "warrant such drastic action" in a hearing during June 1936. The city attorney was then rebuked by the city council who argued that he was trying to be a 'tenth vote' on the council and dictate to the administrative body. The matter was placed into arbitration and was resolved by July 1937 whereby the H&TC agreed to surrender right-of-way under Central Avenue for $75,000 (the original asking price had been $1,000,000 reduced to $25,000 during 1936). However, SP was still able to lobby effectively to delay purchase and construction until the late 1940s (*73*). Finally, construction on the freeway began in 1947 after approval by TxDOT in

March 1943. North Central Expressway's first section opened on August 20, 1949 (*72*). Figure 22 shows the route of US 75 today along with dates of construction and reconstruction of each segment.



Source: (*72*)

Figure 22. US 75 Route Construction and Reconstruction Information.

Houston – Interstate 10 Katy Freeway Expansion

The IH 10 Katy Freeway expansion project was completed in 2008 in Houston. It utilized an abandoned Union Pacific rail corridor that was purchased by TxDOT in 1992 for $78 million (*74*). The Katy Freeway expansion utilized the abandoned right-of-way that ran north of the freeway for almost 28 miles (*74*). Under the purchase agreement UP was allowed to use the right-of-way for five more years, and TxDOT agreed to reimburse the railroad for up to $25 million for environmental remediation (*74*). Figure 23 shows the IH 10 Katy Freeway before construction began to widen the highway. The former railroad right-of-way is shown parallel to the highway in the left portion of the picture.

Source: (*75*)

Figure 23. Houston – IH 10 Katy Freeway Right-of-Way after Rail Removed.

Houston – Westpark Tollway

The Westpark Tollway in Houston is situated on the former San Antonio and Aransas Pass Railroad right-of-way, which was owned by SP by the time the rail line was acquired. The Westpark project was originally formulated in Houston's freeway master plan in 1953 (*75*). In early 1992, Houston's METRO transit agency entered into negotiation to purchase multiple rights-of-way from four of the major railroads, including negotiations with SP who owned the

Westpark right-of-way (*76*). The initial outlines of a deal were concluded by December 1992 when METRO and SP agreed to a deal in which METRO would purchase corridor around Westpark and Hempstead Road in northwest Houston and obtain operating rights along other tracks for a price that could reach up to $113 million. However, the purchase was not all clear sailing. METRO offered to purchase 58 miles of track along Westpark corridor for $45 million, but they declined to complete the other purchases and SP filed suit with METRO filing countering litigation in March 1994 (*77*). The litigation took three years to settle and the 58 miles of Westpark right-of-way was finally purchased by METRO in 1997 for $72 million (*77*).

After the court decision was finalized, business interests in Houston now proposed that the Westpark right-of-way should be used to build a toll road. Harris County's Judge at the time lobbied hard for the newly formed Harris County Toll Road Authority (HCTRA) to lead this development and his successor as County Judge also played a major role in negotiating purchase of this abandoned rail right-of-way from METRO. In 1999, METRO sold 13 miles of 50-ft right-of-way—out of the existing 100-ft wide right-of-way—to HCTRA for $14.3 million. As the construction of the toll road began to take shape HCTRA went back to METRO to purchase more abandoned right-of-way through the corridor at the western end close to FM 1464 where toll expansion west of SH 6 was proposed to be built (*78*). The county approved a resolution in November 2003 to seek an $18.6 million deal with METRO to purchase this additional right-of-way. Figure 24 shows the corridor after the rail infrastructure was removed.

Source: (*75*)

Figure 24. Houston – Westpark Right-of-Way after Rail Removed.

Kerrville – SH 27

In 1973, the City of Kerrville and Kerr County purchased a portion of an abandoned right-of-way that abutted the jointly owned city-county airport property and SH 27 for $14,356.50 (*79*). The abandoned right-of-way was owned by the Southern Pacific Railroad who had fee title. It was comprised of two parcels of land totaling only 11.26 acres. The county unanimously approved this purchase, noting that it would be "advantageous to Kerr County and the City of Kerrville to acquire ownership to the lands aforesaid" (*79*).

Sinton – US 181

Currently, there is a UP railroad line between Corpus Christi and San Antonio that parallels IH 37. An additional rail line between the two urban areas once ran along the US 181 route. At the intersection of US 181 and US 77, a portion of the abandoned rail line corridor was observed to be owned by the State of Texas and was being prepared for future highway-expansion use. Figure 25 shows two images taken during a field visit. The top picture shows the sign indicating ownership by the state and the second picture clearly shows the removed rail ties and early preparation of the roadbed for highway expansion.

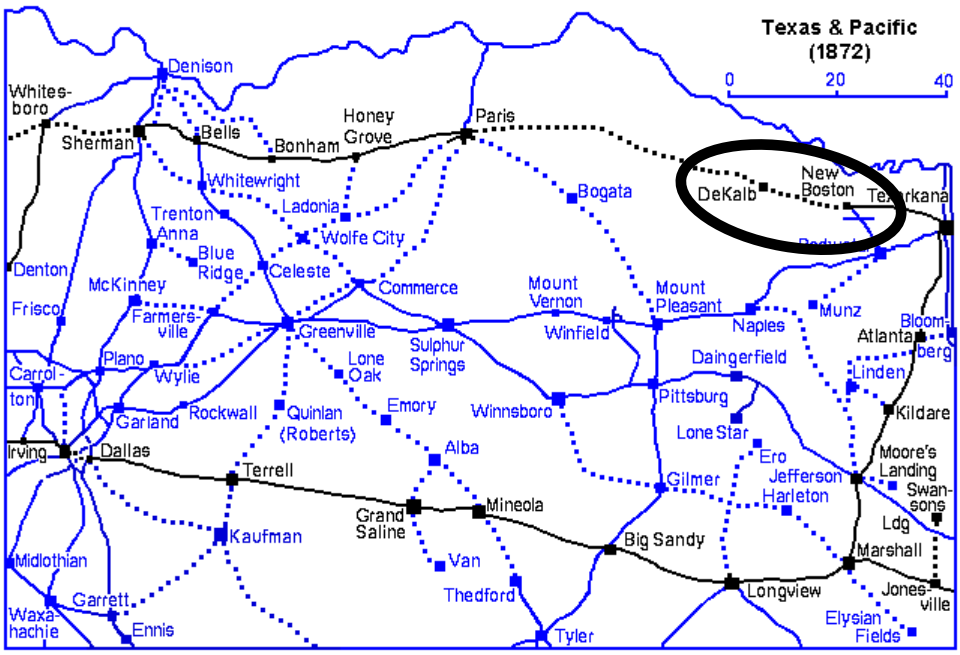
Figure 25. Sinton, Texas, US 181 Corridor.

Joint Use of Abandoned Rail for Both Trail Development and Highway Expansion

In some instances where a rail corridor has been banked, local communities and the trail organization have been able to strike a deal to utilize the right-of-way, share costs, and provide a recreational trail alongside of a highway expansion.

New Boston to DeKalb: Trail and Expansion of State Highway

When the New Boston to DeKalb trail was being developed, Bowie County managed to strike an interesting deal with the Rails-to-Trails Conservancy (RTC) to provide a rail trail along 14 miles of US 82 (which forms part of the Texas Trunk System) between IH 30 and US 259 (*80*). The abandoned Texas and Pacific Railroad (T&P) corridor traversed the entire length of the project. It was owned (after being donated by the railroad for tax credits) by RTC who had rail-banked the corridor and was reserving it for hike and bike trail use. Figure 26 shows the route of the T&P, which was first laid out in 1872 (*81*). The section over which the trail is being developed is circled.



Source: (*81*)

Figure 26. Map of Texas & Pacific Railroad Right-of-Way.

The state representative for this region along with county and TxDOT officials from the Atlanta District, coordinated with RTC to enable a joint use of the corridor for both highway and

pedestrian use. A joint use agreement was created in 2000 through which Bowie County agreed to serve as a trail manager (in perpetuity), and applied for federal enhancement program funds to help construct the trail portion of the project as well as to maintain the trail. Bowie County then donated up to 70 ft of the railroad corridor for the highway widening improvements and kept the remaining 30 ft to be used for the trail. The donation represented a potential savings of $10 million in right-of-way costs for the state.

One of the main hurdles was balancing out the cost of acquiring right-of-way with environmental concerns because the north side of the right-of-way was developed with residential and commercial uses. TxDOT estimated that if they had to purchase this side of the right-of-way it would have exceeded the $10 million, which would have considerably added to the $25 million in projected construction costs. According to the County Judge, being able to use the abandoned railroad right-of-way to the south allowed considerable savings to accrue (*80*). Plans call for the New Boston to DeKalb trail to connect with existing and proposed trails in the Paris area. Figure 27 shows an image of the Trail de Paris located in Paris.

Source: (*82*)

Figure 27. Trail de Paris Rail-to-Trail.

Transit Development

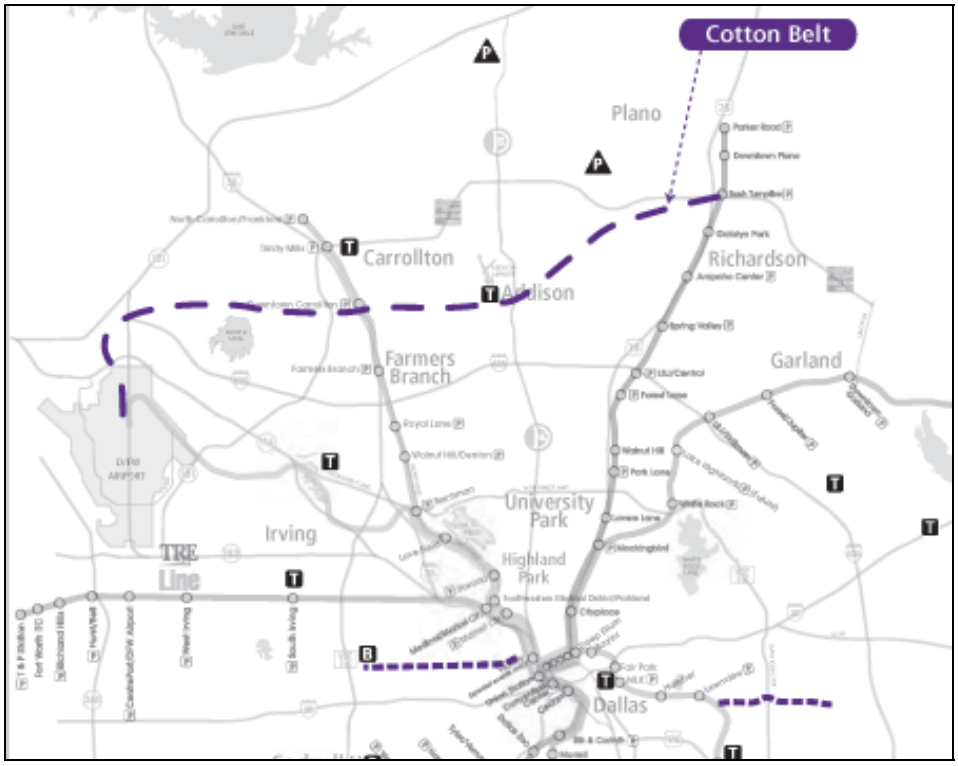
The use of abandoned rail right-of-way for transit activity can be seen throughout Texas, but is most common in the Dallas-Fort Worth Area after the demise of the MKT Railroad after the merger of Southern Pacific with Union Pacific. This afforded DART, as well as other area transit agencies the opportunity to acquire these former rail corridors and preserve them intact for future transit use. Similarly, Austin opened its new commuter rail on an abandoned rail right-of-way in 2010 over which some limited freight rail operations had been taking place on an interim basis and which continue at night when the commuter rail service does not run. METRO in Houston considered purchasing 6.6 miles a former MKT rail bed in the area between the downtown and North Loop 610 in 2007 (*83*). The right-of-way was owned by TxDOT. In many instances these urban area abandoned rail corridors have also afforded cities along them the opportunity to develop Transit Oriented Developments that have led to—in many instances—a dramatic increase in property values and in revenues generated from the development.

Dallas Area Rapid Transit

DART had an aggressive policy of purchasing abandoned rail corridors in an effort to acquire right-of-way for its planned rail network. In 1987, DART hired a real estate expert to help it maximize the value of potential development around the abandoned rail corridors that it was taking into consideration for purchase. DART had been planning to spend about $133 million to acquire the right-of-way it needed to build the planned 93 miles of system and DART officials stressed "*they want to make sure every dollar is well spent …. As our primary long-term focus is the acquisition of rail right of way*" (*85*). It was expected that 70 percent of the land DART would need would have to be acquired from the Santa Fe Railway and Southern Pacific Transportation Company as well as the MKT Railroad property (*85*).

The purchasing of existing and abandoned railroad right-of-way began in earnest in 1988. In March, DART purchased 27 miles (22 percent of the planned system) of the needed right-of-way for the transit system from SP, which included the Plano and Southeast Dallas rail lines (*84*). DART's next purchase was of 34.5 miles of right-of-way from SP in April 1988 (*85*). This former line begins north of IH 30 near Hall Street and continued to the Pleasant Grove area paralleling US 175. In June 1988, DART acquired the Carrollton Line of 13 miles beginning downtown Dallas east of IH 35 (Stemmons Freeway) and terminating at Belt Line Road (*84*). In

September 1989, DART acquired an east-west UP railroad line from Oakland to Malcolm X Boulevard (*86*). In November 1989, DART completed a formal agreement with UP to acquire 80 percent of the total operating rights/rights-of-way that DART needed for its planned rail operations. This agreement included 31.5 miles of right-of-way and the operating rights between Dallas and Fort Worth along the Railtran corridor for $39 million (*87*). In this deal DART acquired a 11.7 mile tract from Central Expressway at Mockingbird Lane northeast to Garland; 16.7 miles of track from Downtown Dallas on the east side of Stemmons Freeway terminating at the Denton County Line; and a 3.1-mile section of right-of-way in downtown Dallas from Oakland Avenue to the Southern Pacific connection that was east of Fair Park. Figure 28 shows the extent of the St. Louis Southwestern Railway (known as the Cotton Belt) route segment that was purchased by DART in 1990. In January 1991, DART acquired 54 additional miles of right-of-way from the Cotton Belt for transit use after the year 2010 (*85*). According to news reports from the period, by 1992 DART had purchased approximately 90 miles of right-of-way paying anywhere from $500,000 up to $1.8 million per mile (*76*).

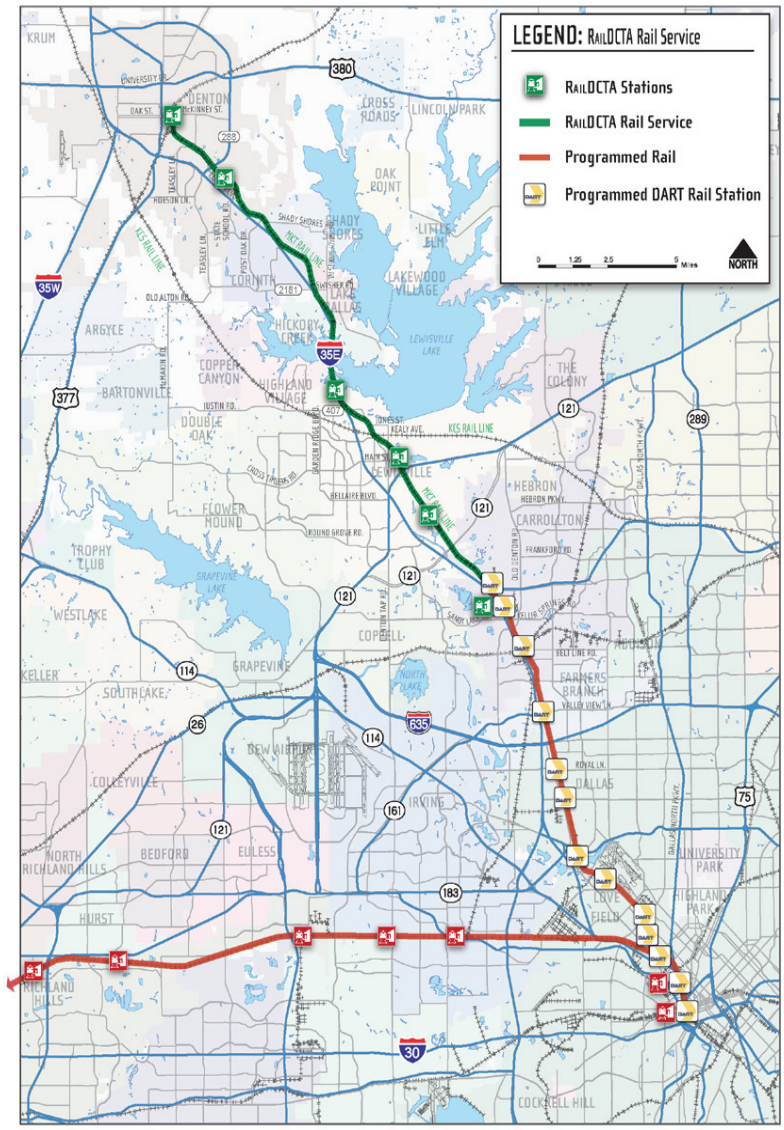


Source: (*88*)

Figure 28. Cotton Belt Route Owned by DART.

Denton County Transit Authority (DCTA) A-Train

The Denton County Transit Authority A-Train is another example of utilization of the old MKT corridor in the Dallas-Fort Worth area. Denton County began construction of this project in early 2009 after an injection of $250 million to DCTA in March 2009 using funds from the SH 121 toll road deal reached earlier that year (*89*). Service is projected to open in late 2010 or early 2011. This route will connect into DART's Green Line in Carrollton. The route from Denton to Carrollton will have six stations. Figure 29 shows the route and stations as well as the link into DART's Green Line system. The Denton Trail discussed earlier will follow adjacent to portions of this corridor.



Source: (*90*)

Figure 29. Map of Denton County A-Train Route.

Redevelopment of Stations, Depot, and Rail Yard Facilities

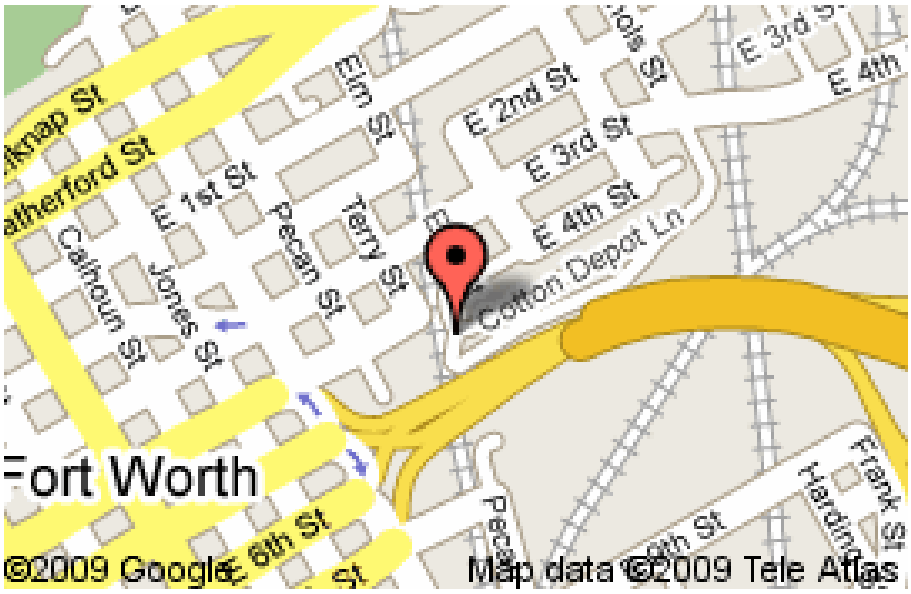
In some instances abandoned railroad stations and depots have been utilized for commercial and residential re-development or 'infill development.'

Re-Development of Rail Yard

In December 1992, DART began not only construction of its light rail service, but also the construction of its light rail vehicle service inspection facility at the former Santa Fe rail yard, which is southeast of downtown Dallas (*85*).

Residential Re-Development of Freight Masters Building Fort Worth

As an example, a developer in the Dallas area (Carleton Residential Properties), utilized a historic freight railroad building situated on the abandoned Cotton Belt Railroad on the east edge of downtown Fort Worth for a multifamily community of 210 units known as the Depot Apartments (*91*). This was an $18 million redevelopment of the circa 1914 former freight master's building. Construction of six four-story apartment buildings and the freight masters building form an urban infill community between Fourth and Fifth streets, west of Elm Street in Fort Worth. Figure 30 shows the old railway track of the Cotton Belt line and the location of the Depot Apartments.



Source: (*92*)

Figure 30. Map of the Location of the Depot Apartments.

Figure 31 shows the Freight Master's Building, which now forms the 'club-house' for this development and how the Freight Master's Building is integrated into the development.

Source: (*93*)

Figure 31. "The Depot" Apartment Complex.

One of the main issues that had to be addressed in this redevelopment was the environmental remediation of the site. Contaminated soil (with arsenic and other materials) had been moved to this abandoned site many years previously. After the state's voluntary cleanup program the site was cleared for development in 2000 (*91*). The development was also an odd shaped lot bordered by a retaining wall, railroad tracks, and a freeway. The warehouse that sat

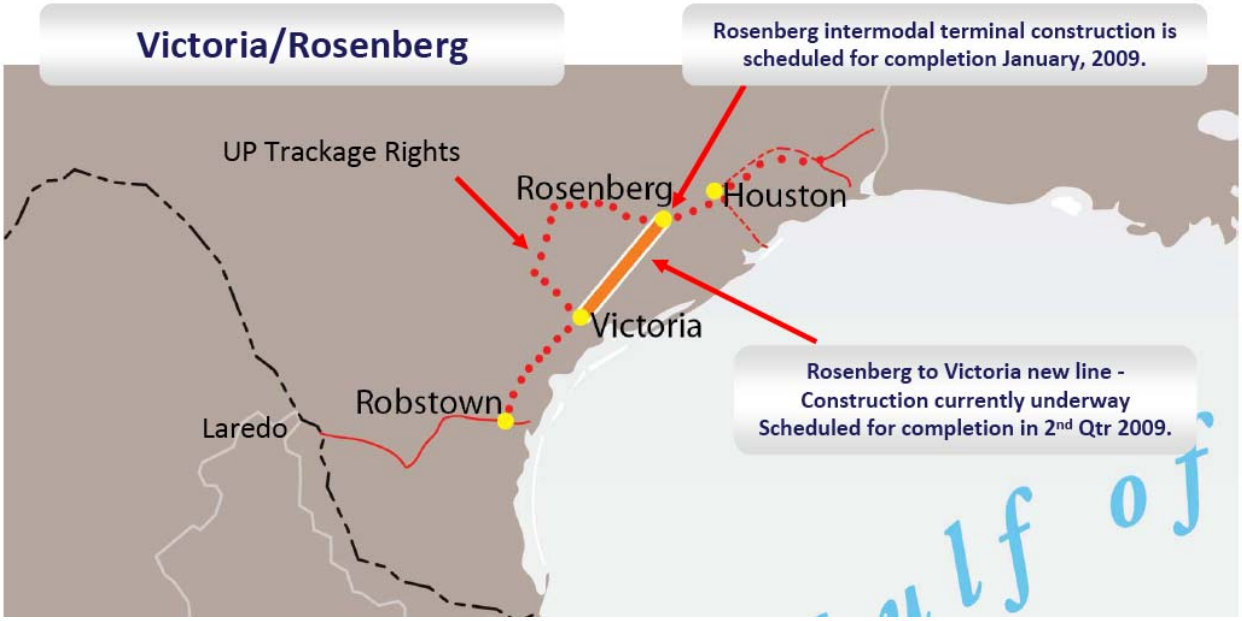
behind the freight mater's building was torn down, but wood, ceiling trusses, and bricks from this property were recycled and used throughout the development. As in many abandoned urban rail sites, the Depot's location is ideal with access to urban freeways, but also with access to the downtown area for entertainment, tourist, and shopping areas.

Resumption of Freight Rail Service

Another activity that can occur on abandoned rail lines is the resumption of freight service. Many of the activities to maintain rail right-of-way are designed keep the corridor intact in order to preserve the corridor for future rail service. Several examples of such use have taken place in Texas as discussed in the following sections.

KCS Line Reactivation of Rosenberg to Victoria

Kansas City Southern Railroad (KCS) announced in June 2009 that it was beginning to operate freight trains on its newly rehabilitated line from Victoria to Rosenberg (*94*). This line was part of the former SP Railroad. By rehabilitating the line KCS is able to shorten the route to Mexico by approximately 70 miles and eliminate the need to operate over 160 miles of heavily utilized UP track (*95*). Figure 32 shows this route.



Source: (*96*)

Figure 32. Rosenberg to Victoria Rehabilitated Line.

KCS applied for a $100 million Railroad Rehabilitation and Improvement Financing loan from the Federal Railroad Administration (*97*), which was approved in 2007, but according to news reports in early 2009 KCS was not pursing this (*98*). As with many abandoned routes this case study also provides interesting history as after the proposed abandonment, a property dispute by landowners owning parcels adjacent to the right-of-way arose and there was also an intervention by an RRTD that formed to save the route.

In December 1993, SP sought permission to abandon the route and filed a notice of exemption with the ICC. This was granted subject to a public use condition under 49 U.S.C.§10906 prohibiting SP from disposing of the property and giving interested parties 180 days to acquire it. In early 1994, SP entered into negotiations to try to sell the route to another carrier, which were unsuccessful. Later in 1994, the Gulf Coast Rural Rail Transportation District (Gulf Coast) attempted to purchase or lease the route and was also unsuccessful. Gulf Coast then petitioned in state court to try to condemn the segment and requested a temporary restraining order and injunction that was granted by the court and enjoined SP from removing tracks along the Victoria segment. SP had the case moved to federal court and attempted to quash the state court's temporary restraining order. Gulf Coast requested that the federal court issue a further temporary injunction. In August 1994, the court found in favor of Gulf Coast. The court's reasoning turned on the fact that it decided that SP had clearly expressed its intent to permanently abandon the rail line and that it had consummated its abandonment and therefore ICC no longer exercised jurisdiction. At the time the suit was pending, SP filed a letter with the ICC (now STB) reporting that Texas Parks and Wildlife had expressed an interest in acquiring the segment for rail banking. The ICC reopened the abandonment proceeding in May 1995 and issued an interim trail use that extended effective date of the notice of exemption for 180 days and deferred SPs authority to abandon the line. This was extended twice and pushed back the effective abandonment date to November 30, 1996.

In the meantime, SP and UP were in the process of merging. The merger was first approved in August 1996. In 1998, after the SP/UP merger had already been approved, the STB allowed a KCS subsidiary, the Texas-Mexican Railway, the right to purchase the dormant line as a condition of the previously approved merger. This was executed on the express condition that STB issue a decision determining that the Victoria segment remained subject to STB jurisdiction.

This decision was granted in 2000. In March 2001, Texas-Mexican Railway purchased the abandoned, former SP route.

In May 2002, adjacent landowners filed suit against Texas-Mexican Railway declaring the right-of-way was abandoned as a matter of state law because STB did not exercise jurisdiction over the line and that as a matter of state property law reverted to them. District court denied the landowners suit dismissing it for *want of subject matter jurisdiction*. On appeal the U.S. Court of Appeals for the Fifth Circuit (*Baros v. Tx Mex Railway*, 400 F.3d 228) affirmed the district court's findings. In the appeals court's ruling it was held that the lower court's refusal to give preclusive effect to its prior decision in 1994 was correct and that the district court did not abuse its discretion in refusing to give preclusive effect to its abandonment filing. The appeals court noted that the order granting the temporary injunction had never gone into effect because Gulf Coast had failed to post the bond, so SP had thus neither the incentive nor the ability to appeal. The court also held that because the authorization initially granted by the ICC was conditional the STB retained exclusive and plenary jurisdiction, so the district court properly concluded that it lacked subject matter jurisdiction to hear the landowner's suit.

Longhorn Railway Company Reactivation of Austin Route

In 1996, The Longhorn Railway Company, petitioned to get authorization from the STB to operate a freight line, in Austin on a 162-mile line that runs from Llano through Austin to Giddings (*99*). At the time of the petition to STB, only 82 miles of the 162 miles were in use. The Austin & Northwestern Railroad abandoned 52 miles of the track from Smoot to Giddings on the east side of Austin and 28 miles from Scobee to Llano on the west side. Capital Metro had previously purchased the line, in 1995 for $1 million to use for mass transit in the future. The Austin & Northwestern was owned by RailTex Service Company Inc (out of San Antonio) and had operated the 82 miles of track since 1986 when it was purchased from SP. The line was used to carry limestone, lumber, brick, waste paper, and various other materials. It crosses a UP track, allowing businesses that use it to receive and send rail freight throughout the country. The track also shared the line with *The Hill Country Flyer*, a weekend excursion train.

This deal soured with Longhorn Rail Company suing Capital Metro regarding its duties as a common carrier (*100*). Longhorn was awarded $3 million by an Austin jury in 2001 (*100*). Longhorn Rail Company filed a petition to the STB to abandon the line in 2000 (*101*). In 2000,

Capital Metro cancelled Longhorn Rail's operating contract and began freight operations with another freight rail operator. In early 2010, a new commuter rail service began operations over the corridor resulting in movement of freight service to nighttime hours.

State Park Trails

Preserved rights-of-way for trails can also exist within state-maintained parks.

Caprock Canyons State Park Trailway

The state purchased the land for this park in 1975 from an estate, but the trail opened only after the 64.25 mile railway right-of-way was donated to Texas Parks and Wildlife in 1992. Transportation enhancement funds were used by the state to convert the abandoned railway to a multi-use facility (*102*). This 12-ft wide trail was opened in 1993 and is a hike, bike, and equestrian trail. The trail has a crushed rock surface except at crossings and bridges. The trail has 46 bridges and has the 772-ft Clarity Rail Tunnel, which is home to a colony of Mexican Free tailed bats. The route passes through numerous towns north of Lubbock in the Texas panhandle.

Tourism Activity

In a few instances, abandoned rail rights-of-way are utilized for tourist activities.

Texas State Railroad

The Texas State Railroad (TSR), operated by Texas Parks and Wildlife, is an example of a tourist activity utilizing an old railroad route. The TSR began back in the 1880s after a state prison was built at Rusk, and the prison planned to operate an ore smelter with prison labor. After two railroads bypassed it, the state was able to persuade the Kansas & Gulf Shortline Railroad Company to locate there; however, after many setbacks over the interceding years in which the railroad rarely made a profit, the TSR was transferred to the Parks and Wildlife Commission in March 1972. TSR was given a $3 million appropriation in August 1972 to refurbish 26 miles of the original 33 miles between Rusk and Palestine (*103*). Recently financial troubles with operation of the TSR resulted in the turnover from TPWD to local control of the railroad operations and the hiring of a successful, private operator of other tourist railroads in the U.S. Figure 33 shows the location of the Texas State Railroad.

Source: (*104*)

Figure 33. Location of the Texas State Railroad.

Grapevine Vintage Railroad

The Cotton Belt Trail in Grapevine also utilizes portions of the old MKT trail between Grapevine and Fort Worth, which DART owns and leases to the Fort Worth and Western Railroad (FWWR). Known as the Grapevine Vintage Railroad, FWWR uses the track for tourist excursions and weekend dinner trips by train. The cities along this 10 mile path own and manage the trail within their own jurisdictions. When the project was first introduced the planners apparently overlooked the fact that part of this trail fell within a railroad right-of-way. Later, DART made policy changes that allowed the trail use to occur within the right-of-way (*105*). Figure 34 shows an image of the Grapevine Vintage Railroad steam locomotive at the Grapevine train station.

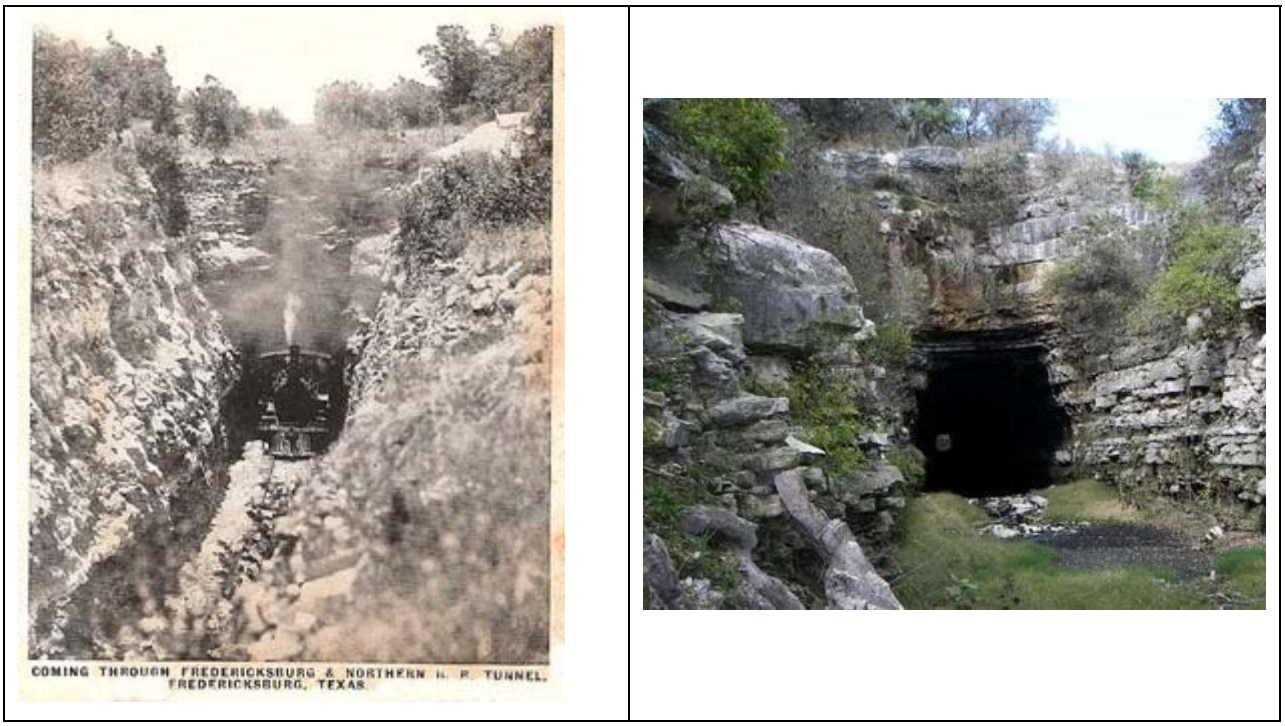
Source: (*106*)

Figure 34. Grapevine Train Station with Grapevine Vintage Railroad Steam Locomotive.

Environmental Uses

In some instances abandoned routes and tunnels eventually have wound up providing an environmental use, even if unintended. For example, the San Antonio Fredericksburg & Northern Railroad tunnel close to Fredericksburg is now home to over three million Mexican Free Tail Bats. Figure 35 shows the entrance to this tunnel with a picture of past rail activity through the tunnel and at its current state.

The tunnel was completed after the San Antonio Fredericksburg & Northern Railroad was chartered in early 1913. It opened for service on August 16, 1913, and the rail was connected to Fredericksburg by October 18, 1913. Fredericksburg had been attempting for over 50 years to get a railroad to come to the city to serve the farmers and craftsman and reduce the travel time of 10 to 11 days that it took—in good weather—to get to this city from San Antonio. The tunnel is the only railroad tunnel ever dug in Texas east of the Pecos River and South of the Panhandle. It was a straight bore of 920 ft (*107*).



Source: (*108*)

Figure 35. The Fredericksburg and Northern Railway Tunnel.

The railroad was never a success, mostly because of the $134,000 cost to build the tunnel. By 1914, the railroad was already in receivership; however, the train continued to operate for almost 29 years (*109*). The route was unfortunate, though, that by the time it was eventually opened the automobile and truck were rapidly becoming the major mode of transportation and it never was able to turn a regular profit. Fredericksburg & Northern Officials twice tried in the mid-1930s to induce the Southern Pacific to purchase the line. By 1941, the owners of the line petitioned the War Department to sell the line and in February 1942 they petitioned the ICC to abandon the route. While the community bitterly contested this abandonment with the ICC arguing that *"if left without rail service the community would face a future of regression and deterioration for a quarter of a century,"* the ICC granted the abandonment petition in May 1942 (*109*). The line was sold in the latter part of 1942 (*107*). In addition, the previously mentioned Clarity Rail Tunnel located along the Caprock Canyon Trail also maintains a bat population.

Utility Purposes

Abandoned rights-of-way provide linear, cleared land that can also be used for utility purposes. Two examples of using former rail corridors for utility purposes are provided below.

Houston East End

The area of Houston located east of downtown is known as Houston's East End. Previous TTI studies investigated rail operational scenarios in the East End area, including analysis of several segments of abandoned rail corridors. Two of those corridors, discussed in a previous section, are now utilized as paved trails. An additional line segment supports large utility towers within the former rail right-of-way. Figure 36 shows the Google Maps *Streetview* of the current use of this former rail line segment.

Source: (*110*)

Figure 36. Houston East End Utility Use of Former Rail Right-of-Way.

Milford

Located parallel to IH 35E on US 77 in Milford, a stretch of abandoned rail line also maintains large utility towers for transmission lines. Figure 37 shows these towers along the former rail line. A concrete bridge abutment remaining from the rail line can also be seen in the right foreground of the figure.

Figure 37. Milford Abandoned Rail Corridor Used for Utility Purposes.

CHAPTER 12: INFRASTRUCTURE (PART II) CONCLUSIONS

OVERVIEW OF FINDINGS

Historical Overview

As with the growth in railroad track miles throughout the U.S., the miles of railroad track in Texas grew exponentially in the late 1800s. Texas rail miles expanded until the 1930s and while several abandonments had already taken place, the state began experiencing tremendous loss of track in the second half of the 20th century. Today Texas still maintains over 10,700 miles of track, ranking it first in the country in track miles.

Texas, like most states, had numerous railroads sprawling to all areas of the state serving community, agricultural, and industrial needs. As a result of the failure to maintain financial viability of certain routes, due to railroad company mergers, modal competition from cars and trucks, and regulatory changes, the railroad companies have abandoned over 6,000 miles of rail track throughout the state. Some rail line segments were saved from abandonment by short line railroad operators, or the rights-of-way was preserved for other purposes, such as hike and bike trails through the efforts of both public and private sector groups.

Potential Abandonments

Most current rail line abandonments are expected to be shorter segments that likely served a small number of customers. Loss of this rail service of this type can still result in major impacts to rural roadways as freight is shifted to trucks and should remain a concern. One way to evaluate which lines may be candidates for future rail line abandonment is to examine the density of traffic on the line segments throughout the state. An examination of the rail line density in Texas reveals that several low-density lines do exist and should be monitored by TxDOT to ensure that valuable transportation assets are not lost. The report discusses several ways in which the right-of-way underlying abandoned rails can be re-purposed and the corridors preserved through interim means for potential long-term reactivation.

Additionally, many short line railroads are operating on rail line segments that were deemed unprofitable by the former Class I owner and were often in relatively poor condition. This combination makes it entirely possible for the state to experience the abandonment of line segments operated by short line railroads. By providing service to many rural communities and

businesses, creating jobs, and providing economic development opportunities, the approximately 40+ short line railroads remain very important to Texas.

Current Uses of Abandoned Rail Rights-of-Way in Texas

The literature indicates over 20 different potential uses of abandoned rail rights-of-way, including uses for recreational, transportation, utility, and environmental purposes. Many of these options have been utilized in Texas. Many corridor segments have been maintained for rails-to-trails facilities. Several examples show major trail corridors in major urban areas that provide needed bicycle and pedestrian-only transportation options. Additionally, several corridors were utilized for major roadway projects, including highway expansion and toll roads. One example shows the reconstitution of a formerly abandoned rail line for current rail service.

PART II CONCLUSIONS

There is no guaranteed way to determine if a rail line will become abandoned in the future. Many short line railroads are able to operate effectively despite their less-than-ideal conditions. A change in the economic conditions or operating strategies may shift traffic back onto a corridor that was previously lightly utilized. Many potential uses exist for preserving abandoned rail corridors and the state should develop laws and policies that allow for maximum flexibility in preserving rail corridors as future transportation assets.

TxDOT and local/regional planners should continue to monitor the rail system for low-traffic freight rail lines that may be in danger of abandonment. Planners should work cooperatively with private railroad companies to explore options for keeping freight rail lines in service, but should abandonment be imminent, options for preserving the corridors should be investigated. Care and forethought must be taken in how such policies are implemented. The federal "railbanking" concept is one possible policy option for rail corridor preservation. Putting a corridor into "interim trail use" status under this program leaves the corridor susceptible to future reactivation by the railroad company when/if sufficient freight traffic in the corridor warrants. As a result, such programs must be used with prudence to ensure that large public infrastructure investments in a corridor are not later lost to rail line reactivation. On the other hand, corridors capable of being purchased as "fee simple" from the railroads or adjoining land

owners have been successfully used in the past for roadway construction and expansion and transit development.

Preserving abandoned rail corridors as future transportation assets should become an accepted and promoted practice within TxDOT. Legislative changes to make abandoned rail corridor preservation and re-use more clearly within TxDOT's authority, while desirable, are not required for TxDOT to take a more proactive role in doing so. Preserving all potential transportation corridors for rail or alternative uses will increase in importance as the state's population grows.

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APPENDICES

APPENDIX A: PREVIOUS RELATED RESEARCH PROJECT DESCRIPTIONS

This appendix contains passages from previously performed research deemed valuable for providing a basic level of understanding for issues that might have been asked of TxDOT to address during the 81st session of the Texas Legislature.

PROTECTING RAIL CORRIDORS AGAINST ENCROACHMENT – RESEARCH PROJECT 0-5546, PERFORMED BY CTR

Description

This project examined means in which the public can protect rail corridors against encroachment. It first examined the legal tools existing in Texas that could facilitate the preservation of rail corridors. The project then investigated policies that have been adopted in other states to set aside future corridors for new construction prevents incompatible land uses in close proximity to existing rail corridors and preserve corridors that have been abandoned for recreational or future transportation use. Finally, it examined various mitigation techniques that could be used to lessen the impact of rail activity on surrounding communities.

Findings

Chapter 1. Rail Corridor Preservation

Freight Rail Preservation – Prior to the changes enacted by the Texas legislature in House Bills 3588 and 2702, in 2003 and 2005, respectively, the state DOT did not become actively involved in the private ownership and operation of freight rail. Neither TxDOT nor local jurisdictions were given statutory authority to purchase, build, or operate freight rail. As a result, there have been few incidences in which active freight rail corridor preservation occurred in Texas aside from TxDOT's 2001 decision to acquire the South Orient (Texas Pacifico) railway. With the passage of HB 3588 and HB 2702, however, TxDOT was granted new authority to construct, operate and own rail facilities—both transit and freight.

Passenger Rail Preservation – There are few instances in which jurisdictions, including transit authorities in Texas, had been actively involved in preserving rail corridors intended

specifically for future transit corridor use. This was accomplished through two mechanisms: purchase and banking. The most prolific example of purchase of abandoned routes occurred in the Dallas Fort Worth area by the Dallas Area Rapid Transit Authority. For example DART utilized the purchase of abandoned freight routes to form the backbone of DART's light rail system.

Chapter 2. Corridor Preservation and Surrounding Authority

TxDOT's Legislative Authority Regarding Rail Corridor Preservation – In 2005, the Texas Legislature transferred all of the powers and duties related to railroad regulation previously specified to the Railroad Commission to the TxDOT. This transfer of authority incorporated the power to acquire property.

Property Acquisition – TxDOT is expressly authorized to acquire land for a rail ROW as well as to acquire a property interest in land "determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities." TxDOT also has power to acquire property outside the right-of-way to mitigate for environmental impacts associated with rail projects or establish buffer zones.

With respect to its authority to acquire property for the ROW, the department is authorized to use any method to acquire the property interest, including voluntary purchase and condemnation. However, the statute states the department's preferred acquisition procedure is to acquire fee simple for the ROW, and an easement for land not included in the ROW proper.[1] The department may either acquire the land itself, or request that the city or county acquire the land. Table A-1 outlines other acquisition tools that TxDOT can utilize.

[1] Fee simple refers to the acquiring the highest bundle of rights available for a particular property. Easements, by contrast, refer to a right to use land in a particularly specified way (or prevent its use in another way) without owning the land outright.

Table A-1. Acquisition Tools Available to TxDOT.

Acquisition Tools
• *Hardship Acquisition*—early acquisition of a parcel on a ROW project at property owner's request to alleviate hardship to the owner. • *The Protective Buy*—early parcel acquisition to prevent imminent parcel development that would materially increase right-of-way costs or tend to limit highway alternatives. • *Donations*—the department may accept donation of land along a proposed corridor. • *Options*—upon a project-by-project authorization by the commission, the department may execute an option contract for the acquisition of ROW and control of development rights. The option contract allows the department to ensure that inconsistent uses do not develop within a proposed corridor. The option contract allows the department to acquire the land in the future without need to resort to the condemnation process. The primary period of the option must be five years or less, and subsequent extensions may not exceed five years.

The Power to Require the Cooperation of Political Subdivisions – Chapter 91 of the Transportation Code relates to the authority of TxDOT over the state's rail system and provisions of this chapter require political subdivisions within Texas to cooperate in the department's efforts to establish *and protect* rail corridors. Specifically, Section 91.006 states that "[w]ithin available resources, an agency or political subdivision of this state shall cooperate with and assist the department in exercising its power and duties under this chapter." This includes the acquisition of property (and an interest in real property) that is necessary and convenient for the provision of rail facilities. The statute authorizes TxDOT to direct the efforts of cities and counties to ensure that they aid the overall rail project. However, it is relatively general in its requirements and given its inherent limitation of "within available resources," it may not impose adequate direct obligations on political subdivisions to ensure that TxDOT can rely on their cooperation.

Regional Transportation Authorities – In the absence of statewide regulatory authority, another mechanism for achieving protection of rail corridors could be through the use of regional authorities and special districts that are authorized to operate transit systems and with eminent domain powers.

Texas Transportation Code has created three types of regional transportation authorities that all enjoy essentially the same range of powers to provide for public transportation in the applicable region. Table A-2 highlights the powers of these authorities. The major differences

between these three regional transportation authorities are in their locations and compositions, rather than their respective regulatory powers.

Table A-2. Power of Transit Authorities.

Powers of the MRTAs, RTAs, and CCTAs
• May acquire, construct, own, and operate a transit authority system. Possess all powers "necessary or convenient" to operate a transit authority system. This includes the authority to exercise eminent domain to condemn property. • Powers limited to mass transit, defined as the transportation of passengers. Includes any means of mass transport, including rail, but does not include freight rail.

Metropolitan Rapid Transit Authorities – Metropolitan Rapid Transit Authorities are authorized in Chapter 451 of the Texas Transportation Code. Originally, these entities could be created only by cities with a population of 1.2 million. These principal cities had to have created an authority by the end of 1985. In 1993, the statute was amended to allow adjacent, alternate cities within the metropolitan area of the principal city, to create authorities in areas not previously covered by an authority. At present, principal cities are no longer allowed to form Metropolitan Rapid Transit Authorities.

Regional Transportation Authorities – Regional Transportation Authorities, authorized by Chapter 452 of the Transportation Code, are similar to Metropolitan Rapid Transit Authorities, except that they can be created in less populous areas. Regional Transportation Authorities can be created by principal municipalities having a population of 350,000 or more, by the county in which a principal municipality is located, or both.

Coordinated County Transportation Authorities – Finally, the Commissioners Courts of counties that are adjacent to a county with a population of one million or more, and are not otherwise part of a Regional Transportation Authority, may create a Coordinated County Transportation Authority.

Regional Mobility Authorities – In addition to the regional authorities contemplated in the Transportation Code, counties may form RMAs to undertake particular transportation projects contained in state and local transportation plans. A county or group of counties can create an RMA. RMAs have similar powers to their transit counterparts.

While the statute authorizing creation of RMAs was motivated to facilitate the construction and operation of toll roads, RMAs are also authorized to undertake passenger or freight rail transportation projects. RMAs have the same powers as the Transportation

Commission for property acquisition associated with a transportation project. The RMA's authority to acquire property and construct a transportation project is not limited to counties within the RMA, provided that the county into which the project extends grants its approval and is given the opportunity to join the RMA.

Inter-municipal Rail Districts – In 1992, the 72nd Texas Legislature provided for the creation of Inter-municipal Commuter Rail Districts to provide commuter rail service between two municipalities that have a population of 450,000 or more. ICRDs are located no more than 100 miles apart.

ICRDs are authorized to acquire, construct, develop, own, operate, and maintain intermodal and commuter rail facilities inside or connected to political subdivisions within their district. They are authorized to condemn through eminent domain proceedings any land that is necessary for the provision of commuter rail facilities. This includes land in fee simple as well as an interest less than fee simple, including right-of-way and easements. This is, however, subject to the provision that the district shall *to the extent possible, use existing* rail or intermodal transportation corridors for the alignment of its system.

Currently there is only one ICRD: the Austin-San Antonio ICRD. However, the Gulf Coast Freight Rail District has the option to add an ICRD should they chose to do so. The 80th Texas Legislature also authorized the Lower Rio Grande Valley to create an ICRD.

Freight Rail Districts – Chapter 171 of the Transportation Code authorized creation of Freight Rail Districts for counties with a population above 3.3 million. FRDs are authorized to exercise the power of an ICRD but are narrowly tailored to provide freight rail facilities. FRDs have the same project powers of RMAs. As of 2008, Texas had one FRD created: the Gulf Coast Freight Rail District.

Rural Rail Transportation Districts – The Texas Legislature also provided for the creation of Rural Rail Transportation Districts in 1981. RRTDs can be created as a single county district or by multiple counties that constitute a contiguous geographic area. These districts are intended to help protect against abandonment of existing rail facilities. In order for a county to be eligible to form a RRTD, there must be a rail facility located within the county that is in the process of being abandoned through bankruptcy court or Surface Transportation Board proceeding, or that carries less than 3 million gross tons per mile per year.

RRTDs are authorized to plan, acquire, construct, own, and operate rail facilities. They are authorized to condemn through eminent domain proceedings any land that is necessary for the provision of rail facilities. This includes land in fee simple or an interest less than fee simple, and includes ROW and easements.

Chapter 3. Municipal Land Use Authority

Given the lack of statewide or regional zoning authority in Texas, another option for protecting rail corridors is to seek the cooperation of those political subdivisions that do posses general zoning powers. In Texas, the political subdivisions that possess the most extensive zoning powers are municipalities. There are two types of cities in Texas: general law and home rule cities. General law cities have many of the same powers as home rule cities, but their powers are limited rather than absolute.[2]

Home Rule and General Law Municipalities – The Texas Local Government Code divides general law municipalities into three types. The differences are based primarily on the size of the community at the time of incorporation.[3] Both general law or home rule cities generally enjoy the same powers with respect to the provision of transportation facilities or the protection of rail corridors. Texas Local Government Code Chapter 211, defines the zoning powers, as well as enables municipalities with the creation of those powers (Table A-3).

[2] Tex. Dep't of Transp. v. City of Sunset Valley, 146 S.W.3d 637 (Tex. 2004).
[3] The distinction allows the legislature to pass laws that affect only a certain class of municipalities.

Table A-3. Municipal Powers in Texas.

Municipal Powers and Obligations
• *Property Acquisition:* All municipalities are authorized to hold, purchase, or convey property located in or outside the municipality, if doing so carries out a municipal purpose. Providing for a transportation project would safely fall under the definition of municipal purpose. • *Land Use Regulation (Zoning):* The general power of a municipality to enact zoning regulations is established by statute and applicable to general law and home-rule cities. The purpose of zoning is to promote the "public health, safety, morals, or general welfare," as well as protect historical and cultural areas of importance. • *Extraterritorial Jurisdiction (ETJ):* The ETJ of a municipality is the unincorporated area contiguous to the boundaries of the municipality. The size of the ETJ varies ranges from 0.5 to 5 miles. A municipality may impose some zoning-type regulations on subdivisions within its ETJ. When the regulations of the municipality conflict with those of the county, the more stringent provisions prevail. However, these powers are much more limited than the municipality's zoning powers within its municipal boundaries. In particular, municipalities may not impose land use or restrictions on subdivisions within their ETJs.

County Powers – The most relevant county power for rail corridor protection arises out of a county's authority over public roads and highways. Commissioner's Courts have the power to exercise general control over all roads and highways in a county. A county may lay out and establish, change, discontinue, close, abandon, or vacate public roads and highways.

It is not clear whether the authority of counties to control public roads extends to rail corridors. The answer depends on whether rail facilities are public roads within the meaning of the statutes. The Texas Constitution states that, "[r]ailroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways..." While this could suggest that railroads are encompassed in the statutes relating to county roads, no court has interpreted this provision to extend a county's authority to regulate public roads to cover regulation of railroads.

Power to Acquire Property – Texas counties are not privileged with the power of eminent domain. Eminent domain powers are assigned to counties to serve particular purposes. There is no direct grant of authority to condemn property for purposes of acquiring a railroad right-of-way or protecting an existing rail corridor. The general grant of eminent domain power is instituted in Local Government Code section 261.001, which provides that "[a] county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or

library, or for another public purpose authorized by law." It is possible that this provision can be interpreted to convey eminent domain power for purposes of protecting rail corridors when read in conjunction with certain provisions of the Transportation Code.

Section 91.002 of the Texas Transportation Code establishes the "acquisition, financing, construction, operation, and maintenance of a rail facility" as a "public and governmental function, exercised for a public purpose and matters of public necessity." This suggests that actions taken to establish a rail corridor by the county would be considered a valid public purpose. The question, then, is whether this action is "authorized by law."

While most of Chapter 91 of the Transportation Code relates to the authority of TxDOT over the state's rail system, counties are implicated by the operation of two statutes. Section 91.006 states that "[w]ithin available resources, an agency or political subdivision of this state shall cooperate with and assist the department in exercising its power and duties under this chapter." That includes the acquisition of property, or other interest in real property, that is necessary and convenient for the provision of rail facilities. Furthermore, counties may "convey title to or a right in property determined to be necessary or convenient by the department under this chapter."

It is unclear whether a county may act of its own volition in acquiring property for a rail corridor. Both 91.006 and 91.094 seem to limit the participation by political subdivisions to situations where TxDOT has taken the lead by coordinating the corridor project. A county that seeks to acquire property for a rail corridor without the consultation of TxDOT may open itself to a legal challenge on the grounds that it is not acting within a power expressly granted by the Texas Constitution or by statute.

Limits of County Power – In sum, Texas counties are much more constrained in their ability to regulate land use than are municipalities and generally do not have zoning authority. However, in very limited situations, some Texas counties have been granted some zoning powers authorized by specific grants from the state legislature. In these limited cases where zoning authority was granted to a county, it was typically given in connection with a recreational area, a military base, or the protection of lake front areas. Additional authority is given to the commissioners courts in certain urban and suburban counties to adopt rules to provide for the "safe, orderly, and healthful development of the unincorporated area of the county." However, this additional authority explicitly does not include use or area restrictive powers. It is generally

limited in establishing rights-of-way widths, lot frontages, and set back lines. Comal County is an example of a county using this limited zoning power, and to date, no grants of zoning powers have been given to counties in connection with transportation planning.

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THE ROLE OF RURAL RAIL TRANSPORTATION DISTRICTS IN TEXAS – RESEARCH PROJECT 0-4007, PERFORMED BY TTI

Description

This multi-year project produced several reports and products that extensively evaluated the history, status, and potential future of Rural Rail Transportation Districts that formed in the State of Texas since the state legislature first authorized them in 1981. RRTDs are subdivisions of Texas state government that have the power to purchase existing rail lines that may be threatened with abandonment, to purchase and operate existing rail lines, or to build new railroad and intermodal facilities. The reports also describe the recent trends that allow districts more latitude to act as regional economic development tools rather than only as infrastructure preservation entities.

Findings

Overview of RRTDs

Purposes for Forming a RRTD – The two main goals behind forming a rail district have historically been rail line preservation and economic development. These two purposes have been borne out in the types of rail districts that exist in Texas today. When first authorizing RRTDs, the 67th Legislature included four legislative findings, or reasons, that had motivated their action to allow formation of these special districts. These reasons were:

- The state contains many rural areas that are heavily dependent on agriculture for economic survival.

- Transportation of agricultural and industrial products is essential to the continued economic vitality of rural areas.
- The rail transportation systems in some rural areas are threatened by railroad bankruptcies and abandonment proceedings that would cause the cessation of rail services to the areas.
- It is in the interest of all citizens of the state that existing rail systems be maintained for the most efficient and economical movement of essential agricultural products from the areas of production to the local, national, and export markets.

These statements articulate that the 67th Legislature's primary concerns were the transportation benefits that could be achieved by preservation of rail transportation assets in rural areas. Twelve years later, the 73rd Legislature added three additional legislative findings by passing SB 968 that linked RRTDs more closely with economic development. These were:

- Rural rail transportation districts are appropriate political subdivisions to provide for the continued operation of railroads, which are declared by Article X, Section 2, of the Texas Constitution to be public highways.
- The creation, re-creation, financing, maintenance, and operation of rural rail transportation districts and facilities acquired by the districts under this Act will help develop, maintain, and diversify the economy of the state, eliminate unemployment or underemployment, foster the growth of enterprises based on agriculture, and serve to develop and expand transportation and commerce within the state under the authority granted by Article III, Section 52-a, of the Texas Constitution.
- Financing by rural rail transportation districts for the purposes provided by this Act is a lawful and valid public purpose.

These findings express the legislative intent for RRTDs to preserve the rail lines in rural areas of the state for economic as well as for transportation reasons. They also make clear that the spending of public funds to preserve rail and encourage economic activity along rail lines can benefit the public.

Since 1993, additional amendments to the legislation have further focused the ability of RRTDs to foster economic development. Changes to the statute, passed in 1997 by HB 2462 of the 75th Legislature, have made it possible for single counties to form rail districts. This

capability has led to formation of several RRTDs focused on specific rail construction projects at planned or existing goods distribution centers around the state. This very localized, project specific application of a RRTD's powers has increased interest in the formation of new districts as another tool that development planners and local government leaders can use to attract new businesses to their area.

Many manufacturing firms will not consider constructing a new plant or relocating to rural sites that do not have rail access in addition to highway access for trucks. Additionally, they prefer sites served by more than one rail carrier so that competition between railroad companies will reduce the rates that they must pay to move freight. The use of RRTD legislation to provide rail transportation options in new areas of the state has also attracted private businesses to enter into joint agreements with RRTDs in order to develop exclusive projects through a public-private partnership. This smaller, more local type of district has become the most common being formed during the last five years. This trend is mainly in response to the need for more development of this type to handle increased trade, the changes made to the statutes, and a slow-down in longer branch lines being abandoned by the Class I railroad companies.

Powers and Duties of a RRTD – Section 5 of the rail district statute outlines the powers and duties of a RRTD. Each of the districts responsibilities are explained in legal terms in the statute, but this section of the guidebook will provide an overview of many of them. Among the powers granted to a RRTD are:

- A district may plan, acquire, construct, complete, develop, own, operate, and maintain rail facilities inside or outside the district.
- A district has the right of eminent domain to acquire lands in fee simple (outright ownership) or any interest less than fee simple.
- A district may sue and be sued.
- A district may acquire by grant, purchase, gift, devise, lease, or otherwise may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of its other powers.
- A district may enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of its facilities, installations, or properties within or outside the district.

- A district may adopt rules to govern operation of the district, its employees, the rail facilities, service provided by the district, and any other necessary matter concerning its purposes.
- A district may enter into joint ownership agreements with any person.
- A district shall establish and maintain rents or other compensation for the use of the facilities owned or controlled by the district in sufficient amounts to pay all expenses necessary to the operation and maintenance of the properties and facilities of the district and any interest and principal on all bonds issued by the district.
- A district may make contracts, leases, and agreements with, and accept grants and loans from the United States of America, its departments and agencies, the state, its agencies, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it.
- A district may acquire rolling stock or other property in any of several manners as outlined in the statute.
- A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties not needed for the efficient operation and maintenance of the system.
- A district may, by order of its board, sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for carrying out its powers.
- A district by resolution may adopt rules and regulation governing the use, operation, and maintenance of the system and shall determine all routings and change them whenever the board considers it advisable.
- A district may lease all or part of its rail facilities, or contract for the use or operation of the rail facilities, to any operator and encourage the use of private firms to accomplish these tasks.
- A district may contract with any county or other political sub-division to provide rail transportation services outside the district boundaries.
- A district must adopt an annual operating budget and publish notice of its hearing to adopt such a budget.

- A district board shall, by resolution, name one or more banks for the deposit of district funds, which may be invested as other public funds.
- A district may not abandon a rail line of the district with respect to which state funds have been loaned or granted unless the abandonment is approved by the Texas Transportation Commission as being consistent with the district's mission.

The broad powers granted to rail districts have given them the potential to accomplish much; however, lack of a stable funding source has proven problematic.

Funding Rural Rail District Activities – The only statutory funding source that has been made available to RRTDs, other than receiving donations of cash and real property, has been the authority to issue revenue bonds and the use of anticipation notes. Specific rules for these methods are included in Section 6 and 6A of the RRTD statute. Because RRTDs need an adequate revenue stream to repay bonds and notes this funding method is not attractive. Currently, at least one RRTD is considering being the first to issue bonds as permitted in the statute.

Unfortunately, up until now, only RRTDs that have been able to obtain multi-million dollar grants from outside sources have had the capital available to fund robust activities. Two RRTDs, the South Orient Rural Rail Transportation District and the Northeast Texas Rural Rail Transportation District, have been successful in gaining state financial assistance through state appropriations bill riders and in one district, the Centex Rural Rail Transportation District, a Class III rail operator has paid for long-term rights to operate on the RRTD's line. Such outside funding sources, from both public and private sources, have enabled these districts to continue rail service over the lines. Other RRTDs have been formed early in the abandonment process and have sought to purchase the rail assets in their district, but without a stable, identified funding source have not been able to purchase the line and prevent its abandonment and scrapping.

The use of innovative financing techniques is the newest trend in funding for RRTDs. The statutory power to accept "grants and loans from the United States of America, its departments and agencies, the state, its agencies, and political subdivisions, and public or private corporations and persons" opens up numerous possible funding sources to RRTDs. These programs can be based either upon the transportation aspects of the railroad or on the economic development that preserving such a line can encourage. Except for the prohibition from levying or collecting ad valorem (property) taxes, there are very few limitations within the RRTD statute

as to what funding sources may be used. As with any small business or local government, it behooves members of RRTD boards to be entrepreneurial in seeking out these sources. Recent examples of economic development-type funds being appropriated to Texas short line railroads include:

- The NETEX RRTD obtained a $1.5 million dollar grant from the U.S. Department of Agriculture to purchase and rehabilitate track.
- The Peanut Railroad between Dublin and Gorman received a $2 million dollar grant from the Texas Department of Economic Development and the Texas Department of Agriculture to rehabilitate its track. (Although this line is not associated with a RRTD, this case illustrates how a light density line with an identified traffic base can obtain such funding if it can make its business case known and explores all available funding sources.)

There are also a number of transportation-related funding programs generally used for highways that can be made available for railroad improvements under certain conditions. This trend to have more flexible, multimodal transportation funding began in 1991 with passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) that authorized certain highway trust fund dollars to be used for other transportation modes and focused attention on the need for freight transportation planning at the state and local levels.

A recent Federal Railroad Administration report listed several examples of transportation funding sources from the Transportation Equity Act for the Twenty-first Century (TEA-21), the latest national transportation funding bill passed in 1998 that has been applied to railroad projects around the U.S. These funding sources include the following programs:

- National Highway System.
- Surface Transportation Program.
- Congestion Mitigation and Air Quality (CMAQ) Improvement.
- Transportation Infrastructure Finance and Innovation Act (TIFIA).
- Railroad Rehabilitation and Improvement Financing (RRIF).
- National Corridor Planning and Development and Coordinated Border Infrastructure Programs (Corridors and Borders).
- Transportation and Community and System Preservation (TCSP) Pilot Program.
- Transportation Enhancements Program.

- Light Density Rail Line Pilot Projects.
- High-Speed Rail Program.

Not all of these programs may be applicable to the needs of RRTDs, nor are all RRTDs eligible for each program, but every possible avenue for funding should be identified and evaluated. For example, RRTDs will most likely not be interested in undertaking projects of over $100 million that require repayment under the TIFIA loan program. Nor will the High Speed Rail development program be likely to affect the low-density lines generally owned by RRTDs.

In addition, each of these TEA-21 programs has distinctive rules regarding how to apply for funding. In some programs, state government may coordinate submission and prioritize applications on a statewide basis before sending them on to the federal government. For example, to apply under the Corridors and Borders Program, a RRTD project would have to compete against and rank higher than other projects at the state level, including high profile highway projects, before it could advance to be considered for an award from the U.S. DOT. A similar competition for funds occurs under the Transportation Enhancements Program although its projects are decided at the state transportation commission level. Applying under this program might be more advantageous for RRTDs in some cases, however, because funds from this program are designated specifically for non-traditional, but still transportation-related, projects. A peculiarity of this program is that it can fund recreational trail development or restoration of a railroad depot into a museum or historical park, but U.S. DOT guidelines have precluded enhancement funds from being used to continue railroad operations.

Other programs, such as CMAQ, apply only in urban areas that the Environmental Protection Agency has designated as federal non-attainment areas for air quality. A few of the existing RRTDs may be located in or near such areas, but most are not. Most federal level programs for rail are either underfunded or have not received federal appropriations. For example, the Light Density Rail Line Pilot Project was authorized by TEA-21, but has not been appropriated funds by Congress since TEA-21's passage.

Possibly the most promising of these programs for small railroads, the RRIF was authorized to provide both grants and loans to the rail industry and state government entities for rehabilitation of rail infrastructure. The grant portion was not funded, but the loan segment of this provision has recently been activated after a long battle over rulemaking for the program.

The program will have $3.5 billion in low interest federal loans and loan guarantees available of which $1.0 billion is reserved for Class III railroads such as those operated in RRTDs. One problem is that loans must be repaid and RRTDs or their operators often cannot generate enough revenue to repay large loans of this type.

Because each program's requirements and application procedures are different, RRTD boards must carefully study whether any of these programs would meet their needs and judge whether or not an application under any specific program has a reasonable chance of success.

Spending time and effort pursuing the most promising programs would be wise since RRTDs have limited personnel and resources to expend. Federal program managers for each specific program should be able to advise RRTD board members on program applicability to rail district use. Local TxDOT district planners and TxDOT's multimodal planning section in Austin should also be consulted for guidance regarding applicable federal programs.

Before deciding to form a RRTD, officials should evaluate the potential for such a governmental entity to accomplish its goals. It is very unlikely that a RRTD will be successful unless there is a commitment of both personnel and fiscal resources to the venture.

Rural Rail Transportation District Best Practices

Factors for an Effective RRTD – Several factors that have proven essential in forecasting the potential ability of an RRTD to carry out its functions effectively were identified during the research project based upon the experiences of the existing districts. These factors fall into four main areas:

- Financial capabilities.
- Board activity level.
- Business operational practices.
- Legal and ownership issues.

County commissions that are considering formation of a RRTD should review these factors beforehand to help in making their decision on whether to proceed. A listing of characteristics describing desirable backgrounds for board members should also help them in selecting appropriate leaders for each RRTD board.

While there is some variance from district to district regarding niche markets or products that will be moved by rail, the RRTDs that have proven successful in preserving rail

infrastructure and developing new rail facilities have several common features that have contributed to their success. Because each district developed under different conditions and the ownership characteristics of each RRTD are not equal, these factors will be evaluated based upon the assumption that the RRTD has ownership of both the existing track infrastructure and its underlying right-of-way.

Financial Capabilities – One of the determining factors in the success or failure of a RRTD is its financial status. The costs of acquiring and operating an abandoned rail line are considerable, and without sufficient financial backing and business prospects, it is unlikely that the RRTD will be able to preserve the rail line. Some of the primary financial considerations for RRTDs are summarized below.

Capital Expenses – The following are a brief description of the capital expenses RRTDs may experience.

- *Acquisition costs* include the cost of the land, the right-of-way, and infrastructure (rail, ties, ballast, etc.) of an abandoned line and any existing support facilities.
- *Rehabilitation costs* will vary according to the current condition of the rail line. Many lines that are being abandoned may have been in gradual decline due to decreasing use and maintenance by the abandoning rail company.
- *Construction costs* must also be considered if a new spur line or supporting facilities are planned.

Funding Sources – The following are some of the funding strategies RRTDs may use to finance capital and operating expenses.

- *Issue revenue bonds* to finance acquisitions and construction.
- *Apply for grants* (federal, state, or private sector) of real property or funding. Possible sources of grants for existing RRTDs include State General Revenue appropriations and funding through private rail, manufacturing, or industrial companies that have an interest in operating/shipping along the line.
- *Sell or lease excess property* from the acquired right-of-way.
- *Charge rents* for use of the right-of-way and associated properties.
- *Public/Private Partnerships* between the RRTD and local business interests.

Economic Development Prospects – To maximize the opportunities for continued funding of rail activity, RRTDs need to ensure opportunities for preserving present and encouraging future economic development along the rail line. Indicators of potential future economic success of the RRTD include the following:

- Existing or prospective customer base/businesses on line when the RRTD forms.
- RRTD involvement in rail industry associations such as the American Short Line and Regional Railroad Association (ASLRRA) or others.
- RRTD involvement in local economic development groups.
- A generally healthy national and local economy.

Board Activity Level – The ability of a RRTD board to complete tasks is greatly determined by the level of activity and effort that is put into its success. The following factors regarding board activity and makeup aid the RRTD.

- *Timeliness of RRTD formation* is the first and possibly most difficult requirement.
- Actions to preserve a local rail line should begin as traffic levels begin to decrease and must be taken once the line is proposed for abandonment by a railroad company. If at all possible, acquisition by the RRTD should occur before the rail infrastructure is removed or deteriorated by heavy use and deferred maintenance. Since many railroad abandonments occur without much warning, organizing and establishing a RRTD within this time window requires local transportation and economic development leaders to be proactive in working with the owning railroad company to preserve rail service.
- Those appointed to the RRTD board should have a background in or an understanding of businesses that rely on rail transportation and general knowledge of the local economy.
- The RRTD board should have regularly scheduled meetings to conduct RRTD business. The current RRTD statute mandates that meetings be held at least monthly. While monthly meetings may seem excessive in the case of some RRTDs that have no assets or operating rail lines, the importance of meeting on a regular basis to ensure continuity of the board cannot be overemphasized.

- Ideally, RRTD boards should have as little turnover of members as possible. Members develop knowledge of rail transportation over time, so experience from years of RRTD board service is beneficial.
- Boards do not need to be overly involved in day-to-day rail operations if a reliable and conscientious contract operator can be obtained. Instead the board should focus on contractor oversight and maintaining financial responsibility for the publicly held RRTD. (See Business Operational Practices.)

Business Operational Practices

Favorable Operating Conditions – The following conditions should be addressed prior to acquiring an abandoned rail line, if possible, as they will directly affect the ability of the RRTD to operate rail service over the line.

- If the rail is not in sufficient condition for operating trains, the cost and timetable of rehabilitation must be considered.
- The rail lines of the RRTD should interchange with at least one Class I railroad, and preferably more than one.
- The RRTD needs to establish a business relationship with its Class I or other interchanging railroads.
- Traffic levels (existing or potential) on the rail line and on the connecting railroads must be sufficient to support operating costs.

The Business Plan – A business plan should include a set of goals for the operation of a rail line (or for the use of the right-of-way if a rail line no longer exists). The RRTD board should be innovative in seeking out new avenues for business and should work closely with local business and economic development groups. The business plan should be developed in concert with the annual RRTD operating budget required by the statute.

Relationship with Rail Operator – Once the business plan and track and interchange conditions are evaluated and the decision is made to acquire the rail line for continued operations, the RRTD should hire a contract rail operator as soon as possible. To ensure a productive relationship between the RRTD board and the operator, the board should do the following:

- Set standards for the rail operator that meet the board's business plan.

- Develop an understanding of how rates are set for movement by rail so that the board and operator can more easily negotiate on user fees for the RRTD and in setting fees that will cover both line maintenance costs and the other financial needs of the RRTD and operator.
- Understand that the rail operator will need the RRTD board's assistance in gaining STB approval to operate over the line and may need to have certain fees waived or even limited financial assistance from the RRTD during an initial period of start-up operations.
- Hire an operator that is skilled and aggressive in gaining new, retaining current, and regaining former shippers while providing a high level of customer service.

Legal and Ownership Issues – RRTD ownership of the land, right-of-way, and rail infrastructure are essential to long-term preservation of the line and continuing rail operations. Without ownership and control of all these elements, the RRTDs future activities will be limited. RRTD boards should do the following:

- Ensure support and agreement between all counties involved before proceeding.
- Prepare to negotiate with the rail company on the purchase price (taking into account the company's expected income from scrapping and selling the rail line components) and with potential rail operators.
- Hire a good transportation lawyer to guide the RRTD board through the process and protect the interests of the RRTD.
- Use the RRTD's status as a public agency to good advantage wherever possible in finding funding or other assistance for RRTD activities. Boards should seek legal guidance in such matters. If the RRTD is unable to gain ownership of track infrastructure, but has ownership of the underlying right-of-way, it should do its best to preserve the right-of-way intact for future redevelopment as a rail corridor. One method for achieving this is for the RRTD to place the right-of-way in railbanked status and convert it to some interim use until a new rail line is needed.

Evaluating Economic Success – Ultimately, because its main purposes are to provide transportation options and to promote economic development, a successful RRTD will seek to break even financially. Any profits it might generate should be either invested in improvements to its existing holdings or for investment to raise capital for future projects. Periodic evaluations

of RRTD activities and accomplishments help to measure the success and progress of a RRTD and to identify areas for possible improvement. The following selection of economic evaluation measures is not comprehensive, but provides a starting point for monitoring the current and potential success of an existing RRTD.

Information on Economic Development – Measures of economic development that should be tracked within a RRTD's county or counties include the following:

- Growth of existing businesses that use rail shipping.
- New businesses in the area that use rail shipping.
- Number of businesses switching to rail shipping from truck shipping (or supplementing truck shipping with rail shipping).
- Increase in profits and jobs within businesses that switch to rail shipping from truck shipping (or supplement truck shipping with rail shipping).
- Number of manufacturers/shippers served.

Gauging Board Activity – Measures of effectiveness for RRTD board activity could include the following:

- Frequency of board meetings.
- Attendance levels at board meetings.
- Average length of tenure for board members.
- Successful partnering with operator and other railroads.

Funding Avenue Exploration – Measures of funding avenue exploration could include the following:

- Amount of funding and/or real property received from federal or state grants.
- Amount of funding and/or real property received from private-sector companies.
- Number of manufacturers and shippers paying for rail shipping within the RRTD.
- Number and amount of revenue bonds sold.
- Total funding obtained versus capital and operating costs.

The application process for loans and grants from federal and state sources often take a significant amount of time. These programs also have varying legal and collateral requirements that must often be met. The RRTD board should take these factors into consideration when considering such funding options.

Rail Traffic Levels/Trucks Diverted – Measures of rail and truck traffic levels could include the following:

- Number of rail carloads shipped per day/week/month/year within the district.
- Number of truckloads shipped per day/week/month/year within the district.

Long-Term Roadway Rehabilitation Costs – Measures of long-term roadway reconstruction/rehabilitation costs could include the following:

- Number of rail carloads diverted from truck shipping per day/week/month/year, (expressed as the equivalent number of truckloads removed from roads with each rail car equivalent to approximately three or four truckloads).
- Number of truckloads removed per day/week/month/year (from above measure), expressed as the approximate reduction in roadway damage (with roadway damage from each 80,000-lb truckload equivalent to that of approximately 9600 automobiles).
- Expected roadway lifetime, based on the number of truckloads shipped.

New Roles and Responsibilities

Current RRTD Relationships with Other Texas Governmental Subdivisions – The broad powers granted to RRTDs, including ones that are not specifically enumerated here but are covered in the Year 1 report, give RRTDs great potential to be active in development and redevelopment of rail transportation facilities statewide. Establishment of a method for RRTD board members to interact with TxDOT's rail planning staff could be of great benefit to both entities. Coordination of plans and cross-training of personnel will result in better understanding and interaction at both the TxDOT district and state rail planning levels.

Suggested Framework for the TxDOT-RRTD Relationship Conclusion – Creation of a framework through which both TxDOT and RRTDs can work cooperatively to improve rail transportation options throughout the state is greatly needed. Putting the recommendations made in this chapter into practice will begin a process that, over time, will lead to robust interaction and an alliance between local TxDOT planners and RRTD boards. This relationship in turn can prevent conflicts between TxDOT planning documents and RRTD plans while greatly increasing the amount and quality of information available to statewide rail and highway planners in the Rail Division. The legislative recommendations if adopted will support this new organizational framework and make compliance with RRTD statutes more straightforward.

Criteria for TxDOT Involvement in Rail Preservation

System/Safety Related Factors

Several factors related to system characteristics and rail safety should be taken into account when evaluating which lines should require TxDOT to become involved. These include:

- The importance of the line to the state's rail system and the rail system goals outlined in the most current Texas Rail System Plan and the Statewide Transportation Plan update.
- The condition of the rail line and its potential to handle projected traffic types (e.g., its ability to handle 286K railcars).
- The opportunities for interchange of traffic with other rail carriers associated with the line.
- The number of and distance to other alternate rail services in the area.
- The condition and service coverage of existing highway alternatives.
- The traffic safety, roadway reconstruction, and environmental costs incurred due to increased truck transportation on rural roadways.
- The potential for safety and maintenance benefits related to the closing of rail-highway grade crossings along the line.

Business Factors

Business-related factors to be included in determining TxDOT involvement include:

- The economic development implications of lost rail service to the area.
- The existing and potential business base along the line.
- The long-term potential for increased development in the area.
- The potential for partnering with a short line railroad or RRTD to operate the line.
- The long-term potential salvage value of the line and its right-of way if rail operations do not continue.

Funding/Local Support Factors

Finally, these factors related to funding opportunities and local support for rail line preservation should also be considered:

- The availability of other line-specific appropriated or private funding assistance.
- The interest level of the local community in preserving and supporting future rail service.

Use of RRTDs for Economic Development Purposes Conclusion – In the U.S. railroads are predominantly owned and operated by private companies. If we seek to maintain the private nature of the railroad industry, particularly in areas where the rail service economics are marginal, then the public sector must be very selective in choosing how it will intervene in the provision, preservation, and purchase of rail assets. Public entry into this historically and principally private domain that has the effect of further reducing non-sustaining rail rates through a public entity such as a RRTD is ill advised. In some cases, it can be argued that further rate reductions may have the effect of hastening the demise of the very transportation service the RRTD wishes to invigorate. Each RRTD board must therefore evaluate the rail transportation situation that exists within its area of responsibility and develop plans that address public need for rail transportation while seeking to preserve the delicate economic balance that drives the private sector rail industry.

The background knowledge necessary to make such decisions may or may not be held by RRTD board members when initially appointed. The need for information on the rail industry and issues was addressed in producing the guidebook during Year 1 of this project, Texas Rural Rail Transportation Districts: Guidebook for Formation and Evaluation, TxDOT Project 0-4007-P1. By combining the knowledge base in that guidebook with the awareness of some of the issues outlined in this chapter, RRTD board members, transportation planners, and others may better define the role of RRTDs in the future.

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THE RAILROAD SYSTEM OF TEXAS: A KEY COMPONENT OF THE STATE AND NATIONAL RAIL INFRASTRUCTURE – RESEARCH PROJECT 0-1703, PERFORMED BY TTI AND CTR

Description

This robust research effort by both the Texas Transportation Institute and the Center for Transportation Research provided detailed investigations into 32 state rail policies, plans, and programs; develops exemplary state rail programming and planning based on case studies; and provides a framework for rail planning in Texas.

Findings

A Framework for Rail Planning

Compared to the planning functions for other transportation modes, the state rail planning process in Texas has been limited in scope. The reasons for this are varied, but reduce principally to the private nature of rail transportation.

Because rail carries so much freight in Texas and reduces so drastically the number of trucks on Texas' roads, integration of rail into the statewide transportation plan is important to developing a balanced transportation system in Texas. A balanced transportation system, rather than one with principal dependence on only one mode, optimizes resources by taking advantage of the strengths of each type of transportation system: road, rail, water, and air. In this undertaking, there is an implicit understanding that each mode is different, with differing requirements, constraints, and constituencies. Some of the unique considerations pertaining to planning for rail transportation are presented below:

- Rail transportation is largely a private-sector transportation service and thus integrating rail into a statewide planning process requires an understanding of the goals and constraints affecting railroad management.
- Different interests are affected by railroad service, many dependent on the low rates afforded by rail transportation, and each valuable to the planning process.
- Rail planning technical issues are different, particularly when it comes to analyzing the costs and benefits associated with rail issues facing shippers, railroads, and the state.
- State concerns regarding rail issues have historically been questions regarding the retention of existing rail service and facilities, rather than that of improving service—this may be changing.

As stated above, rail operations in the U.S. are almost entirely controlled by private-sector interests. Planning by the private rail companies traditionally has concentrated on network considerations, facilities, maintenance, types and level of service provided, pricing, and marketing policy. Rail planning from the perspective of the railroad companies is, of necessity, primarily concerned with enhancing the economic viability of the enterprise. The role of the state in the rail planning process must then, by definition, consider the relationships between rail service and the economic and social well-being of its citizens. A basic requirement of the state rail planning process is the formulation of a mechanism by which an assessment can be made as to the interests of state government regarding rail operations in light of social, economic, and environmental considerations. In order to achieve this, a major component of any rail planning process should be a rational and factual analysis of rail operations in the state and its impact on shippers, carriers, and other affected interests. The kind of impacts evaluated should focus on each specific circumstance. The rail planning process outlined in this report will assist TxDOT in determining an appropriate focus.

Rail services are, and will continue to be, of vital importance to the effective functioning of the Texas economy. It is essential for the rail planning process to recognize and respond to the many needs implied by this relationship in an organized manner. The purpose of this document is to present an overview of the key steps in the planning process for rail transportation at the state level. The steps proposed represent only the basic foundation required to initiate and implement a comprehensive, ongoing rail planning process. Building on this foundation will require from

TxDOT, a commitment of resources, time, and experience with the complex rail issues affecting our state.

Steps in the Rail Planning Process

A state rail planning process often concentrates on rail considerations involving either branch lines or the system-wide network. A branch line planning process is, in many cases, a reaction to a perceived need to retain rail service in the likelihood of potential rail abandonment. On the other hand, a system-wide planning process takes a much broader view of rail operations in the state, treating the rail system as a component of the overall transportation network. The rail planning process steps detailed in this document can serve rail planners both from a branch line or statewide perspective.

The steps in the rail planning process identified through this research are:

Step 1 - Goal definition in explicit terms such that progress toward specific objectives can be measured.

Step 2 - Identification of major rail issues of concern to the state.

Step 3 - Identification of affected parties or interests impacted by rail planning decisions.

Step 4 - Development of rail service requirements or needs as perceived by affected interests or stakeholders.

Step 5 - Determination of information and data requirements necessary to evaluate rail service options.

Step 6 - Identification or development of appropriate analytical or methodological tools for data analysis or impact evaluation.

Step 7 - Development of rail service options and policy alternatives and the determination of evaluation factors upon which to compare options or alternatives.

Step 8 - Comparison of rail service options or policy alternatives including the "do nothing" scenario.

Step 9 - Formulation of a preliminary rail plan.

Step 10 - Development of the means by which the plan is implemented.

At this point it is important to make the distinction between the rail planning process and the development of a distinct plan to respond to rail-related transportation needs. A specific plan is developed methodically, with the best data available and considering important issues by using the process outlined in this section. The process is a logical sequence of steps that determines or

uses pre-existing goals, consults with affected parties, and gathers and evaluates information all to make the best possible choice for the combined constituencies.

A comprehensive assessment of global state needs, using the rail planning process, may contribute on the other hand, to the development of a statewide rail plan by identifying many individual plans, projects, or initiatives. This research will frequently discuss the steps of the planning process in the context of a single assessment. However, it should be understood that the process encompasses both strategic and tactical activities.

The state railroad planning process may involve a large number of participants. An important requirement for a successful planning process is the identification of a lead agency and the clear definition of the mechanisms and relationships by which other affected state agencies participate in the planning process. Additionally, the process framework must be constructed so that rail plan objectives are compatible with public policies in other areas, such as other modes of transportation, economic development initiatives, and environmental policies. A rail planning process needs to draw upon a wide range of sources, not only for information and data, but for the different perspectives they will contribute toward the undertaking.

Rail Line Abandonment

Rail abandonment can greatly affect the areas that lose rail service. The loss of rail service to a community can be significant. The creation of a single mode transportation system greatly limits the future growth and direction of the community by hindering economic expansion and development opportunities. This includes the ability to attract certain types of industries that depend on rail service. Quality of life within the community may also deteriorate as pollution levels and roadway degradation increase with increased truck traffic.

A list of negative impacts on a community may include:

- Loss of jobs.
- Loss of businesses.
- Loss of population.
- Reduced ability to attract certain types of industries.
- Loss of tax revenues with the possibility of the reduction of local services or an increase in taxes.
- Increase in local street and road traffic and increased maintenance expenses.

- Reduced economic development opportunities.
- Increased levels of noise and air pollution.
- Reduced property values.

Figure A-1 demonstrates these potential impacts resulting from the abandonment of light density lines.

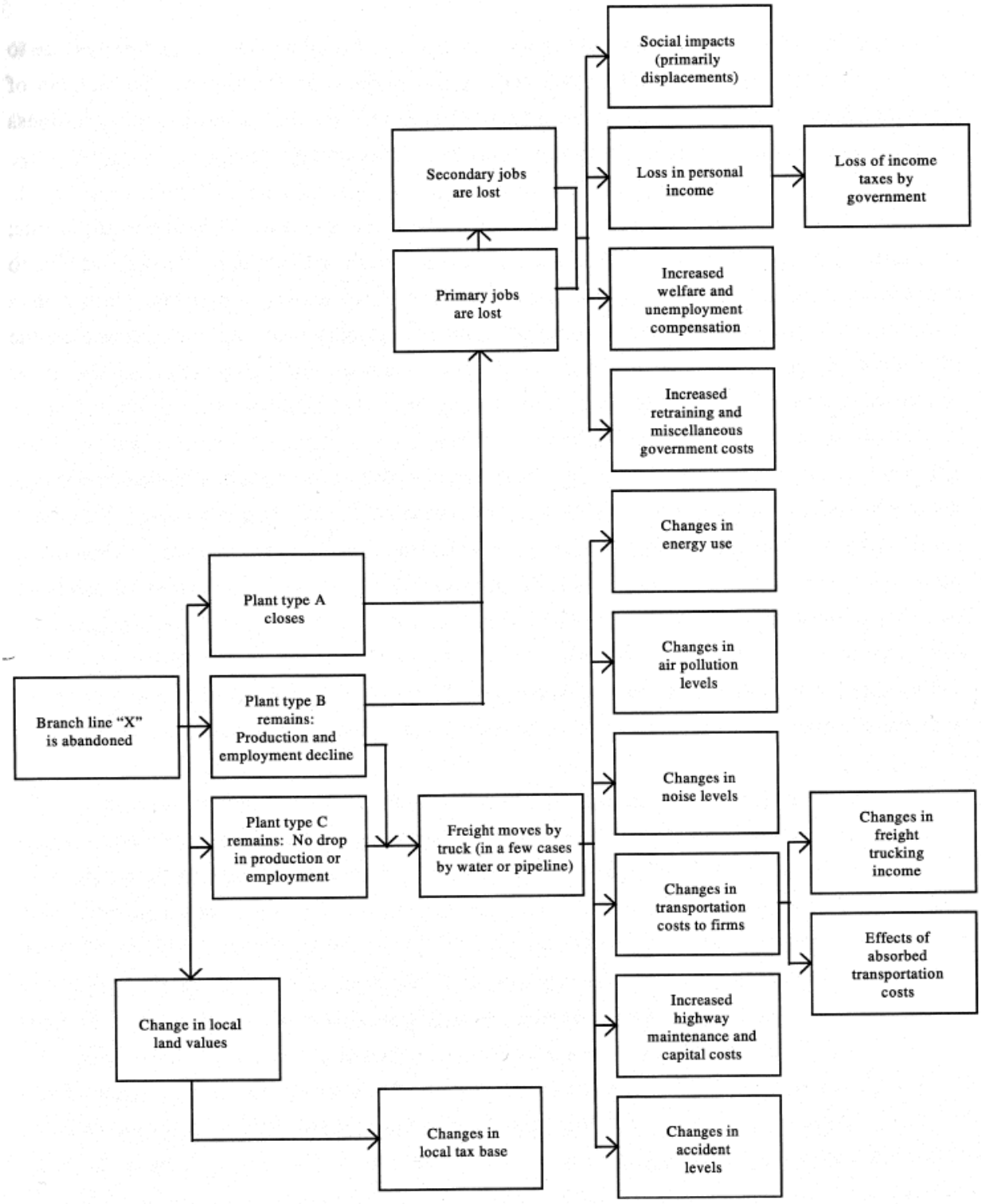

Figure A-1. Potential Impacts Resulting from the Abandonment of Light Density Lines.

Businesses are especially vulnerable to negative impacts associated with the loss of rail service to an area. To them, the loss of rail service may become a question of survival. The

amount of dependence on rail service will dictate the overall effects on a specific business, but any business may experience secondary impacts regardless of their reliance on rail.

Firms using rail service to any extent have three choices: 1) use trucks for all freight requirements; 2) relocate to an area where rail service is available; or 3) go out of business. Those firms able to shift all their transportation needs to trucks may experience an increase in freight rates, reduction in revenues, and loss of market. Reduction may occur in employment opportunities and in the profitability of the business. In addition, these firms become captive to one mode and lose their negotiating position.

The state of Texas also has legitimate concerns about the loss of rail service to different areas. These concerns are both economic and social in character and encompass the following areas:

- **Economic development**: Without a balanced freight transportation system economic development objectives of the state may be difficult to achieve.
- **Regional development**: Certain regions of the state will undoubtedly be at a distinct disadvantage in their efforts to grow and remain economically viable.
- **Competitive prospects**: Both the state and some areas may find that their competitive position as it relates to other states is diminished.
- **Quality of life**: Certain quality of life considerations are lost or diminished when an area loses rail freight service. While these may be difficult to quantify they are no less valid and need to be recognized when confronting a possible line abandonment.

Full Bibliography

Roop, Stephen, Jeffery Warner, Duane Rosa, and Richard Dickinson. *The Railroad System of Texas: A Component of the State and National Transportation Infrastructure.* Research Report FHWA/TX-99/1703-3. Texas Transportation Institute, College Station, TX, November 1998.

FUNDING STRATEGIES AND PROJECT COSTS FOR STATE-SUPPORTED INTERCITY PASSENGER RAIL: SELECT CASE STUDIES AND COST DATA – RESEARCH PROJECT 0-4723, PERFORMED BY TTI

Description

This project investigated project costs and funding strategies utilized by U.S. states and coalitions of states to fund intercity passenger rail projects.

Findings

This project determined that while each of the case study states have committed to supporting intercity passenger rail, their funding methods for doing so are quite varied. Table A-4 shows highlights of these differences. Because federal transportation funding that can be used by states for passenger rail support is limited, states have been forced to look for all possible funding sources and apply them based on a state-by-state determination of how best to use the funds.

Table A-4. State Funding Method Variability for Intercity Passenger Rail Projects.

Case Study	State Rail Agency	Types of Projects	State Funding Source(s)
California	Caltrans Rail Division	Operational subsidies Capital improvements Rolling stock	Public transportation account Intercity rail capital program State highway account Rail-eligible bond programs
North Carolina	NC DOT Rail Division	Operational subsidies Capital improvements	Highway fund Highway trust fund North Carolina Railroad Company (NCRR) lease revenue
Pennsylvania	Pennsylvania Department of Transportation (PennDOT) Bureau of Public Transportation	Operational subsidies Capital improvements	Annual $7.5 M Federal Transit Administration (FTA) grant State/Amtrak agreement Annual public transit appropriations
Virginia	Virginia Department of Rail and Public Transportation (DRPT)	Stations Infrastructure	Direct state subsidies to Virginia Railway Express (VRE) Rail enhancement fund Transportation trust fund formula grants Local general funds One-time appropriations
Pacific Northwest Corridor (Washington and Oregon)	Washington State Department of Transportation (WS DOT) Public Transit and Rail Division Rail Office	Operational subsidies Capital improvements	Multimodal account Several state rail accounts
	Oregon Department of Transportation (ODOT) Rail Division	Operational subsidies Capital improvements	Allocation of federal Congestion Mitigation Air Quality (CMAQ) funding Federal earmarks

Conclusions

In conducting this project, the research team reached several conclusions based upon the case studies and the additional research into other intercity rail project costs in other parts of the U.S. These conclusions are listed below.

- Accurate per mile project cost estimates for intercity rail capital projects are very difficult to develop and depend upon many project-specific factors. Due to the high number of project variables, project costs instead fall into ranges that can be narrowed based upon known project characteristics.
- Operational funding requirements for state-supported intercity rail projects are largely independent of the length of the service route. Instead Amtrak now determines state operations cost for additional intercity passenger rail service based upon ridership, farebox recovery, and food sales on the route itself. Amtrak uses this Route Contribution Analysis "full-cost" methodology nationwide to determine these costs.
- The uncertainty of the future of Amtrak and how it will be reformed add to the uncertainty in determining future intercity passenger rail costs. The recent federal proposal to jointly fund future capital spending for intercity rail projects is promising; however, whether that funding is provided on a 50-50 federal-state basis or at a ratio closer to an 80-20 federal-state basis will be greatly influential upon how involved states may become in financing such projects.
- A funding needs assessment is required to determine the potential cost of passenger routes selected for implementation.
- Development of a functional state-sponsored intercity rail program takes both consistent funding and time for partnerships to mature.
- In order to develop a robust program, both a stable funding source and a long-term commitment by the state are necessary.
- State-supported intercity rail programs are more readily developed in states that have shown an emphasis on multimodal transportation planning and funding.

Recommendations

The research team recommends the following actions be taken at the state level if Texas is to consider increasing its investment in intercity passenger rail.

- A statewide study of potential intercity passenger rail routes and needs should be conducted. A survey of the condition of the statewide freight rail network is needed prior to making an assessment of intercity rail passenger costs for added service to any selected route. TxDOT has begun work with a consultant team to carry out this process along previously identified/federally designated high-speed corridors.
- Funding sources for accomplishing this task and partnership agreements with the freight railroads will also be needed in order to achieve a realistic assessment.
- TxDOT needs to identify and work closely with any potential project funding partners. These contacts should include federal, local government, and private sector partners.
- Texas should move toward identification and establishment of long-term state-level funding sources for intercity rail improvements.
- TxDOT should continue to expand its capacity for the development of plans for intercity passenger rail routes and projects that improve both passenger and freight rail flows.
- Present funding limitations on TxDOT rail activities should be reexamined including the prohibition against state purchase of rail rolling stock. State-owned rolling stock has proven successful in several of the case study states as a means to partner with Amtrak to operate improved passenger service.

Full Bibliography

Morgan, C.A., J.E. Warner, C.E. Roco, S.S. Roop. *Funding Strategies and Project Costs for State-Supported Intercity Passenger Rail: Selected Case Studies and Cost Data*. Research Report 0-4723-1. Texas Transportation Institute, College Station, TX, June 2005.

RAIL RELOCATION PROJECTS IN THE U.S.: CASE STUDIES AND LESSONS FOR TEXAS RAIL PLANNING – RESEARCH PROJECT 0-5322, PERFORMED BY TTI

Description

Freight transportation is a major component of the transportation activity in metropolitan areas of Texas where both highway and rail routes converge. Traffic conflicts in urban areas are especially acute in areas surrounding urban rail facilities. Rail operations are also greatly

hindered in urban rail facilities, which are often surrounded by incompatible land-use activities. One approach to addressing urban vehicle-rail conflicts and urban rail operations issues is to consider the relocation of train operations to new rail corridors located outside urban boundaries. This project examines rail relocation projects in the United States to determine best practices, document project costs and expected benefits, and develop recommended policies for TxDOT use in assessing potential urban rail relocation projects throughout the state.

Findings

The conclusions from the 0-5322 project indicate that railroad relocation is a viable option for addressing several issues within urban areas and should be considered by TxDOT and local planners as one of several potential options for improving mobility and safety, reducing congestion, increasing capacity, and providing new economic development opportunities. This research provides TxDOT rail planners with additional tools to use in evaluating, prioritizing, and implementing rail relocation projects to address transportation needs. Public sector rail relocation planning efforts must take into account the needs of the private rail carriers, businesses served by rail, real estate developers, neighborhoods, and other parties when making decisions. The lessons derived from the case study projects in this research project provide guidance in several areas. These include:

- Project prioritization/selection characteristics.
- Potential funding sources and methods.
- Partnering principles for railroad companies and other private sector partners.
- Public information/involvement recommendations.
- Corridor relocation and development recommendations.

Table A-5 summarizes the lessons from each of these areas. By taking these factors into account, the public sector can judiciously use rail relocation as a tool to improve urban transportation characteristics, increase public safety in certain areas, and make incremental improvements to rail operations.

Table A-5. General Rail Relocation Planning Lessons from Study.

Lesson Areas	Lessons
Project Goals	• Multiple goal projects are often easier to achieve because benefits and funding opportunities often increase. • Rail relocation can be part of a much larger project to achieve diverse goals such as urban redevelopment, economic development, flood control, grade crossing safety improvements, and development of passenger rail or other transportation-related improvements. • Involving other goals as part of a rail relocation project increases the number of project partners that can bring legislative and administrative support as well as expertise to the project.
Partnering	• Lead public sector agencies should develop memoranda of understanding with all private sector parties early in the project. • Rail relocation projects should be beneficial to both the public sector and the private railroad company or companies involved. • Partners must jointly determine the benefits to be accrued by each party. • If a public sector agency is the lead agency for the rail relocation project and multiple railroad companies are included in the project; each railroad's interests and benefits/costs of pursuing the project should be evenly considered. • Projects need legislative support throughout the life of the project, often partners can be instrumental in aiding the public sector agency in maintaining legislative support and/or identifying legislators who are likely to support the project.
Project Financing	• Although it may result in an overall delay in completion, phasing of projects into segments of independent utility is often vital for project implementation to spread the total costs over several legislative cycles. • At other times, the urgency of the project due to a special event or circumstances may dictate that the project be devised and planned in such a way that it can be implemented quickly to avoid the consequences of long-term development. • Use of available federal funding (TIFIA loans, grants, private activity bonds, etc.) should be maximized to implement rail relocation projects. • Once the project is completed and planned revenues are proven, federal loans can potentially be retired early and replaced by commercial loans at even more attractive rates. • Local funding for matching federal funds can be derived from a variety of sources depending upon the laws in place in the area of the rail relocation project, such as local sales tax revenue, hotel taxes, local income tax revenues, or per car fees for use of the new facility. • State DOTs can apply additional federal funds to rail relocation projects by designating discretionary funds, such as Enhancement Program funds, to benefit the project. • Creativity in identifying and applying funds from new and diverse sources, such as economic development funds and money from private developers, is often key to project completion.

Public Involvement	• Demonstrate the public benefits of the project from the beginning. Show that the project is not only benefiting the private railroad companies. • Maintaining contact with the public through many different methods is necessary to keep support levels high. • Project websites, public meetings, and published materials that both inform and influence the public to the long-term project benefits can overcome opposition to delays during project construction or to stopping the project prior to full implementation. • Public sector agencies should maintain and develop relationships with local media outlets so that project information can be quickly disseminated or false statements by project opponents can be refuted. • Support of key public officials is often dependent upon individual support created by systematic and thorough public information and outreach efforts to their constituents.
Relocation and Subsequent Development	• Public agencies planning rail relocation projects must work closely with the private railroad company or companies to limit the impacts that any new route (from either relocation to a new corridor or consolidation to an adjacent existing corridor) may have upon rail operations or that would greatly increase the shipment costs due to increased distances traveled or increased grades that must be encountered. • Overall movement of freight and passengers across the regional rail system must be taken into account before deciding to relocate any single segment. • In certain instances, the location of existing rail facilities (yards, division offices, crew change points, etc.) may dictate that vertical separation (elevating or trenching an entire segment) in the existing corridor is preferable to moving the line to a new route. • Strategic use of grade separations and crossing closures should be considered as an alternative prior to the consideration of rail relocation. • Public sector agencies should seek to put into place development restrictions along newly relocated rail corridors that call for compatible land uses and restrict residential encroachment along the corridor.

Full Bibliography

C.A. Morgan, J.E. Warner. C.E. Roco, G.C. Anderson, L.O. Olson, and S.S. Roop. *Rail Relocation Projects in the U.S.: Case Studies and Lessons for Texas Rail Planning*. Report 0-5322-1. Texas Transportation Institute, College Station, TX, March 2007.

APPENDICES FOR PART I

APPENDIX B: CASES REVIEWED

Table B-1. Selected Federal Cases Reviewed.

Name	Citation
Barclay v. United States (US App., 2006)	443 F.3d 1368
Birt v. STB (DC Circ., 1996)	90 F.3d 580
Blendu v. U.S. (Fed. Circ., 2007)	79 Cl. 500
Buffalo Township v. Carl E. Jones *et al*. (Supreme Court Pennsylvania)	383 Wal 2001
Charles Baros *et al.* v. Texas Mexican Railway (Tex., 2005)	400 F. 3d 228
Caldwell v. United States (US App., 2004)	391 F.3d 1226
Chevy Chase Land Co. v. United States (Fed. Circ., 1999)	158 F.3d 574
Citizens Against Rails to Trails v. STB (US App., 2001)	347 U.S. App. D.C. 382
Borough of Columbia v. STB (US App., 2003)	342 F.3d 222
Conrail *et al*. v. Lewellen *et al*., (Court of Appeals Indiana, 1996)	666 N.E.2d 958
Dave *et al.* v. Rails to Trails Conservancy *et al*. (US App., 1996)	79 F.3d 940
Hash v. United States, (Fed. Circ., 2005)	403 F 3d 1308
Hayfield Northern Railroad Co *et al.* v. Chicago & North Western Transportation Co (Supreme Court, 1984)	467 U.S. 622
Samuel C Johnson 1988 Trust v. Bayfield County (US App., 2008)	520 F.3d 822
King County v. Rasmussen (US App., 202)	299 F3d 1077
Lowers v. United States (S.D. Iowa, 2001)	663 N.W.2d 408, 410–11
Lucas v. Township of Bethel *et al.* (US App., 2003)	319 F3d 595
Mauler v. Bayfield County (US App., 2002)	309 F.3d 997
Michigan Department of Natural Resources v. Carmody-Lahti Real Estate Inc. (Michigan Supreme Court., 2004)	472 Mich 359
Moody v. Great W. Ry. Co. (US Dist., 2007)	536 F.3d 1158
National Association of Reversionary Property Owners v. STB (US App.)	158 F.3d 135

Waren D Nicodeums Trust et al., v. Union Pacific Corporation (US App., 2006)	440 F.3d 1227
Preseault v. United States (Fed. Circ., 1996)	100 F.3d 1525, 1548-1549, 1552
Preseault *et al.* v. ICC (Supreme Court, 1990)	494 U.S. 1; 853 F 2d 145
State of Minnesota v. Hess (Supreme Court of Minnesota, 2004)	684 N.W.2d 414
Toews *et al*. v. United States (US App., 2004)	376 F.3d 1371

Table B-2. Selected Texas Cases Reviewed.

Name	Citation
Olive, Sternenberg & Co. v. Sabine & East Texas Railway Co	11 Tex.Civ App. 208; 33 S.W. 1395; 1895 Tex App.
Red River, T & S Ry. Co *et al.* v. Davis	195 S.W. 1160; 1917 Tex. App.
Texas & N. O. R. Co. v. Orange County *et al.*	206 S.W. 539, 1918 Tex. App.
Stevens *et al.* v. Galveston, H. & S.A. Ry. Co. *et al.*	212 S.W. 639; 1919 Tex. App.
Cox v. Campbell	135 TEX. 428, 143 S.W. 2d 361, (Tex. 1940)
Guy A. Thompson, Trustee, International Grat Northern Railroad Company, Debtor, v. R. E Janes *et al.*	151 TEX. 495; 252 S.W. 2d 1933; 1952 Tex.
Texas Electric Railway Company *et al.* v. William F. Neale *et al.*	151 TEX, 526; 252 S.W. 2d 451; 1952 Tex.
The State of Texas v. E.T. Fuller, Jr. *et al.*	407 S.W. 2D 215; 1966 Tex. LEXIS 270; 10 Tex. Sup. J. 15
Jerome Angelo, et ux, v. E. E. Biscamp.	441 S.W. 2d 524; 1969 Tex. 12 Tex. Sup. J. 389
Lo-Vaca Gathering Company v. Missouri-Kansas-Texas Railroad Company.	476 S.W 2d 732; 1972 Tex. App.
Donald Auerbach v. Dallas Area Rapid Transit and Douglas S. Perry D/B/A The Perry Company.	1995 Tex. App. LEXIS 3615
Air-Ag Inc, George Mullino and Rule cooperative Gin & Elevator Company v. F & H Santa Fe Rail, Inc.	22 S.W. 3d 596; 200 Tex. App. LEXIS 3429
Soncy Road Property Ltd, Amarillo Cottonseed Hill Co, Inc, Golden Spread Energy Inc, City Machine & Welding Inc, Krause Landscape Inc and Lane Plunk v. George Chapman, Karen Corp and City of Amarillo	259 F. Supp. 2d 522; 2003 U.S. Dist.
The Burlington Northern and Santa Fe Rail way Company v. The City of Houston Texas.	171 S.W. 3d 240; 2005 Tex. App.
Charles Baros *et al.* v. Texas Mexican Railway Company	400 F. 3d 228
State v Beeson	232 S.W.3d, 265; 2007 Tex. App.

SH Oil & Royalty Co. v. Texas & New Orleans R. Co. (Tex. Civ. App)	295 SW 2d 227 (1956)
Calcasieu Lumber Co. v. Harris (77 Tex 18)	13 SW 453 (1890)
Right of Way Oil Co. v. Gladys (106 Tex 94)	157 SW 737 (1913)
Texas Elec. Ry. Co. v. Neale (151 Tex 526)	252 SW 2d 451 (1952)
Adams v. Rowles (149 Tex. 52)	228 SW 2d 849 (1950)
Toal v. Smith (Tex. App)	54 SW 3d 431 (2001)
Tex. Dep't of Transp. v. City of Sunset Valley (Tex. 2004)	146 S.W.3d 637

APPENDIX C. RECENT TEXAS STB ABANDONMENT PROCEEDINGS

Table C-1. Recent STB Proceeding Abandonments in Texas.

Rail Line	Description	Location	Petitioner Requests (if applicable)	Status
Union Pacific Railroad Company (UP)	UP and Dallas, Garland & Northeastern Railroad Company (DGNO) jointly filed a notice seeking exemption from the requirements of 49 U.S.C. 10903 for UP to abandon, and for DGNO to discontinue service and lease operations over a line of railroad.	Bowie County, TX		Date made available to the public: November 10, 2008.
Union Pacific Railroad Company (UP)	UP filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon an 8.3-mile line of railroad known as the Chesterville Industrial Lead (from milepost 52.9 near Chesterville to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, TX.	Colorado and Wharton Counties, TX	On March 6, 2008, Metro filed a request pursuant to section 8(d) of the National Trails System Act, 16 U.S. C. 1247(d), and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way. Since the request is compliant with the requirements of CFR 1152.29 and UP is willing to negotiate for trail use, there is a 180 day period for the agreement to be reached.	The notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8928-29). The exemption was scheduled to become effective on March 24, 2008.
Union Pacific Railroad Company (UP)	UP made a request for exemption from prior approval requirements that were granted on November 23, 2007. The request was for permission to abandon the UP line and allow discontinuance of service by Dallas, Garland & Northeastern Railroad Company over, the Trinity Industrial Lead, between milepost 0.0 near Terminal Junction and mile post 4.1 near Mockingbird Lane, a distance of 4.1 miles.	Dallas County, TX	The city of Dallas has expressed interest in buying the line, and on August 29, 2008, it entered into a contract with the UP, by which it intends to purchase the line.	The exemption was scheduled to become effective on October 21, 2008, but in November the Board served a decision to subject the decision to public use, environmental, and standard employee protective conditions. The UP was granted a time extension for the abandonment request by February 2, 2009.

Rail Line	Description	Location	Petitioner Requests (if applicable)	Status
Union Pacific Railroad Company (UP)	UP made a request for exemption under 49 CFR 1152 Subpart F to abandon a 4.57 mile line of railroad known as the Waxachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX.	Ellis County, TX	City of Waxahachie filed a petition to negotiate an interim trail use/rail banking agreement with UP for the described line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).	As of April 27, 2007, a 90 day extension was granted (till July 2007).
Southwestern Railroad Company, Inc. (SWRR)	The railroad company sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S. C. 10903 to abandon a line of railroad extending from milepost 0.10 at Shattuck, OK, to milepost 85.4 at Spearman, TX, a distance of 85.3 miles in Ellis County, OK, and Limbscomb, Ochiltree, and Hansford Counties, TX (the Line).	Ellis County, OK, and Limbscomb, Ochiltree, and Hansford Counties, TX	TTRRTD has filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). It has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that use of the right-of-way for rail service is subject to possible future construction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29.	Notice of filing was served and published in the Federal Register on August 22, 2007, the Top of Texas Rural Rail Transportation District (TTRRTD) filed a request for imposition of a public use condition and for issuance of a notice of interim trail use (NITU). The exemption was granted but was subject to trail use, public use, and standard employee protective conditions.
Missouri Pacific Railroad Company	On December 18, 1996, the Missouri Pacific Railroad Company (MP) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 23.0 at New Boston, in Bowie County, TX, to the end of the track at milepost 61.5 near Clarksville, in Red River County, TX, a distance of approximately 38.5 miles.	Red River and Bowie Counties, TX	On December 30, 1996, Rails to Trails Conservancy (RTC) timely filed a request for issuance of a notice of interim trail use (NITU) and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking.	

Rail Line	Description	Location	Petitioner Requests (if applicable)	Status
Union Pacific Railroad Company (UP)	Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 1.52-mile line of railroad known as the Sinton Industrial Lead, extending from milepost 122.82 to milepost 121.30, in San Patricio County, TX.	San Patricio County, TX	Environmental concerns-TPWD	Notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8929).
Union Pacific Railroad Company (UP)	Union Pacific (UP) filed a notice if exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 1.67-mile line of railroad known as the Huntsville Industrial Lead, extending from milepost 5.0 to milepost 6.67 near Huntsville, in Walker County, TX (Line).	Walker County, TX	Environmental concerns	The notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8928-29). The exemption was scheduled to become effective on March 24, 2008.

APPENDIX D. OTHER STATE STATUTES

NORTH CAROLINA STATUTES

Article 2D.

Railroad Revitalization.

§ 136-44.35. Railroad revitalization and corridor preservation a public purpose.

The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services and that programs for railway corridor preservation which assure the availability of such corridors in the future are vital to the continued growth and prosperity of the State and serve the public purpose. (1979, c. 658, s. 1; 1989, c. 600, s. 1.)

§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.

The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designed to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such lines; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities. (1979, c. 658, s. 2; 1987 (Reg. Sess., 1988), c. 1071, s. 1; 1989, c. 600, s. 2.)

§ 136-44.36A. Railway corridor preservation.

The North Carolina Department of Transportation is authorized, pursuant to 16 U.S.C.A. § 1247(d), to preserve rail transportation corridors and permit compatible interim uses of such corridors. (1987 (Reg. Sess., 1988), c. 1071, s. 2.)

§ 136-44.36B. Power of Department to preserve and acquire railroad corridors.

In exercising its power to preserve railroad corridors, the Department of Transportation may acquire property for new railroad corridors and may acquire property that is or has been part of a

railroad corridor by purchase, gift, condemnation, or other method, provided that the Department may not condemn part of an existing, active railroad line. The procedures in Article 9 of this Chapter apply when the Department condemns property to preserve or acquire a railroad corridor. (1989, c. 600, s. 3; 1991, c. 673, s. 1.)

§ 136-44.36C. Installment contracts authorized.

The Department of Transportation may purchase active or inactive railroad lines, corridors, rights-of-way, locomotives, rolling stock, and other rail property, both real and personal, by installment contracts which create in the property purchased a security interest to secure payment of the purchase money. No deficiency judgment may be rendered against the Department of Transportation in any action for breach of a contractual obligation authorized by this section, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any money due the seller. (1991, c. 673, s. 2.)

§ 136-44.36D. Recreational leasing requirements.

Portions of rail corridors held by the North Carolina Department of Transportation in fee simple absolute may be leased by the Department for interim public recreation use provided the following conditions are met:

(1) Before requesting trail use, a sponsoring unit of local government has held a public hearing in accordance with G.S. 143-318.12 and notified the owners of all parcels of land abutting the corridor as shown on the county tax listing of the hearing date, place, and time by first-class mail at the last addresses listed for such owners on the county tax abstracts. A transcript of all public comments presented at the hearing has been sent to the North Carolina Department of Transportation at the time of requesting use of the corridor.

(2) A unit of local government has requested use of the rail corridor or a portion thereof for interim public recreational trail use, and agrees in writing to assume all development costs as well as management, security, and liability responsibilities as defined by the North Carolina Department of Environment and Natural Resources and the North Carolina Department of Transportation.

(3) Adjacent property owners are offered broad voting representation by membership in the organization, if any, that is delegated most immediate responsibility for development and management of the rail-trail by the sponsoring local government.

(4) The North Carolina Department of Transportation has determined that there will not likely be a need to resume active rail service in the leased portion of the rail corridor for at least 10 years.

(5) Any lease or other agreement allowing trail use includes terms for resumption of active rail use which will assure unbroken continuation of the corridor's perpetual use for railroad purposes and interim compatible uses.

(6) Use of the rail corridor or portions thereof as a recreational trail does not interfere with the ultimate transportation purposes of the corridor as determined by the North Carolina Department of Transportation. (1991, c. 751, s. 1; 1997-443, s. 11A.119(a).)

§ 136-44.37. Department to provide nonfederal matching share.

The Department of Transportation upon approval by the Board of Transportation and the Director of the Budget may provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 47, 48; 2006-203, s. 76.)

§ 136-44.38. Department to provide State and federal financial assistance to cities and counties for rail revitalization.

(a) The Department of Transportation is authorized to distribute to cities and counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget.

(b) Repealed by Session Laws 1989, c. 600, s. 4. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 49, 50; 1989, c. 600, s. 4; 2006-203, s. 77.)

§§ 136-44.39 through 136-44.49. Reserved for future codification purposes.

WASHINGTON CODE

2.10 RCW 47.76.240 Rail Preservation Program

The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects, the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in proceedings of the surface transportation board, or its successor agency, on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance.

INDIANA CODE CREATING THE TRANSPORTATION CORRIDOR PLANNING BOARD

IC 8-4.5-2

Chapter 2. Transportation Corridor Planning Board

IC 8-4.5-2-1

Establishment

Sec. 1. The transportation corridor planning board is established.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-2

Members

Sec. 2.

(a) The board consists of the following members:

(1) The commissioner or the commissioner's designee.

(2) The director or the director's designee.

(3) An individual representing agriculture appointed by the governor.

(4) An individual representing the railroad industry appointed by the governor.

(5) An individual representing persons interested in the preservation of railroad corridors for recreational and other uses appointed by the governor.

(6) An individual representing local government appointed by the governor.

(7) An individual representing the utility industry appointed by the governor.

(8) Two (2) individuals appointed by the governor, one (1) of whom must be a property owner.

(9) The secretary of commerce or the secretary's designee.

(b) In appointing members of the board, the governor shall appoint members so that not more than five (5) members of the board belong to the same political party.

As added by P.L.40-1995, SEC.3. Amended by P.L.158-1999, SEC.3; P.L.4-2005, SEC.115.

IC 8-4.5-2-3

Limitation on term of membership

Sec. 3.

(a) This section applies only to a member of the board under section 2(a)(1) or 2(a)(2) of this chapter.

(b) An individual serves as a member of the board as long as the member holds the office described in section 2(a)(1) or 2(a)(2) of this chapter.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-4

Term of office for members appointed by governor

Sec. 4.

(a) This section applies only to a member of the board appointed by the governor under section 2(a)(3) through 2(a)(8) of this chapter.

(b) The term of an individual serving on the board begins on the later of the following:

(1) The day the term of the member whom the individual is appointed to succeed expires. If the individual does not succeed a member, the member's term begins as provided in subdivision

(2) The day the individual is appointed.

(c) The term of a member expires July 1 of the fourth year after the member's term begins.

(d) The governor may reappoint a member for more than one (1) term. A member reappointed by the governor is the member's own successor for purposes of subsection (b).

(e) The governor shall appoint an individual to fill a vacancy in the office of a member.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-5

Presiding officer

Sec. 5.

(a) Except as provided under subsection (b), the commissioner is the presiding officer of the board.

(b) If the commissioner designates an individual to serve in the commissioner's place under section 2(a)(1) of this chapter, that individual serves as presiding officer of the board.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-6

Quorum

Sec. 6.

Five (5) members of the board constitute a quorum.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-7

Voting

Sec. 7.

The affirmative vote of five (5) members of the board is required for the board to take any action.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-8

Compensation and reimbursement

Sec. 8.

(a) A member who is not a state employee is entitled to both of the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) A member who is a state employee is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-9

Expenses

Sec. 9.

Expenses of the board must be paid from appropriations made to the Indiana department of transportation.

As added by P.L.40-1995, SEC.3.

IC 8-4.5-2-10

Support staff

Sec. 10.

Staff of the Indiana department of transportation shall serve as staff for the board.

As added by P.L.40-1995, SEC.3.

KENTUCKY CODE GOVERNING ABANDONED RAIL AND RAILBANKING

277.400 Entities eligible to file declaration of state railbanking -- Use of property subject to declaration -- Claims of aggrieved persons.

(1) Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a “Declaration of State Railbanking,” concurrently

serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.

(2) Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.

(3) After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:

> (a) The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;
>
> (b) All required federal and state permits and authority to reactivate and operate a railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;
>
> (c) Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and
>
> (d) The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place

one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.

(4) Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.

(5) Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 2, effective July 14, 2000.

277.402 Preservation of railroad corridors -- Public policy – Preliminary declaration of state railbanking.

(1) It is the public policy of this state to preserve railroad corridors for future railroad use. Toward this end, the Commonwealth recognizes that the salvage of tracks, ties, signaling equipment, ballast, and other items may indicate an intent to maximize return on present investment and not an intent to abandon any underlying easement for railroad or other use and that the obtaining of federal authority to discontinue service over or abandon a corridor does not necessarily indicate an intent to relinquish any property interests under state law. In any civil action to determine the status of a railroad use easement, ambiguity as to intent shall be resolved in favor of continued preservation of the corridor.

(2) Any holder of a railroad corridor held by easement or otherwise may preserve that corridor by filing with the Secretary of State a "Preliminary Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall state the name of the entity holding the corridor, a textual description and map of the land area encompassed by the corridor, and a statement that the entity does not intend to abandon the corridor described in the declaration. The entity filing the declaration may at any later time cause that declaration to be withdrawn from the Secretary of State's files. While a preliminary declaration of state railbanking is on file with the Secretary of State, the corridor set out in the declaration shall not, regardless of the status or conclusion of any federal regulatory proceeding or the salvage of track and other material from the corridor, be deemed abandoned and shall continue to exist under Kentucky law and the property encompassed by the corridor shall not revert to any other form of ownership.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 3, effective July 14, 2000.

277.404 Conservation easement under KRS 382.800 to 382.860 over land adjoining or traversed by a railtrail.

In addition to any other legal right, any person having a legal interest in land adjoining a railtrail or in the land traversed by the railtrail itself may grant to the entity holding the right to maintain a railtrail over the property a conservation easement over all or a portion of the property in accordance with KRS 382.800 to 382.860. The entity holding the right to maintain a railtrail over the corridor may, if it finds the easement's terms acceptable, yearly designate for the tax purposes of the party conveying the easement that the entity is holding the corridor pursuant to the authority granted to that entity in the easement as opposed to authority granted in KRS 277.400 or any similar law allowing railbanking under federal law. This designation shall not, however, affect in any way the legal right of that entity to hold the corridor pursuant to a federal or state railbanking law or the operation of those laws, and the right to maintain the railtrail on the land shall not lapse as the result of the extinguishment or modification of the easement. The easement, by its terms, may be limited in duration from year to year or for a set period of years, may extinguish itself upon the happening of a defined contingent future event, or may last in perpetuity.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 4, effective July 14, 2000.

277.406 Duty of railroad proposing to discontinue service or to abandon railroad corridor to notify the Railtrail Development Office and the Department of Parks.

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the Department for Local Government and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 338, sec. 10, effective July 14, 2000.

NEW HAMPSHIRE ABANDONED RAIL POLICY

Use of Abandoned Rail Corridors

Rail service has been abandoned on over 75 miles of New Hampshire rail corridor since the last plan amendment in 1993. A goal of the Statewide Rail Plan and Rail Program is to

preserve abandoned railroad corridors having potential for future transportation or public uses. The rail program has worked toward this goal, during this period of rail system rationalization, by preserving corridors wherever appropriate and possible. A substantial portion of the rail lines that have been purchased by the state for preservation purposes are being used as trails, as an interim use for the corridor, during the absence of railroad service.

Purchases by the State of New Hampshire have resulted in the state owning close to 500 miles of rail corridors for preservation purposes including 193 miles of active line and 300 miles in interim trail use. As the state's operating rail system has been rationalized, the state has invested in the preservation of the corridors, thus realizing one of the goals of the 1993 Amendment to the 1991 Statewide Rail Plan and the State Rail Program.

Rail Abandonment

Each rail line proposed for abandonment will be studied on a case by case basis. The analysis takes into consideration the following:

- Historical statistics: review of car and shipper/receiver usage of the line.
- Future potential: review of the line with regard to future potential uses, continued rail use, rail banking or other public uses.
- Potential adverse impacts: examination of the impact on customers and the community should abandonment occur.

Based on the analysis, the State will develop an opinion and may forward comments to the Surface Transportation Board.

Rights-of-Way Preservation

New Hampshire supports the preservation of active or abandoned railroad rights-of-way that have potential for future rail transportation needs or other public uses, and has initiated a corridor preservation program. The rail corridor preservation policy evolved following the State's purchase of the Concord to Lincoln line in 1975 and the North Stratford to Beecher Falls line in 1977. The purpose of acquiring these lines was to assist in providing continued rail service to New Hampshire industries. Legislation was passed prohibiting any use of railroad right-of-way that would unreasonably limit the ability to restore rail service at minimal cost. Legislation has also been enacted allowing the State to acquire a corridor in three ways:

- To negotiate with the owners of abandoned railroad lines to purchase the railroad rights-of-way.
- To match any verifiable, bona fide offer made to purchase the railroad rights-of-way.
- To acquire the railroad rights-of-way by condemnation.

In 1991, The New Hampshire General Court enacted legislation that alters the potential state ownership interest in rail corridors in the state. The legislation enables the State to declare fee-simple ownership of all railroad rights-of-way and railroad properties acquired by the Commissioner of the New Hampshire Department of Transportation or the State of New Hampshire.

In addition to acquisition, legislation also allows the Department to enter into agreements with the owners of abandoned rights-of-way wherein the owner agrees to preserve the corridor intact for a specified period. In return, the owner is relieved, during the period of agreement, of certain taxes as well as relief of civil liability for any personal injury or property damage occurring on the right-of-way. The Department has entered into two such agreements with municipalities.

VIRGINIA ABANDONED RAIL POLICY

Rail Preservation Policies

Effective April 1, 1999, it is the policy of the CTB to consider railways and rail corridors as important elements of the Statewide Transportation System. The CTB supports the use of funds for projects deemed important elements of the Statewide Transportation System. Such consideration shall include the acquisition, lease, improvement, or assistance to appropriate entities in the acquisition, lease, or improvement of railways, and equipment, and the purchase of abandoned railway rights-of-way for transportation purposes that the CTB determines are for the common good of the Commonwealth or a region of the Commonwealth. The Department of Rail and Public Transportation Director shall administer and expend or commit, subject to the approval of the CTB, such funds as may be set forth in the Appropriations Act for this purpose. Such funds may be expended or provided in the form of grants or loans to others to improve railways, equipment, or related facilities specific to rail operations on public or private property and to acquire or lease railway properties for transportation purposes. Any properties purchased can be leased to others for continuation of rail service. No funds shall be used for general railroad operating expenses. Costs incurred for the administration of approved projects shall be an eligible expense under this policy. In allocating funds for improvement, the CTB shall consider the project cost in relation to the prospective use, line capacity, and the economic and public benefits. In allocating funds for purchase, the CTB shall consider the potential for future public uses of the properties. The CTB shall adopt procedures for the allocation and distribution of the funds as may be provided, including provisions for safeguarding the Commonwealth's interest in all projects.

Rail Preservation Procedures

A. The Director of the Virginia Department of Rail and Public Transportation (DRPT), administers, expends, or commits, subject to the approval of the Commonwealth Transportation Board (CTB), such funds for acquiring, leasing, or improving or constructing railways and related facilities, and purchasing railway properties, and equipment for transportation uses. Funds may be spent directly by the Director or by reimbursement of the local entities, private or public.

B. The DRPT may develop projects for the consideration of the CTB or receive applications from others for such projects.

C. All applications from others for rail funds shall be submitted by the applicant to the DRPT. Each application shall be accompanied by a resolution from the appropriate local

government or Transportation District Commission supporting that such funds be allocated to the proposed project. Each application shall be considered on the basis of its merits.

D. The Rail Division of DRPT acts as staff to receive and process applications and supervise the expenditure of funds. All applications shall be submitted by February 1 (Administratively amended to February 1, 2006) of each year to DRPT in accordance with the guidelines outlined in the Rail Preservation Application Process Memorandum. The DRPT reviews the applications and state projects, including developing analyses and comments, and transmit same to the Director, for review and concurrence prior to presentation to the Rail, Transit, and HOV (RTHOV) Committee of the CTB. The RTHOV Committee develops recommendations for the CTB to select projects and establish priorities, in accordance with its policies, and the procedures contained herein.

E. As a general guide for staff analysis, no more than 50 percent of the funds shall be recommended for any applicant in any fiscal year unless it is determined that there are not sufficient applications to use the available funds or a project has been determined to be of major significance to the Commonwealth. Final allocations shall be determined by the CTB.

F. In deciding whether to allocate funds for a project, the CTB shall consider the potential for future public uses of the property and/or the cost thereof in relation to the prospective rail use, and other economic and public benefits, and the common good of the Commonwealth or a region of the Commonwealth. Freight improvement projects must have a benefit-cost analysis of greater than one, except in the case of a safety project which is not eligible under another safety program. Passenger projects will be based on service needed and capacity constraints. Projects may be considered for purchase if they have a potential for rail or other future transportation uses.

G. Funds may be provided in the form of grants or loans to acquire, lease, improve, or assist other appropriate entities to acquire, lease, or improve railways, related facilities, and equipment on public or private property, and to purchase railway properties for rail service and other transportation purposes.

H. Funds may be provided to local governments, authorities, agencies, Transportation District Commissions or non-public sector entities for rail projects funded under the program at a 70% state and 30% local match. Funds provided for Class I rail operators for freight purposes may be in the form of loans to be repaid over a period of years at an interest rate to determined by the Director and approved by the RTHOV Committee. No funds may be used for general railroad operating expenses. These funds may also be used as a portion of the non-federal share for the utilization of federal funds by public or private parties. Funds may also be used to match other grants obtained by the applicant. These funds will provide no more that 70 percent of the local share. Additionally, funds may be provided for administration of a project on a 70-30 match basis with a maximum administration reimbursement of 5 percent of the total projects cost or $50,000 per year, whichever is less. Also, funds may be provided to assist in obtaining a qualified assess-ment and engineering of the necessary track structure and bridge improvement needs.

I. Funds may be granted or loaned to the current or prospective owners of a Short line railroad to purchase or refinance operating railway properties. The maximum amount of any loan may be limited by the net liquidation value. The owners may repay part of the loan over 20 years at an interest rate to be determined by the Director, with approval by the RTHOV Committee. The Commonwealth shall retain an interest in the property with an option to buy the balance if the rail operation is not continued as originally intended.

J. The actual amounts loaned, their repayments, schedules, loan provisions, and interest charged shall be established by the Director and approved by the RTHOV Committee. The loan amounts shall not exceed the funds made available for any railway by the CTB. The Commonwealth shall retain a contingent interest in any project for which loans are provided until such time as the Commonwealth has been reimbursed.

K. The Commonwealth may purchase lines for short line rail service or other transportation purposes. Said lines could be leased to others for rail transportation purposes at a rate to be determined and recommended by the Director, with approval by the RTHOV Committee. Such lines purchased shall not be subject to a time limitation for retention.

L. The Commonwealth will retain an interest in materials installed in tracks, and facilities reconstructed or improved with grant funds from the Commonwealth until the Commonwealth's interest is repaid or the useful life as determined by the Director has expired. The useful life determination shall have the approval of the RTHOV Committee.

M. The recipient of funding shall be contractually committed to the perpetual maintenance of such tracks and facilities, and/or property and to the payment of any costs related to the future relocation or removal of such tracks and facilities. Where applicable, the recipients or their subcontractors shall also be contractually committed to provide for the continued operation of rail service as a common carrier and to assume all liability in connection with the implementation and operation of the project. The Commonwealth shall be advised of any change in the carrier status.

N. The Commonwealth may allow the recipient of funds to purchase the Commonwealth's interest in a railway, equipment, and facilities at a value determined by the Director and have the approval of the RTHOV Committee.

O. In the event the recipient of funds desires to sell property or interest in railway equipment and facilities which have been acquired, reconstructed, or improved under this program, said sale shall be subject to the Commonwealth's vested interest and written approval.

P. The Commonwealth does not consider any rail with a weight of less than 100 lbs. to be an acceptable size for use in the track structure. Rail Preservation monies will not be utilized to pay for or pay to have installed any rail less than the minimum accepted size. The use of 112 lbs. rail or other low production rail is discouraged because of the scarcity of tie plates and joint bars.

Q. The DRPT’s goal is to assist in bringing all short lines to a Class 2 Track Safety Standard operation as prescribed in the Track Safety Standards publication as part of the Federal Railroad Administration’s Title 49 Part 213 regulations. The achievement of this plan will depend on the availability of funding. Once reached the track shall be maintained at this level.

This requirement may be waived in the case of an emergency. Additionally, applications for funds must provide a plan that outlines bringing their track structure and bridges to a minimum Class 2 Track Safety Standards and, if necessary, structures to a load limit of 286,000 pounds. These plans must be submitted at time of application beginning April 1, 1999. All applicants submitting request for funds starting in FY 2000 with rail lines below Class 1 Track Safety Standards must submit a plan to bring their rail lines to Class 1 Track Safety Standards within a reasonable amount of time.

The Director of the Department of Rail and Public Transportation shall utilize the guidelines developed for processing the implementation of these procedures and that the procedures shall become effective on April 1, 1999.

VIRGINIA DOT POLICY ON THE USE OF TRANSPORTATION ENHANCEMENT FUNDING

Preservation of Abandoned Railway Corridors, including the conversion and use of the corridors for pedestrian or bicycle trails

Examples of projects that may be considered eligible include:

- Acquisition of abandoned railroad right-of-way for trail development
- Planning, design and construction of shared-use trails along a railroad right-of-way
- Developing rail-with-trail facilities (trails built alongside abandoned rail corridors)

This type of project inherently relates to surface transportation because railroads were built for a transportation purpose.

Acquisition of railroad right-of-way must preserve and protect a railway corridor. This activity however, may not be used to keep a railroad corridor from being abandoned.

Trails must be open to the public and not restricted to “club” members or municipal residents. Equestrian facilities constructed as part of a shared-use bicycle and pedestrian trail are eligible, however, trails limited to equestrian use only are not eligible for Transportation Enhancement funding.

85.08 Freight railroad assistance

(1) LEGISLATIVE FINDINGS.

The legislature finds that private capital and local governmental financial and technical resources are unable to fully meet the transportation needs of all citizens. It is determined that the programs authorized under this section are legitimate governmental functions serving proper public purposes.

(2) GENERAL POWERS.

The department shall administer the programs of financial and technical assistance under this section for the purpose of assistance to or restoration of freight railroad service and shall maximize the use of available federal aid in conjunction with the allocation of state aid. The department may exercise those powers necessary to establish freight railroad assistance programs, including authority:

(b) To plan, promote and engage in financial and technical assistance programs for continuing, restoring and operating rail branch line transportation services.

(c) To maintain adequate programs of investigation, research, promotion and development in connection with transportation programs authorized under this section and to provide for public participation in these programs.

(d) To comply with federal regulations affecting federal transportation service continuation or restoration, or operating assistance programs.

(e) To enter into joint service agreements or other agreements providing for mutual cooperation related to transportation services and projects, including joint applications for federal aids with any county or other body public and corporate.

(f) To receive, use or reallocate federal funds, grants, gifts and aids.

(g) To adopt rules necessary to effectuate and enforce this section and to prescribe conditions and procedures, including auditing and accounting methods and practices, to assure compliance in carrying out the purposes for which state financial and technical assistance is made.

(i) To make and execute contracts with the federal government, any other state or any county, city, village, town, railroad, or any transit commission organized under s. 59.58 (3), 66.0301 or 66.1021, to ensure the continuance and improvement of quality transportation service at reasonable rates or to provide for rail service on rail property owned by the state.

(j) To audit the operating revenues and expenditures of all transportation systems participating in the aids program under this section in accordance with accounting methods and practices prescribed by the department.

(k) To allow other uses of rail corridors owned by the state that are being used for freight rail service when such uses serve the purpose of providing assistance to or

restoration of freight rail service, and to regulate the safety and compatibility of such uses with the provision of freight rail service by issuing a permit for any such use.

Cross Reference: See also ch. Trans 31, Wis. adm. code.

(l) To acquire rail property for the purpose of preserving freight rail service or improving the efficiency of freight rail service if, in the department's judgment, the public interest requires acquisition of the rail property.

(3) COORDINATION AND COOPERATION

(a) The department shall coordinate the transportation activities of the state to effectuate the purposes of this section and is responsible for negotiating with the federal government for transportation service programs authorized under this section.

(b) The department may cooperate with other states in connection with the acquisition, rehabilitation, construction or operation of any transportation properties within this state or in other states in order to carry out the purposes of this section. The department may enter into contractual arrangements for such purposes, including joint acquisition of transportation properties with other states and entering into leases jointly with other states affected thereby.

(4) RAIL PLANNING AND TECHNICAL ASSISTANCE GRANTS

Upon its own initiative or upon application by a government agency, the department may make grants of financial assistance and provide technical assistance for rail system, service and technical studies.

(4m) FREIGHT RAILROAD LOANS AND GRANTS

(a) *Purpose; findings.* The purpose of this subsection is to assist in the preservation and improvement of freight rail service in this state. The legislature finds that private capital and local government contributions are insufficient for adequate freight rail service. The legislature finds that freight rail service preservation and improvement bear a significant relationship to the conservation of energy, the preservation of existing economic and tax bases and the maintenance of a balanced transportation system. The legislature further finds that these are proper governmental functions and that the programs authorized under this subsection are therefore valid governmental functions serving proper public purposes. It is the intent of this subsection to promote the public good by preserving and improving freight rail service in this state.

(b) *Definitions.* In this subsection:

1. "Eligible applicant" means a county, municipality or town or agency thereof, a railroad, a current or potential user of freight rail service or a transit commission organized under s. 59.58 (3), 66.0301 or 66.1021.

3. "Rail service" means a level of rail service which the department determines to be an acceptable level of service.

(c) Railroad facilities acquisition grants and loans. The department may make grants to eligible applicants for the purpose of preserving freight rail service through the acquisition of rail property. The grant may be composed of state funds, federal funds, state property, the use of state property, or any combination of state funds, federal funds, state property and the use of state property. No grant for the acquisition of rail property improvements may exceed 80% of the acquisition cost. No grant for the acquisition of rail property exclusive of rail property improvements may exceed 100% of the acquisition cost. A grant may be made to an eligible applicant before or after abandonment of a railroad line as defined in s. 85.09 (3). The department may permit an eligible applicant's share of an increase in the acquisition cost of rail property or rail property improvements to be paid in installments if the increase in acquisition cost is caused by negotiation or litigation. No grant may be made under this paragraph for the acquisition of rail property if the acquisition price exceeds an amount deemed reasonable by the department. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the acquisition cost. A grant of money or a loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw). The department shall administer this program and shall have all powers necessary and convenient to implement this paragraph and par. (d), including the following powers:

1. To develop the specifications and provisions of the grants and loans which are made to eligible applicants.

2. To receive and review applications for grants and loans and to prescribe the form, nature and extent of the information which shall be contained in applications.

3. To determine whether the proposed rail service to be provided on the rail property acquired, rehabilitated or constructed with financial assistance under this paragraph or par. (d) has a likelihood of attaining and sustaining economic self−sufficiency and to employ such findings in the awarding of grants and loans.

4. To determine whether the rail property to be acquired with financial assistance under this paragraph offers satisfactory opportunity for alternate public use or recovery of public funds and to employ such findings in the awarding of grants and loans.

5. To make and execute agreements with eligible applicants for grants and loans. These agreements shall ensure that any public purpose served by the financial assistance is appropriately maintained by the eligible applicant, that rail service on the line is adequately continued and that the required corridor preservation, maintenance, rehabilitation and improvement activities are performed.

6. To determine whether rail service is being adequately continued and the grantee or, if applicable, the railroad providing service on the affected rail line is performing any corridor preservation, maintenance or improvement

activities that are required by the department on a rail line for which a grant is made under this paragraph or par. (d). If, without the approval of the department, rail service is discontinued or the grantee disposes of any portion of the rail property for which financial assistance was obtained under this paragraph or par. (d), or if corridor preservation, maintenance or improvement activities are inadequate, including failing to meet any federal or state safety or performance standards specified in the agreement with the department or established by departmental rule, the rail property for which financial assistance was obtained shall revert to the ownership and control of the department unless the department elects to accept repayment from the grantee of the full amount of all grants and loans received from the department for the line, including any interest accrued on loans.

7. To provide technical assistance to the eligible applicant and any railroad using the rail property in a manner deemed necessary by the department.

(d) Railroad rehabilitation and construction grants and loans. The department may make grants to eligible applicants for the purpose of rehabilitating or constructing rail property improvements. Construction shall be limited to that which is required to continue rail service on a particular line or to provide alternative rail service when a line has been abandoned. A grant under this paragraph may be composed of state funds, federal funds, state property, the use of state property, technical assistance, or any combination of state funds, federal funds, state property, the use of state property and technical assistance. The value of a grant may not exceed 80% of the costs of rehabilitation or construction. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the rehabilitation or construction costs. A grant may be made before or after abandonment of a railroad line as defined in s. 85.09 (3). A grant or loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw).

(e) Freight rail infrastructure improvement loans.

1. Upon the request of an eligible applicant, the department may negotiate and enter into a loan agreement with the eligible applicant for purposes of rehabilitating a rail line or to finance an economic development and transportation efficiency project, including a project designed to promote safety or the viability of a statewide system of freight rail service, to assist intermodal freight movement or to provide industry access to a rail line. A loan made under this paragraph shall finance a project that confers a public benefit or enhances economic development in this state. Loans made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bu), (bw) or (bx).

2. Projects for which a loan made under this paragraph may be used include all of the following:

a. Line upgrades that will expand the use of a rail line for the public benefit, including increased passenger service and increased use of double−stack technology and piggyback service.

b. Rail branch line stabilization or upgrading.

c. Projects associated with rail intermodal facilities, such as terminals, team tracks, docks, conveyers and other loading and unloading facilities.

d. Relocation of a freight rail off−loading facility that has been agreed to by the owner of the facility; the city, village or town in which the facility is located; and the city, village or town in which the facility will be relocated.

e. Rail line relocation or consolidation.

3. Loans made under this paragraph shall be allocated by the department on bases that protect the public interest, including a cost−benefit analysis. A loan made under this paragraph may cover up to 100% of a project's cost.

4. The department shall administer this program and shall have all powers necessary and convenient to implement this paragraph, including the following powers:

a. To establish standards and schedules for railroad infrastructure improvement projects and to establish the specifications and provisions of a loan that is made to an eligible applicant.

b. To establish the level and period of rail service to be provided by the railroad in any loan agreement.

c. To negotiate and establish the financial participation required of an eligible applicant in any loan agreement.

d. To provide technical assistance to an eligible applicant.

5. An application for a loan under this paragraph may not be made if an abandonment or discontinuance application is pending on the line or portion of line, or the line or portion of line on which the rail property improvements are located has been designated by the railroad to the federal surface transportation board on its system diagram map as anticipated to be the subject of an abandonment or discontinuance application within a 3−year period following the date of the application or the date on which the loan is scheduled, unless the secretary determines that this restriction may be waived for a particular application.

(g) Exemption from bond requirements. The secretary may exempt contracts involving the performance of labor or furnishing of materials for any public improvement or public work under the railroad rehabilitation and construction program of par. (d) or the loan program for freight rail infrastructure

improvements under par. (e) from the performance and payment bond requirements of s. 779.14 if the secretary determines that:

1. Adequate guarantees or warranties are provided for by contract;

2. Adequate safeguards are provided by accounting and payment controls;

3. Adequate security is available;

4. Public benefits of proceeding with the project substantially outweigh the risk of waiving the performance and payment bond requirements of s. 779.14; and

5. The project cannot proceed in a timely and efficient manner unless the performance and payment bond requirements of s. 779.14 are waived in whole or in part.

(5) ASSISTANCE TO RURAL AREAS.

(a) In this subsection, "rural municipality" means any of the following:

1. A city, town or village with a population of 4,000 or less.

2. A city, town or village that is located in a county with a population density of less than 150 persons per square mile.

(b) In awarding assistance under this section, the department shall make a good faith effort to select eligible applicants that represent or will benefit various geographical regions and populations of this state, including rural municipalities.

NEW YORK LAW

Article 2 Section 18 of the Consolidated New York Laws

§ 18. Acquisition of Abandoned Railroad Transportation Property.

1. Notwithstanding the provisions of any general, special or local law to the contrary, the commissioner shall have a preferential right to acquire, for and in behalf of the people of the state of New York, for use in the future for transportation purposes, as such purposes are set forth in this chapter, the highway law or the canal law, any property as defined in subdivision six of this section and which has been abandoned for railroad transportation purposes as defined in subdivision two of this section. No property owner shall dispose of any such property without having first obtained notification from the commissioner that the preferential right of acquisition granted under this section does not apply, or a release of such preferential right from the commissioner. Conveyances of property in violation of this section shall be null and void. Acquisition of property pursuant to this section shall be in the manner provided by section thirty of the highway law. No acquisition shall be made until the director of the budget shall have issued a certificate of availability of funds therefore. Before any property is acquired pursuant to this section, the commissioner shall determine that it is in the best interests of the state to acquire such property for use in the future for transportation purposes.
1-a. The department of transportation is hereby designated the official state agency to receive all notifications from the federal interstate commerce commission or any other federal or state

agency in regard to discontinuance of service or railroad property abandonment proceedings, including notification of applications from railroad companies for any such purposes.
1-b. The department of transportation shall promptly inform in writing all interested state agencies, transportation authorities, and every county, city, town and village in which such property is located and the appropriate entity designated by the governor pursuant to title IV of the federal intergovernmental cooperation act of nineteen hundred sixty-eight and the federal office of management and budget circular A-98 of (a) the issuance of any certificate from the federal interstate commerce commission or other federal or state agency authorizing discontinuance of railroad service or abandonment of railroad transportation property, (b) approval of discontinuance of service or a determination of abandonment of railroad transportation property pursuant to this section, and (c) the receipt of an application to release a preferential acquisition right to railroad transportation property pursuant to this section.
1-c. Whenever a property owner intends to dispose of abandoned railroad transportation property, it shall notify the department of transportation in writing of its intention. Upon receipt of such notification, the department of transportation shall have ninety days to make a determination and notify the property owner as to the applicability of the preferential right of acquisition granted under this section, except that this period may be suspended by the department upon its finding that the property owner has not submitted information sufficient to enable the department to make its determination. If suspended, this period will resume upon receipt of this required information. In the event the department fails to notify the property owner of its determination, the preferential right of acquisition shall be deemed not to apply. The department shall inform the appropriate state agencies, every metropolitan or regional transportation authority and every county, city, town and village in which such railroad property or portion thereof is located, of the intention of the property owner and the department's finding of applicability of the preferential right of acquisition. If notified by the department that the preferential right of acquisition does not extend to the subject property, or the department has not notified the property owner of its determination prior to the expiration of the foregoing ninety day period, notwithstanding any suspension, the property owner shall not enter into a binding contract to sell the property within forty-five days after this notification by the department. Such state agencies, metropolitan or regional transportation authorities, and counties, cities, towns and villages shall have preferential acquisition rights to be determined as herein provided. No state agency, metropolitan or regional transportation authority, county, city, town, or village shall have any preferential right of acquisition unless specifically authorized in writing by the department. Within a reasonable time thereafter, any agency of government which intends to exercise a preferential acquisition right for such property shall notify the department of transportation in writing. Within a reasonable time, not greater than one hundred twenty days after receipt of such notification by the property owner, the department of transportation shall notify the property owner in writing whether the department of transportation intends to exercise its preferential acquisition right under this section or, if not, whether it has determined that any other agency of government has been authorized by it to exercise a preferential acquisition right to such property. If the department of transportation notifies the property owner that it does not intend to exercise its right and that it has not authorized any other state or local agency of government to so exercise its right, the commissioner shall issue the property owner a written release of the preferential acquisition rights granted under this section. In the event the department fails to provide notice of the intent to release the preferential right of acquisition, such right shall be deemed to have expired. If the department of transportation, or any other state

or local agency of government shall be qualified to exercise such preferential acquisition right, the department of transportation shall notify the property owner of such intention and the property owner shall not dispose of such abandoned railroad transportation property without first having obtained a release of the preferential right from the department of transportation. There shall be good faith bargaining between the property owner and the department or any party of interest either authorized by the department to exercise the preferential right of acquisition or notified by the department as to the inapplicability of the preferential right of acquisition. The department of transportation shall issue a written release of the preferential acquisition right within one hundred eighty days after demand by the property owner, or such right will be deemed to have been expired. The department shall make a good faith effort to issue such release.

1-d. Whenever a conflict occurs between one or more agencies of government as to the exercise of a preferential right, the department of transportation shall in the exercise of its sole discretion resolve such conflict and make a prompt determination of the reasonable and proper order of priority with respect to the same. In making such determination, the department shall take into consideration the provisions of the comprehensive state-wide master transportation plan and its actions shall be consistent to the extent practicable with the effectuation of all state plans, policies and objectives.

1-e. The commissioner of transportation shall promulgate rules and regulations consistent with and for the purpose of adequately implementing the foregoing subdivisions.

2. For the purposes of this section, property shall be deemed to be abandoned for railroad transportation purposes (a) when, where required by law, a certificate of abandonment of the railroad line situate thereon has been issued by the interstate commerce commission and/or any other federal or state agency having jurisdiction thereof; or (b) when such a certificate of abandonment is not so required and the use of such property for railroad transportation purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances. Non-use of the property for railroad transportation purposes for two consecutive years shall create a presumption of abandonment. When use of such property for railroad transportation purposes has been discontinued and upon request of the property owner or his own motion, the commissioner shall undertake an investigation thereof, which may include consultation with the interstate commerce commission, and shall render a determination as to whether or not (a) the property owner has definite plans for the use of such property for purposes ordinarily associated with the safe and normal operation of a railroad or associated transportation purposes; (b) such property continues to be suitable for such railroad transportation purposes; and (c) such property is necessary, either presently or in the future, for such railroad transportation purposes. Such property shall be deemed to be abandoned for railroad transportation purposes if the commissioner shall determine that (a) the property owner has no definite plans for the use of such property for purposes ordinarily associated with the safe and normal operation of a railroad or associated transportation purposes; or (b) such property is no longer suitable for such railroad transportation purposes; and (c) such property is not necessary, either presently or in the future, for such railroad transportation purposes. The commissioner shall render such determination within ninety days after the commencement of such investigation and such determination shall be conclusive except that if the property is determined not to be so abandoned such determination shall not preclude the undertaking of a subsequent investigation concerning the same property. Sales of abandoned railroad transportation property for continued

or resumed rail transportation use may be exempted at the commissioner's discretion from the preferential right of acquisition. This section shall not apply to the subsequent resale of property lawfully acquired subject to the provisions of this section as then applicable, except when the subsequent sale involves property previously exempted from this section by the commissioner.

3. The expense of the acquisition of property including the cost of making surveys and preparing descriptions and maps of property to be acquired, and of administrative duties in connection therewith, serving notice of appropriation, publication, making title searches, appraisals and agreements, and examinations and readings and approval of titles made by the attorney-general, expenses incurred by the commissioner or the attorney-general in proceedings for removal of owners or occupants, and expenses incurred by the commissioner in connection with the management and supervision of the property, shall together be deemed to constitute the cost of property acquired pursuant to this section. The comptroller is hereby authorized to charge against the moneys appropriated for highway or other transportation purposes and to reserve there from such sums as may be sufficient to defray the necessary expenses to be incurred by the attorney general for examination, readings and approval of titles, upon the filing with him by the attorney general from time to time of a certificate or certificates approved by the commissioner setting forth such estimated expenses. Such expenses shall be paid from the funds so reserved after audit by the state comptroller.

4. Any moneys received by the commissioner from rentals or other sources of revenue in connection with the management, operations, occupancy, use or the sale of or exchange of property, under this section, that has been acquired by the commissioner pursuant to this section shall be deposited in the treasury of the state to the credit of the capital construction fund.

5. The commissioner may determine whether any property acquired pursuant to this section may be, in whole or in part, sold or exchanged on terms beneficial to the state, and in all cases of such determination, he may, notwithstanding the provisions of any general, special or local law, so dispose of such property. In order to carry any such sale or exchange into effect, the commissioner of transportation is hereby authorized to execute and deliver, in the name of the people of the state, a quitclaim of, or a grant in and to, such property. Each such instrument of conveyance shall be prepared by the attorney general and before delivery thereof, shall be approved by him as to form and manner of execution.

6. The term "property" as used in this section means all abandoned railroad property, except: (a) property noncontiguous to line rights of way and yards, except when such property has been made noncontiguous as a result of a previous sale or release of the preferential right, and (b) side and spur track properties not greater than one-fourth mile in length, except when sales of such property would make adjoining rights of way noncontiguous.

7. The commissioner, when he deems it necessary, may in the manner provided by subdivision twelve of section thirty of the highway law, obtain possession of any property acquired pursuant to this section.

8. The commissioner, in the manner provided by subdivision thirteen-c of section thirty of the highway law, shall manage and receive fair and reasonable value for the holding, use or occupancy of property acquired pursuant to this section.

9. The provisions of this section shall not apply to a railroad company owned and operated by a municipal corporation.

APPENDIX FOR PART II

APPENDIX E: CHRONOLOGICAL LISTING OF RAILROAD CONSTRUCTION AND ABANDONMENT IN TEXAS

Table E-1. Chronological Listing of Railroad Construction and Abandonment in Texas.

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1853	Buffalo Bayou, Brazos & Colorado	Harrisburg	Stafford's Point	20	
1855	Buffalo Bayou, Brazos & Colorado	Stafford's Point	Richmond	12	
1855	Galveston & Red River	Houston	Milepost 2	2	
1856	Houston Tap	Houston	Pierce Junction	6.5	
1856	Houston & Texas Central	Milepost 2	Cypress	23	
1857	Galveston, Houston & Henderson	Virginia Point	Milepost 25.5	25.5	
1857	Houston & Texas Central	Cypress	Hockley	10	
1858	Buffalo Bayou, Brazos & Colorado	Richmond	Randon	8.1	
1858	Houston Tap & Brazoria	Pierce Junction	Bonney	25	
1858	Houston & Texas Central	Hockley	Hempstead	15	
1858	San Antonio & Mexican Gulf	Port Lavaca	Milepost 5	5	
1858	Southern Pacific	Swanson's Landing	Milepost 10.9	10.9	
1859	Buffalo Bayou, Brazos & Colorado	Randon	Milepost 65	24.9	
1859	Galveston, Houston & Henderson	Milepost 25.5	Houston City Limits	17	
1859	Houston Tap & Brazoria	Bonney	Chenango	5	
1859	Houston & Texas Central	Hempstead	Milepost 75	25	
1859	Southern Pacific	Milepost 10.9	1 mile e. of Marshall	16.6	
1859	Texas & New Orleans	Houston	Milepost 10	10	
1859	Washington County	Hempstead	Chappell Hill	11	
1860	Buffalo Bayou, Brazos & Colorado	Milepost 65	Alleyton	15	
1860	Galveston, Houston & Henderson	Houston		2	
1860	Galveston, Houston & Henderson	Virginia Point	Galveston	3.5	
1860	Houston Tap & Brazoria	Chenango	East Columbia	13.5	
1860	Houston & Texas Central	Milepost 75	Millican	5	
1860	Texas & New Orleans	Milepost 10	Orange	96	
1861	Eastern Texas	Sabine Pass	Beaumont	25	
1861	Memphis, El Paso & Pacific	Moore's Landing	Jefferson	6	
1861	San Antonio & Mexican Gulf	Milepost 5	Victoria	23	
1861	Washington County	Chappell Hill	Brenham	10.31	
1863	Eastern Texas	Sabine Pass	Beaumont		25
1863	San Antonio & Mexican Gulf	Port Lavaca	Victoria		28
1863	Southern Pacific	Swanson's Landing	Jonesville		14
1863	Southern Pacific	Jonesville	State Line	6.5	
1863	Texas & New Orleans	Orange	Connell		17.5
1865	Columbus Tap	Alleyton	Colorado River	2.5	
1865	Galveston & Houston Junction	Houston		2	
1865	Texas & New Orleans	Connell	Beaumont		5.5
1865	Texas & New Orleans	Beaumont	Houston		83
1866	Buffalo Bayou, Brazos & Colorado	Colorado River	Columbus	0.6	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1866	San Antonio & Mexican Gulf	Port Lavaca	Victoria	28	
1866	Texas & New Orleans	Houston	Beaumont	82.59	
1867	Houston & Texas Central	Millican	Bryan	20	
1868	Houston & Texas Central	Bryan	Hearne	20	
1869	Southern Pacific	1 mile e. of Marshall	Longview	24.9	
1870	Houston & Texas Central	Brenham	Hills	42.4	
1870	Houston & Texas Central	Hearne	Groesbeck	50.2	
1870	Indianola	Indianola	Milepost 12.5	12.5	
1871	Houston & Great Northern	Houston	New Waverly	55	
1871	Houston & Texas Central	Groesbeck	Corsicana	38.6	
1871	Houston & Texas Central	Hills	Austin	51.29	
1871	Indianola	Milepost 12.5	Clarks	2.5	
1871	International	Hearne	Brazos River	6	
1871	International	Hearne	Milepost 50	50	
1871	International	Longview	Tecula	48.11	
1871	Rio Grande	Brownsville	Port Isabel	22.5	
1872	Houston & Great Northern	New Waverly	Crockett	55.91	
1872	Houston & Texas Central	Corsicana	Dallas	58.6	
1872	Huntsville Branch	Huntsville	Phelps	8	
1872	International	Milepost 50	Palestine	36.89	
1872	Missouri, Kansas & Texas	Red River	Denison	5	
1872	Waco & Northwestern	Bremond	Ross	54.6	
1872	Memphis, El Paso & Pacific	Moore's Landing	Jefferson		6
1873	Gulf, Western Texas & Pacific	Cuero	Victoria	28	
1873	Houston & Great Northern	Crockett	Palestine	39.79	
1873	Houston & Great Northern	Troup	Mineola	44.4	
1873	Houston & Texas Central	Dallas	Denison	76	
1873	International	Tecula	Palestine	35.9	
1873	Texas & Pacific	Longview	Dallas	125.82	
1873	Texas & Pacific	Marshall	Texarkana	66.91	
1873	Texas & Pacific	Sherman	Brookston	54.5	
1874	Galveston, Harrisburg & San Antonio	Columbus	Luling	70.68	
1874	International & Great Northern	Brazos River	Rockdale	24	
1874	Texas & Pacific	Dallas	Eagle Ford	6	
1875	Galveston, Harrisburg & San Antonio	Luling	Milepost 169	15.22	
1875	Rusk Transportation	Rusk	Jacksonvile	17	
1875	Texas & Pacific	Brookston	Paris	8.78	
1875	Gulf, Western Texas & Pacific	Port Lavaca	Clarks		6
1876	East Line & Red River	Jefferson	Greenville	121.8	
1876	Galveston, Brazos & Colorado Narrow Gauge	Galveston	Milepost 10	10	
1876	Galveston, Harrisburg & San Antonio	Milepost 169	Marion	15.41	
1876	International & Great Northern	Rockdale	Austin	61	
1876	Texas & New Orleans	Beaumont	Orange	21.91	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1876	Texas & Pacific	Eagle Ford	Fort Worth	23.54	
1876	Texas & Pacific	Paris	Texarkana	90.44	
1876	Texas Transportation	Houston		7.9	
1876	Houston & Texas Central	Red River City	Denison		6
1877	Galveston, Brazos & Colorado Narrow Gauge	Milepost 10	Milepost 15	5	
1877	Galveston, Harrisburg & San Antonio	Marion	San Antonio	23.69	
1877	Gulf, Colorado & Santa Fe	Galveston	Arcola	42	
1877	Henderson & Overton Branch	Overton	Henderson	16	
1877	Houston East & West Texas	Houston	Keefer	29.31	
1877	Texas Western Narrow Gauge	Houston	Pattison	42	
1877	Tyler Tap	Big Sandy	Tyler	21	
1878	Central & Montgomery	Navasota	Montgomery	27.4	
1878	Corpus Christi, San Diego & Rio Grande Narrow Gauge	Corpus Christi	Banquete	25	
1878	Dallas & Wichita	Dallas	Lewisville	20	
1878	Georgetown	Georgetown	Round Rock	10	
1878	Houston East & West Texas	Keefer	Wescott	19.19	
1878	Longview & Sabine Valley	Longview	Camden	12.11	
1879	Corpus Christi, San Diego & Rio Grande Narrow Gauge	Banquete	San Diego	27	
1879	Denison & Pacific	Denison	Gainesville	41.89	
1879	Gulf, Colorado & Santa Fe	Arcola	Richmond	20.7	
1879	Houston East & West Texas	Wescott	Goodrich	14.5	
1879	Waxahachie Tap	Garrett	Waxahachie	12.36	
1880	Dallas, Cleburne & Rio Grande	Dallas	Cleburne	53.33	
1880	Dallas & Wichita	Lewisville	Denton	19	
1880	Denison & Southeastern	Denison	Whitewright	20.5	
1880	Gulf, Colorado & Santa Fe	Richmond	Brenham	63.3	
1880	Houston East & West Texas	Goodrich	Moscow	24	
1880	Missouri, Kansas & Texas Extension	Whitewright	Greenville	31.59	
1880	Texas & Pacific	Fort Worth	Baird	139.8	
1880	Texas & Pacific	Sherman	Fort Worth	90.4	
1880	Texas & St. Louis	Texarkana	Big Sandy	106.6	
1880	Texas & St. Louis	Tyler	Athens	37	
1881	Galveston, Harrisburg & San Antonio	Glidden	La Grange	27.87	
1881	Galveston, Harrisburg & San Antonio	Chaney Junction	Stella	10.62	
1881	Galveston, Harrisburg & San Antonio	El Paso	Sierra Blanca	91	
1881	Galveston, Harrisburg & San Antonio	San Antonio	Uvalde	92.24	
1881	Gulf, Colorado & Santa Fe	Brenham	Belton	100.4	
1881	Gulf, Colorado & Santa Fe	Temple	Fort Worth	128	
1881	Houston East & West Texas	Moscow	Burke	23	
1881	International & Great Northern	Austin	Laredo	234.4	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1881	Louisiana Western Extension	Orange	Sabine River	6.7	
1881	Missouri, Kansas & Texas	Fort Worth	Hillsboro	55	
1881	Missouri, Kansas & Texas	Greenville	Mineola	50.5	
1881	Rio Grande & El Paso	State Line	El Paso	20.15	
1881	Sabine & East Texas	Beaumont	Sabine Pass	30.17	
1881	Sabine & East Texas	Beaumont	Kountze	24.4	
1881	Texas Mexican	San Diego	Laredo	110.62	
1881	Texas & Pacific	Baird	Sierra Blanca	382.52	
1881	Texas & St. Louis	Athens	Corsicana	38	
1881	Texas & St. Louis of Texas	Corsicana	Waco	56	
1881	Texas Trunk	Dallas	Kaufman	35.8	
1881	Texas Western	Pattison	Sealy	10	
1882	Austin & Northwestern	Austin	Burnet	60	
1882	East Line & Red River	McKinney	Greenville	31.8	
1882	Fort Worth & Denver City	Hodge Junction	Wichita Falls	110.3	
1882	Galveston, Harrisburg & San Antonio	Sierra Blanca	Shumla	312.26	
1882	Galveston, Harrisburg & San Antonio	Uvalde	Comstock	124.75	
1882	Galveston, Harrisburg & San Antonio	Spofford	Eagle Pass	34.64	
1882	Gonzales Branch	Harwood	Gonzales	12.1	
1882	Gulf, Colorado & Santa Fe	Belton	Lampasas	48.4	
1882	Houston East & West Texas	Burke	Nacogdoches	28	
1882	Kansas & Gulf Short Line	Tyler	Jacksonville	28.55	
1882	Missouri, Kansas & Texas	Hillsboro	Taylor	107.11	
1882	Missouri, Kansas & Texas	Echo	Belton	7.15	
1882	New York, Texas & Mexican	Rosenberg	Victoria	91	
1882	Sabine & East Texas	Kountze	Rockland	48.66	
1882	Texas Central	Garrett	Terrell	38	
1882	Texas Central	Ross	Albany	178	
1882	Texas Mexican Northern	Laredo	Milepost 4.67	4.67	
1882	Texas & Pacific	Gordon	Gordon Mines	3	
1882	Texas & St. Louis of Texas	Waco	Gatesville	46	
1882	Trinity & Sabine	Trinity	Milepost 38	38	
1883	Brownsville & Gulf	Brownsville		1.01	
1883	Galveston, Harrisburg & San Antonio	Comstock	Shumla	17.64	
1883	Gulf, Colorado & Santa Fe	Alvin	Houston	25.66	
1883	Gulf, Colorado & Santa Fe	Somerville	Navasota	28.6	
1883	Houston East & West Texas	Nacogdoches	Fitze	16	
1883	Rio Grande & Pecos Valley	Laredo	Santo Thomas Mine	27.75	
1883	Texas Trunk	Kaufman	Cedar	15.7	
1884	Austin & Oatmanville	Kouns	Oatmanville	6	
1884	Marshall & Northwestern	Marshall	Montvale Springs	15.5	
1884	Missouri, Kansas & Texas	Milepost 38	Colmesneil	29	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1884	Texas Central	Terrell	Roberts	14	
1885	Fort Worth & Denver City	Wichita Falls	Harrold	33.7	
1885	Galveston, Sabine & St. Louis	Camden	Martin's Creek	10.5	
1885	Gulf, Colorado & Santa Fe	Lampasas	Brownwood	71	
1885	Gulf, Colorado & Santa Fe	Montgomery	Conroe	17.59	
1885	Houston East & West Texas	Fitze	State Line	38	
1885	Kansas & Gulf Short Line	Rusk	Lufkin	43.05	
1885	Lake Creek	Montgomery	Hawthicket	8	
1885	San Antonio & Aransas Pass	San Antonio	Labatt	25.4	
1885	Texarkana & Northern	Texarkana	Red River	10	
1885	Texas Mexican Northern	Milepost 4.67	Stock Pens		3.33
1886	Dallas & Greenville	Dallas	Greenville	52.43	
1886	Denison & Washita Valley	Warner Junction	Ray	5.25	
1886	Fort Worth & Denver City	Harrold	Chillicothe	31	
1886	Fort Worth & New Orleans	Fort Worth	Waxahachie	40.05	
1886	Gulf, Colorado & Santa Fe	Brownwood	Ballinger	63.63	
1886	Gulf, Colorado & Santa Fe	Coleman Junction	Coleman	6.26	
1886	Gulf, Colorado & Santa Fe	Dallas	Ladonia	71.3	
1886	San Antonio & Aransas Pass	Labatt	Corpus Christi	125.4	
1887	Fort Worth & Denver City	Chillicothe	Canadian River	193.5	
1887	Fort Worth & Rio Grande	Fort Worth	Granbury	40	
1887	Gainesville, Henrietta & Western	Gainesville	Henrietta	70.39	
1887	Gulf, Colorado & Santa Fe	Cleburne	Weatherford	41.73	
1887	Gulf, Colorado & Santa Fe	Fort Worth	State Line	71.3	
1887	Gulf, Colorado & Santa Fe	Ladonia	Honey Grove	11.8	
1887	Gulf, Colorado & Santa Fe	Ladonia	Paris	29.6	
1887	Gulf, Western Texas & Pacific	Port Lavaca	Clarks	6	
1887	Missouri, Kansas & Texas	Taylor	Boggy Tank	89.75	
1887	Missouri, Kansas & Texas	Lockhart	San Marcos	16.14	
1887	St. Louis, Arkansas & Texas of Texas	Corsicana	Milepost 35	35	
1887	St. Louis, Arkansas & Texas of Texas	Mt. Pleasant	Sherman	109.9	
1887	St. Louis, Arkansas & Texas of Texas	Commerce	Renner	57.4	
1887	San Antonio & Aransas Pass	Kenedy	Wallis	131	
1887	San Antonio & Aransas Pass	San Antonio	Kerrville	70.5	
1887	San Antonio & Aransas Pass	Yoakum	West Point	50.3	
1887	Southern Kansas of Texas	State Line	White Deer	87.21	
1887	Austin & Oatmanville	Kouns	Oatmanville		6
1887	Galveston, Brazos & Colorado Narrow Gauge	Galveston	Milepost 15		15
1887	Gulf, Western Texas & Pacific	Indianola	Port Lavaca		15
1888	Dallas & Waco	Dallas	Waxahachie	33.23	
1888	Fort Worth & Denver City	Canadian River	State Line	80.25	
1888	Gulf, Colorado & Santa Fe	Ballinger	San Angelo	36	
1888	Kansas City, El Paso & Mexican	El Paso	Lanoria	10	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1888	Panhandle	Washburn	Panhandle City	14.54	
1888	Paris & Great Northern	Paris	Red River	16.94	
1888	St. Louis, Arkansas & Texas of Texas	Milepost 35	Hillsboro	5	
1888	St. Louis, Arkansas & Texas of Texas	Renner	Fort Worth	39.8	
1888	San Antonio & Aransas Pass	Gregory	Rockport	21.1	
1888	San Antonio & Aransas Pass	Skidmore	Alice	43	
1888	San Antonio & Aransas Pass	Wallis	Houston	46.2	
1888	Southern Kansas of Texas	White Deer	Panhandle City	13.2	
1888	Texas & Pacific	Gordon Mines	Thurber	3.29	
1888	Texas, Sabine Valley & Northwestern	Martin's Creek	Carthage	15.39	
1889	Austin & Northwestern	Burnet	Marble Falls	16	
1889	Dallas & Waco	Waxahachie	Milford	19.77	
1889	Fort Worth & Rio Grande	Granbury	Harbin	46.43	
1889	Galveston & Western	Galveston	Lafitte	13.1	
1889	Gulf, Western Texas & Pacific	Victoria	Beeville	55.2	
1889	Kildare & Linden	Kildare	Linden	13.3	
1889	San Antonio & Aransas Pass	Shiner	Lockhart	53.8	
1889	San Antonio & Aransas Pass	Waco	Lott	28	
1889	San Antonio & Aransas Pass	West Point	Lexington	35.4	
1890	Bowers & Piney Creek	T&S Junction	Piney Creek	13	
1890	Dallas & Waco	Milford	Hillsboro	14	
1890	Fort Worth & Denver City	Hodge Junction	Fort Worth	5.66	
1890	Fort Worth & Rio Grande	Harbin	Comanche	28.06	
1890	Lancaster Tap	Hutchins	Lancaster	4.76	
1890	Pecos River	Pecos City	State Line	54	
1890	Sherman, Denison & Dallas	Denison	Sherman	10.67	
1890	Wichita Valley Railway	Wichita Falls	Seymour	51	
1891	Fort Worth & Rio Grande	Comanche	Brownwood	30	
1891	Fort Worth & Rio Grande	Fort Worth		1.67	
1891	San Antonio & Aransas Pass	Lexington	Lott	57.5	
1891	Weatherford, Mineral Wells & Northwestern	Weatherford	Mineral Wells	23	
1891	Bowers & Piney Creek	T&S Junction	Piney Creek		13
1892	Austin & Northwestern	Fairland	Llano	29.9	
1892	Chicago, Rock Island & Texas	State Line	Milepost 21.89	21.89	
1892	De Kalb & Red River	De Kalb	Lennox	8	
1892	De Kalb & Red River	Muir	Mooresville	1.5	
1892	Galveston, Harrisburg & San Antonio	Helmet	Shumla	12	
1892	Hearne & Brazos Valley	IGN Junction	Stone City	16.41	
1892	Missouri, Kansas & Texas of Texas	Boggy Tank	Brazos River	33.8	
1892	Missouri, Kansas & Texas of Texas	Smithville	Lockhart	35.93	
1892	Pan-American	Victoria	Milepost 9.52	9.52	
1892	Texas, Louisiana & Eastern	Conroe	Cleveland	22.2	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1892	Velasco Terminal	Velasco	Chenango Junction	20	
1893	Austin & Northwestern	Granite Mountain	Quarries	2.05	
1893	Austin & Northwestern	Bessemer	Olive Iron Mine	1.15	
1893	Chicago, Rock Island & Texas	Milepost 21.89	Paradise	33.71	
1893	Houston & Texas Central	Ledbetter	Ledbetter Quarries	5.02	
1893	Missouri, Kansas & Texas of Texas	Brazos River	Houston	41.7	
1893	North Galveston, Houston & Kansas City	Virginia Point	North Galveston	15.69	
1893	Sherman, Shreveport & Southern	Between Jefferson	McKinney	1.4	
1893	South Galveston & Gulf Shore	Galveston		4	
1893	Texas City Terminal	Texas City Junction	Texas City	4.2	
1893	Texas, Louisiana & Eastern	Cleveland	Meriam	5.38	
1893	Texas & Sabine Valley	Carthage	Boren	2	
1893	Unknown				5.56
1894	Chicago, Rock Island & Texas	Paradise	Fort Worth	36.4	
1894	Gulf, Beaumont & Kansas City	Beaumont	Silsbee	21.28	
1894	Gulf, Beaumont & Kansas City	Collins Ferry Junction	Collins Ferry	2.83	
1894	La Porte, Houston & northern	Harrisburg	.5 miles e. of Thayer	12	
1894	Paris, Marshall & Sabine Pass	Montvale Springs	Harleton	3.5	
1894	Rio Grande & Eagle Pass	Between Laredo	Santo Thomas	2.25	
1894	Sugar Land	Sugar Land	Arcola Junction	14.2	
1894	Texas, Louisiana & Eastern	Meriam	Milepost 29.6	2.02	
1894	Texas Midland	Junction	Ennis	4.6	
1894	Galveston, Harrisburg & San Antonio	Between Houston	El Paso		10.72
1894	Galveston, Harrisburg & San Antonio	Helmet	Shumla		11.16
1894	Pan-American	Victoria	Milepost 9.52		9.52
1894	Sherman, Shreveport & Southern	Between Jefferson	McKinney		1.96
1894	Unknown				0.33
1895	Denison & Washita Valley	Between Warner	Ray	1.54	
1895	Galveston, La Porte & Houston	Between Brady	Harrisburg	1.7	
1895	Galveston, La Porte & Houston	.5 miles e. or Thayer	La Porte	5.76	
1895	Gulf & Interstate of Texas	Bolivar	Milepost 5.97	5.97	
1895	Gulf, Beaumont & Kansas City	Silsbee Junction	Kirbyville	31.09	
1895	Houston Belt & Magnolia Park	Houston	Brady	4.07	
1895	Missouri, Kansas & Texas of Texas	Between San Marcos	Smithville	2.5	
1895	Paris, Marshall & Sabine Pass	Harleton	Milepost 1.5	1.5	
1895	Rio Grande Northern	Chispa	Milepost 12.07	12.07	
1895	San Antonio & Gulf Shore	San Antonio	Sutherland Springs	29	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1895	Texas Midland	Roberts	Greenville	18.64	
1895	Wichita Falls	Wichita Falls	Henrietta	17.96	
1895	Unknown			1.25	
1895	Lake Creek	Montgomery	Hawthicket		8
1895	Rio Grande & Eagle Pass	Santo Thomas	Minera		2.61
1895	South Galveston & Gulf Shore	Galveston			4
1895	Texas Central	Between Ross	Albany		3
1896	Aransas Harbor Terminal	Aransas Pass		1.89	
1896	Dallas Terminal & Union Depot	Dallas		4.1	
1896	Denison & Pacific Suburban	Denison	Sherman Junction	7.59	
1896	Galveston, La Porte & Houston	La Porte	North Galveston	11.1	
1896	Galveston, La Porte & Houston	Strang	La Porte	3.58	
1896	Galveston, La Porte & Houston	Virginia Point	Galveston	6.35	
1896	Gulf, Beaumont & Kansas City	Various Changes		5	
1896	Gulf & Interstate of Texas	Milepost 5.97	Beaumont	62.41	
1896	Rio Grande Northern	Milepost 12.07	San Carlos	14.18	
1896	Sabine Pass, Alexandria & Northwestern	Durst	Mitchelli	8.34	
1896	Texarkana & Fort Smith	Texarkana	State Line	24	
1896	Texarkana & Fort Smith	Port Arthur	Beaumont	19.4	
1896	Texas Mexican	Quarry Branch		4	
1896	Texas & New Orleans	Houston	Englewood	3.89	
1896	Houston & Texas Central	Ledbetter	Ledbetter Quarries		5.02
1896	Unknown				2.14
1897	Gulf & Interstate of Texas	Between Port Bolivar	Beaumont	1.97	
1897	Marshall, Timpson & Sabine Pass	Timpson	Russellville	10	
1897	San Antonio & Gulf	Between San Antonio	Sutherland Springs	2.67	
1897	Texas Midland	Commerce	Paris	37.61	
1897	Texas & New Orleans	Between Sabine Pass	Rockland	1.68	
1897	Unknown			0.71	
1897	Texarkana & Fort Smith	Between Red River	State Line		2.26
1897	Texas Mexican	Quarry Branch			4
1897	Texas Southern	Harleton	Milepost 15		1.5
1898	Beaumont Wharf & Terminal	Beaumont		2	
1898	El Paso & Northeastern	Lanoria	State Line	8.38	
1898	Pecos & Northern Texas	Amarillo		1	
1898	San Antonio & Gulf	Sutherland Springs	Stockdale	5.86	
1898	San Antonio & Gulf	Lavernia	Sand Pits	1.02	
1898	Texarkana & Fort Smith	Sabine River	Beaumont	28.26	
1898	Texas, Arkansas & Louisiana	Atlanta	Bloomburg	7.7	
1898	Texas Central	Between Ross	Albany	2	
1898	Unknown			1.13	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1898	Texas Midland	Midland Junction	Garrett		1.73
1899	Cane Belt	Lakeside	Bonus	10.05	
1899	Chicago, Rock Island & Texas	Bridgeport	Jacksboro	28	
1899	Colorado Valley	Sweetwater	Milepost 7.25	7.25	
1899	El Paso & Northeastern	El Paso		4.56	
1899	Fort Worth & New Orleans	Between Waxahachie	Fort Worth	1.92	
1899	Gulf, Beaumont & Kansas City	Kirbyville	Rogan	10	
1899	Marshall, Timpson & Sabine Pass	Russellville	Carthage	9.6	
1899	Moscow, Camden & San Augustine	Moscow	Camden	7	
1899	Pecos & Northern Texas	Amarillo	State Line	93.48	
1899	Texarkana & Fort Smith	Ruliff	Possum Bluff	1.65	
1899	Texas & Pacific	Between Junction	Coal Mine	1.09	
1899	Trinity Valley	Dodge	Oakhurst	6.5	
1899	Unknown			0.5	
1899	De Kalb & Red River	De Kalb	Marysville		11.47
1899	Galveston, Harrisburg & San Antonio	Between Houston	El Paso		1.27
1899	Rio Grande & Eagle Pass	Between Laredo	Mindera		1.87
1899	Texarkana & Fort Smith	Between Sabine River	Port Arthur		1.24
1899	Texas & New Orleans	Houston	Englewood		3.89
1900	Beaumont Wharf & Terminal	Beaumont		1.14	
1900	Calvert, Waco & Brazos Valley	Calvert	Valley Junction	14.3	
1900	Cane Belt	Bonus	Wharton	14.6	
1900	Cane Belt	Eagle Lake	Sealy	17.7	
1900	Central Texas & Northwestern	Between Waxahachie	Garrett	1.17	
1900	Emporia & Gulf	Emporia	Crooker	15	
1900	Galveston, Houston & Northern	Between Brady	Magers	1.21	
1900	Gulf & Brazos Valley	Peck City	Mineral Wells	10.55	
1900	Hearne & Brazos Valley	IGN Junction	Hearne	2.26	
1900	Houston, Oaklawn & Magnolia Park	Brady	Magnolia Park	1.43	
1900	New York, Texas & Mexican	Wharton	Milepost 12	12	
1900	Sherman, Shreveport & Southern	Jefferson	State Line	29.45	
1900	Texas Central	Albany	Stamford	37	
1900	Texas & Louisiana	Lufkin	Donovan	14.5	
1900	Texas & New Orleans	Cedar	Athens	25.99	
1900	Texas & New Orleans	Rockland	Milepost 25.54	25.54	
1900	Texas & Northeastern	Village Mills	Wick	5	
1900	Warren & Corsicana	Warren	Campwood	18.3	
1900	Galveston, Houston & Northern	Between Galveston	Brady		1.14
1900	Gulf & Interstate of Texas	Port Bolivar	High Island		28.35
1900	Houston East & West Texas	Between Houston	State Line		1
1900	Rio Grande Northern	Chispa	San Carlos		26.25
1900	Texas, Sabine Valley & Northwestern	Between Longview	Carthage		1.4
1900	Texas Western	Houston	Sealy		52

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1900	Unknown				0.35
1901	Calvert, Waco & Brazos Valley	Valley Junction	Bryan	22.75	
1901	Calvert, Waco & Brazos Valley	Calvert Junction	Marlin	28.65	
1901	Cane Belt	Wharton	Bay City	24.9	
1901	Cane Belt	Lakeside	Dunovant Plantation	4.3	
1901	Cane Belt	Lane City	Garwood	3.2	
1901	Chicago, Rock Island & Mexico	State Line	Milepost 78.7	78.7	
1901	Gulf, Beaumont & Great Northern	Rogan	Milepost 15	15	
1901	Gulf, Colorado & Santa Fe	Rayburn	Milepost 40	40	
1901	Missouri, Kansas & Texas of Texas	San Marcos	San Antonio Junction	45.6	
1901	New York, Texas & Mexican	Milepost 12	Van Vleck	19.41	
1901	St. Louis, San Francisco & Texas	Red River	Denison	5.33	
1901	St. Louis, San Francisco & Texas	Sherman		1.41	
1901	Texas & New Orleans	Athens	Frankston	22.15	
1901	Texas & New Orleans	Milepost 25.54	Milepost 50.95	25.41	
1901	Texas Southern	Gilmer	Ashland	17	
1901	Timpson & Northwestern	Timpson	Milepost 8	8	
1901	Emporia & Gulf	Emporia	Crooker		15
1901	Galveston, Harrisburg & San Antonio	Between Houston	El Paso		1.16
1901	Galveston, Houston & Henderson	Between Galveston	Houston		2.55
1901	Galveston, Houston & Northern	Between Magers	Galveston		2.06
1901	Gulf, Beaumont & Kansas City	Call Junction	Call		2.32
1901	Gulf, Beaumont & Kansas City	Collier's Ferry Junction	Collier's Ferry		2.83
1901	Gulf, Beaumont & Kansas City	Silsbee Junction	Silsbee		3.21
1901	Kildare & Linden	Kildare	Linden		13.3
1901	Sabine Pass, Alexandria & Northwestern	Durst	Mitchelli		8.34
1901	Texas & Northeastern	Village Mills	Wick		5
1901	Texas Southern	Between Marshall	Harleton		2
1901	Unknown				2.77
1902	Blackwell, Enid & Texas	Vernon	Red River	12.28	
1902	Chicago, Rock Island & Mexico	Milepost 78.7	State Line	13.05	
1902	Choctaw, Oklahoma & Texas	State Line	Yarnall	94.83	
1902	Denison, Bonham & New Orleans	MKT Junction	Bonham	24.17	
1902	Eastern Texas	Lufkin	Kennard Mill	28.28	
1902	Galveston, Houston & Henderson	Between Galveston	Houston	1.16	
1902	Gulf, Beaumont & Great Northern	Milepost 15	Milepost 37.55	22.55	
1902	Gulf, Colorado & Santa Fe	Milepost 40	Silsbee	10	
1902	International & Great Northern	Bryan	Spring	78.22	
1902	International & Great Northern	Marlin	Waco	41	
1902	Orange & Northwestern	Orange	Buna	29.75	
1902	Orange & Northwestern	West Orange	South Orange	3.11	
1902	Red River, Texas & Southern	Sherman	Carrollton	52.98	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1902	Red River, Texas & Southern	Fort Worth		4.56	
1902	Texas & Louisiana	Donovan	Monterey	7.5	
1902	Texas & New Orleans	Frankston	Jacksonville	15.44	
1902	Texas & New Orleans	Milepost 50.95	Mahl	5.51	
1902	Texas Short Line	Grand Saline	Milepost 4.5	4.5	
1902	Texas Southern	Gilmer	East Winnsboro	37.72	
1902	Unknown			0.76	
1902	Austin & Northwestern	Bessemer	Olive Iron Mine		1.42
1902	Brownsville & Gulf	Brownsville			1.01
1903	Cane Belt	Bay City	Matagorda	21.4	
1903	Chicago, Rock Island & Gulf	Fort Worth	Dallas	32	
1903	Chicago, Rock Island & Texas	Jacksboro	Graham	27.29	
1903	Dallas, Cleburne & Southwestern	Egan	Cleburne	9.82	
1903	Dallas Terminal & Union Depot	Dallas		1.22	
1903	Eastern Texas	Kennard Mill	Kennard Mill	2.02	
1903	El Paso & Southwestern of Texas	EP&NE Junction	State Line	4.69	
1903	Fort Worth & Rio Grande	Brownwood	Brady	49.72	
1903	Gulf, Beaumont & Great Northern	Milepost 37.55	Milepost 63	25.45	
1903	Gulf, Colorado & Santa Fe	Between Temple	San Angelo	1.06	
1903	Houston & Texas Central	Burnet	Lampasas	23.01	
1903	International & Great Northern	Waco	Fort Worth	94.55	
1903	International & Great Northern	Madisonville	Milepost 30	30	
1903	Missouri, Kansas & Texas of Texas	Granger	Georgetown	15.5	
1903	New York, Texas & Mexican	Van Vleck	Hawkinsville	16.71	
1903	New York, Texas & Mexican	Van Vleck Junction	Tres Palacios	37.6	
1903	Oklahoma City & Texas	Red River	Quanah	8.68	
1903	St. Louis, Southwestern of Texas	Addison	Dallas	12.13	
1903	Texarkana & Fort Smith	Between Sabine River	Port Arthur	1.31	
1903	Texas Central	Ross	Waco	12.77	
1903	Texas & New Orleans	Mahl	Jacksonville	37.74	
1903	Texas & New Orleans	Nome	Sour Lake	7.2	
1903	Texas Short Line	Milepost 4.5	Hoyt	4.86	
1903	Timpson North Western	Milepost 8	Ragley	1.75	
1903	Trinity & Brazos Valley	Hillsboro	Milepost 2	2	
1903	Galveston, Houston & Henderson	Between Galveston	Houston		2.55
1903	Galveston & Western	Nottingham	Galveston		7.6
1903	Gulf & Brazos Valley	Peck City	Mineral Wells		10.55
1903	Houston & Texas Central	Between Garrett	Fort Worth		1.71
1903	San Antonio & Gulf	Lavernia	Sand Pits		1.02
1903	Unknown				1.59
1904	Beaumont, Sour Lake & Western	Beaumont	Sour Lake	20.5	
1904	Cane Belt	Rayner	Bonus	13.78	
1904	Chicago, Rock Island & Gulf	Bridgeport	Coal Mine	1.83	
1904	Chicago, Rock Island & Gulf	Between Fort Worth	Dallas	1.07	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1904	Chicago, Rock Island & Gulf	Yarnall	Amarillo	18.48	
1904	Fort Worth Belt	Fort Worth		11.6	
1904	Gulf, Beaumont & Great Northern	Milepost 63	Center	14.8	
1904	Gulf, Colorado & Santa Fe	Bragg	Saratoga	9.49	
1904	Gulf & Interstate of Texas	High Island	Port Bolivar	28.35	
1904	International & Great Northern	Bray's Bayou	Buffalo Bayou	3.86	
1904	International & Great Northern	Milepost 30	Navasota	14.7	
1904	Missouri, Kansas & Texas of Texas	Georgetown	Austin	29.9	
1904	St. Louis, Brownsville & Mexico	Robstown	Brownsville	141.25	
1904	St. Louis, Brownsville & Mexico	Harlingen	Milepost 7.75	7.75	
1904	San Antonio & Aransas Pass	Alice	Falfurrias	36.4	
1904	Trinity & Brazos Valley	Cleburne	Hillsboro	29.88	
1904	Trinity & Brazos Valley	Milepost 2	Mexia	47.05	
1904	Wichita Falls & Oklahoma	Wichita Falls	Byers	22.1	
1904	Wichita Valley Railway	Between Wichita Falls	Seymour	1.2	
1904	Unknown			1.73	
1905	Fort Worth Belt	Fort Worth		1.5	
1905	Fort Worth & Denver City	Between Fort Worth	State Line	5.57	
1905	Jasper & Eastern	Kirbyville Junction	Sabine River	17.5	
1905	Livingston & Southeastern	Livingston	Knox	7.2	
1905	Nacogdoches & Southeastern	Hayward	Woden	11.11	
1905	Nacogdoches & Southeastern	Hamptons Switch	Hamptons	4.86	
1905	Northeast Texas	Redwater	Munz	18.46	
1905	Panhandle & Gulf	Milepost 7.25	Sylvester	14.89	
1905	Rio Grande & Eagle Pass	Between Laredo	Minera	1	
1905	St. Louis, Brownsville & Mexico	Bay City	Milepost 31	31	
1905	St. Louis, Brownsville & Mexico	Robstown	Refugio	43.2	
1905	St. Louis, Brownsville & Mexico	Milepost 7.75	Sam Fordyce	47.65	
1905	St. Louis, Brownsville & Mexico	Monterey	Milepost 115.37	4.47	
1905	Texas Southern	Lodwick Lumber Company Spur		11.14	
1905	Fort Worth & Denver Terminal	Fort Worth			5
1905	Unknown				5.68
1906	Galveston, Harrisburg & San Antonio	Stockdale	Smiley	17.37	
1906	Kansas City, Mexico & Orient of Texas	Sylvester	Knox City	56.7	
1906	Livingston & Southeastern	Knox	Milepost 2.8	2.8	
1906	Orange & Northwestern	Buna	Newton	28.06	
1906	St. Louis, Brownsville & Mexico	Refugio	Milepost 31 miles w. of Bay City	68.05	
1906	St. Louis, Brownsville & Mexico	Bay City	Algoa	60.64	
1906	Texas & Gulf	Timpson	Watterman	12.17	
1906	Trinity & Brazos Valley	Mexia	Milepost 79.22	79.22	
1906	El Paso & Northeastern	El Paso			4.82

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1906	Nacogdoches & Southeastern	Hamptons Switch	Hamptons		4.86
1906	Unknown				1.99
1907	Abilene & Northern	Stamford	Abilene	38.7	
1907	Aransas Harbor Terminal	Aransas Pass		1.31	
1907	Beaumont & Great Northern	Trinity	Onalaska	20	
1907	Burr's Ferry, Browndel & Chester	Rockland	Aldredge	7.1	
1907	Caro Northern	Caro	Mt. Enterprise	16.5	
1907	Galveston, Harrisburg & San Antonio	Cuero	Smiley	26.46	
1907	Houston Belt & Terminal	Houston		8.13	
1907	Houston & Texas Central	Mexia	Nelleva	94.23	
1907	Pecos & Northern Texas	Canyon City	Plainview	57.3	
1907	Texas Central	Stamford	Rotan	41	
1907	Texas City Terminal	Texas City		2.85	
1907	Texas & Gulf	Between Longview	Watterman	1.73	
1907	Trinity & Brazos Valley	Milepost 79.22	Houston	77.35	
1907	Trinity & Brazos Valley	Teague	Waxahachie	67.32	
1907	Wichita Falls & Northwestern of Texas	Wichita Falls	Milepost 16.97	16.97	
1907	Wichita Valley Railway	Seymour	Stamford	60.7	
1907	Unknown			0.05	
1907	Northeast Texas	Redwater	Munz		18.46
1907	Timpson & Northwestern	Milepost 8	Ragley		2
1908	Beaumont & Great Northern	Onalaska	Livingston	13	
1908	Beaumont, Sour Lake & Western	Grayburg	Houston	62.37	
1908	Cane Belt	Boedecker	Garwood	2.97	
1908	Chicago, Rock Island & Gulf	Between State Line	Amarillo	20.64	
1908	Chicago, Rock Island & Gulf	Irving	Carrollton	10.94	
1908	Galveston Terminal	Galveston		4.26	
1908	Kansas City, Mexico & Orient of Texas	Knox City	Benjamin	11.26	
1908	Nacogdoches & Southeastern	Woden	Milepost 1.75	1.66	
1908	Roscoe, Snyder, & Pacific	Roscoe	Snyder	30.21	
1908	St. Louis, Brownsville & Mexico	Napolita	Blalock's Sugar Mill	2.83	
1908	St. Louis, Brownsville & Mexico	Buckeye	Tres Palacios Pumping Plant	4.32	
1908	St. Louis, Southwestern of Texas	Milepost 115.38	Milepost 130.91	15.53	
1908	Southern Kansas of Texas	Panhandle	Amarillo	24.66	
1908	Southern Kansas of Texas	Panhandle	Washburn		14.72
1908	Southwestern	Henrietta	Scotland	19.48	
1908	Stephenville North & South Texas	Stephenville	Hamilton	44.38	
1908	Texas & New Orleans	Port Arthur		3.41	
1908	Texas State	Rusk	Meshaw	15	
1908	Weatherford, Mineral Wells & Northwestern	Mineral Wells	Graford	18.2	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1908	Wichita Falls & Southern	Wichita Falls Junction	New Castle	52.36	
1908	Unknown			3.08	
1908	Texas City Terminal	Texas City			1.05
1908	Warren & Corsicana Pacific	Warren	Campwood		18.95
1909	Abilene & Southern	Abilene	Bradshaw	27.41	
1909	Asherton & Gulf	Asherton Junction	Light	11.7	
1909	Beaumont, Sour Lake & Western	Sour Lake Junction	Sour Lake	2	
1909	Burr's Ferry, Browndel & Chester	Aldredge	Milepost 11.12	4.02	
1909	Chicago, Rock Island & Gulf	Between Amarillo	Ontario	20	
1909	Groveton, Lufkin & Northern	MKT Junction	Vair	21.15	
1909	Hearne & Brazos Valley	Between Hearne	Stone City	1.06	
1909	Kansas City, Mexico & Orient of Texas	Benjamin	Red River	70.2	
1909	Quanah, Acme & Pacific	Acme	Sands	2.25	
1909	St. Louis, Brownsville & Mexico	Tres Palacios		4.5	
1909	Shreveport, Houston & Gulf	Manning	Prestridge	9	
1909	Texas & Gulf	Between Watterman	Emmons	1.75	
1909	Texas & New Orleans	Gallatin	Rusk	7.84	
1909	Texas Southeastern	Diboll	Milepost 11.8	11.8	
1909	Texas Southeastern	Blix	Lufkin	9.85	
1909	Texas State	Meshaw	Crystal Lake	9	
1909	Trinity Valley & Northern	Dayton	Fouts	10	
1909	Unknown			1.41	
1909	Beaumont Wharf & Terminal	Beaumont			1.21
1909	Galveston, Harrisburg & San Antonio	Smith Junction	Glidden		3.59
1909	Galveston & Western	Galveston			2
1909	Marshall & East Texas	Lodwick Lumber Company			9.19
1910	Abilene & Southern	Bradshaw	Ballinger	26.89	
1910	Artesian Belt	Macdona	Christine	42.34	
1910	Asherton & Gulf	Light	Asherton	20.4	
1910	Bartlett-Florence	Bartlett	Jarrell	11.45	
1910	Chicago, Rock Island & Gulf	Ontario	State Line	29.08	
1910	Concho, San Saba & Llano Valley	Miles	Paint Rock	16.49	
1910	Crystal City & Uvalde	Uvalde Junction	Carrizo Springs	53	
1910	Estacado & Gulf	McCaulley	Norman	6	
1910	Galveston Wharf	Galveston		11.05	
1910	Gulf, Texas & Western	Jacksboro	Seymour	75.22	
1910	Kansas City, Mexico & Orient of Texas	Sweetwater	San Angelo	78.5	
1910	Marshall & East Texas	Marshall	Elysian Fields	17.96	
1910	Pecos & Northern Texas	Plainview	Lubbock	46.72	
1910	Pecos & Northern Texas	Plainview	Floydada	26.75	
1910	Quanah, Acme & Pacific	Sands	Paducah	35.37	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1910	Quanah, Acme & Pacific	Quanah		1.37	
1910	Roscoe, Snyder, & Pacific	Snyder	Fluvanna	18.65	
1910	St. Louis, Brownsville & Mexico	Port O'Connor	Bloomington	37.58	
1910	Southwestern	Scotland	Archer City	9.59	
1910	Stamford & Northwestern	Stampford	Spur	82.5	
1910	Texas & Gulf	Gary	Center	21.31	
1910	Texas Southeastern	Milepost 11.8	Neff	6.2	
1910	Texas State	Crystal Lake	Palestine	8.56	
1910	Timpson & Henderson	Milepost 8	Henderson	26	
1910	Trinity Valley & Northern	Fouts	Milepost 15	5	
1910	Livingston & Southeastern	Milepost 2.17	Milepost .65		1.52
1910	Stephenville North & South Texas	Between Stephenville	Hamilton		2.48
1910	Unknown				0.89
1911	Abilene & Northern	Anson	Hamlin	17.87	
1911	Angelina & Neches River	Keltys	Nadina	19.89	
1911	Beaumont & Great Northern	Trinity	Weldon	15.5	
1911	Beaumont Wharf & Terminal	Beaumont		1.67	
1911	Bryan & College Interurban	Bryan	College Station	5	
1911	Concho, San Saba & Llano Valley	San Angelo	Sterling	42.97	
1911	Crosbyton-South Plains	Crosbyton	Lubbock	38.82	
1911	Crystal City & Uvalde	Crystal City	Gardendale	41	
1911	Fort Worth & Denver Terminal	Fort Worth		13.75	
1911	Fort Worth & Rio Grande	Whiteland Junction	Menard	27.86	
1911	Kansas City, Mexico & Orient of Texas	San Angelo	Mertzon	27.3	
1911	Marshall & East Texas	Pine Ridge	Glen	3.44	
1911	Missouri, Oklahoma & Gulf of Texas	Carpenter's Bluff	Denison	9.1	
1911	Paris & Mt. Pleasant	Paris	Bogata	24.06	
1911	Pecos & Northern Texas	Lubbock Junction	Lamesa	70.83	
1911	Pecos Valley Southern	Pecos	Toyahvale	40.1	
1911	St. Louis, Brownsville & Mexico	Tres Palacios Rice Mill	Collegeport	7.9	
1911	St. Louis, Brownsville & Mexico	Brownsville	Rio Grande	1.79	
1911	St. Louis, Brownsville & Mexico	Rio Grande Junction	Slinkert	5.45	
1911	Stephenville North & South Texas	Hamilton	Gatesville	31.67	
1911	Texas Central	De Leon	Cross Plains	40.72	
1911	Trinity Valley & Northern	Milepost 15	Milepost 18	3	
1911	Weatherford, Mineral Wells & Northwestern	Between Weatherford	Graford	2.44	
1911	Wichita Falls & Wellington of Texas	State Line (Dodson)	Wellington	15	
1911	Unknown			0.52	
1911	Hearne & Brazos Valley	Between Hearne	Stone City		1.15
1912	Angelina & Neches River	Nadina	Chireno	10.74	
1912	Aransas Harbor Terminal	Aransas Pass	Port Aransas	6.5	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1912	Bartlett Western	Jarrell	Florence	11.75	
1912	Brownwood North & South	Brownwood Junction	May	17.65	
1912	Galveston Wharf	Galveston		29.82	
1912	Gulf, Colorado & Santa Fe	Lometa	Eden	97.28	
1912	Houston Belt & Terminal	Houston		9.74	
1912	Houston & Brazos Valley	Velasco	Light House	3.4	
1912	Jefferson & Northwestern	Jefferson	Camp	31	
1912	Jefferson & Northwestern	Givens	Linden	4.86	
1912	Kansas City, Mexico & Orient of Texas	Mertzon	Girvin	103.51	
1912	Pecos & Northern Texas	Slaton Junction	Coleman	182.55	
1912	Port Bolivar Iron Ore	Longview	Milepost 29.66	29.66	
1912	San Antonio, Uvalde & Gulf	Gardendale	Fowlerton	25.9	
1912	Stephenville North & South Texas	Edson	Comanche	31.61	
1912	Sugar Land	Sugar Land	Cabell	4.9	
1912	Sugar Land	Arcola	Ratchford	13.62	
1912	Texarkana & Fort Smith	Chaison Junction	B. L. Co. Spur	1.09	
1912	Texarkana & Fort Smith	Neches Junction	Port Neches	3.56	
1912	Unknown			1.82	
1912	Estacado & Gulf	McCaulley	Norman		6
1913	Aransas Harbor Terminal	Port Aransas	Morris & Cummins Channel	3.5	
1913	Fort Worth Belt	Fort Worth		2.19	
1913	Galveston Wharf	Galveston		3.55	
1913	Gulf, Texas & Western	Jacksboro	Salesville	23.5	
1913	Kansas City, Mexico & Orient of Texas	Girvin	Alpine	95.08	
1913	Paris & Mt. Pleasant	Bogata	Mt. Pleasant	27.26	
1913	Pecos & Northern Texas	Sweetwater Junction	Sweetwater	3.12	
1913	San Antonio & Rio Grande Valley	San Juan	Edinburg	7.89	
1913	San Antonio, Uvalde & Gulf	Fowlerton	San Antonio	77.17	
1913	San Antonio, Uvalde & Gulf	Pleasanton Junction	Kittle	48.29	
1913	San Benito & Rio Grande Valley	Fernando	Santa Marie	29.81	
1913	San Benito & Rio Grande Valley	Ohio	Boulevard Junction	11.37	
1913	San Benito & Rio Grande Valley	La Lometa	Monte Christo	19.74	
1913	San Benito & Rio Grande Valley	Los Indios	Head Gates	1.22	
1913	Texarkana & Fort Smith	Ruliff	Possum Bluff	1.58	
1913	Livingston & Southeastern	Livingston	Milepost .65		7.85
1913	Marshall & East Texas	Pine Ridge	Glen		3.44
1913	Unknown				1.31
1914	Galveston & Western	Galveston		1	
1914	Greenville & Northwestern	Anna	Blue Ridge	11.48	
1914	Houston & Brazos Valley	Freeport Junction	Bryan Mound	4.1	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1914	Houston & Texas Central	Giddings	Stone City	39.27	
1914	Pecos & Northern Texas	Lubbock Junction	Farwell Junction	88	
1914	Quanah, Acme & Pacific	Paducah	Macbain	39.93	
1914	Riviera Beach & Western	Riviera	Riviera Beach	9.7	
1914	San Antonio, Fredericksburg & Northern	Fredericksburg Junction	Fredericksburg	23.47	
1914	San Antonio, Uvalde & Gulf	Kittle	Corpus Christi	68.3	
1914	Unknown			0.48	
1915	Galveston, Harrisburg & San Antonio	Strang	Seabrook	12.8	
1915	Galveston, Harrisburg & San Antonio	Bay Bridge	Galveston	2.17	
1915	Houston & Texas Central	Eureka	Stella	9.53	
1915	Motley County	Matador	Matador Junction	8	
1915	St. Louis, Brownsville & Mexico	Bloomington	Victoria	13.56	
1915	St. Louis, Brownsville & Mexico	Heyser	Austwell	16.88	
1915	Unknown			4.51	
1915	Texas & New Orleans	Milepost 11.12	Turpentine		1.01
1916	Bryan & College Interurban	Bryan	Villa Maria	1.5	
1916	Galveston Wharf	Galveston		1.92	
1916	Lufkin, Hemphill & Gulf	Bronson	Hemphill	12.3	
1916	Roby & Northern	Roby	North Roby	4.32	
1916	Sugar Land	Otey	Anchor	6.22	
1916	Union Terminal	Dallas		4.83	
1916	Unknown			0.89	
1916	Missouri, Kansas & Texas of Texas	Between Denison	Hillsboro		2.06
1917	East Texas & Gulf	Hicks	Wurtsbaugh	14.6	
1917	El Paso Southern	El Paso		2.02	
1917	Jefferson & Northwestern	Camp	Marietta	4.25	
1917	Kansas City, Mexico & Orient of Texas	Main Line	Plaster Works	1.63	
1917	Midland & Northwestern	Midland	Florey	47.5	
1917	San Antonio Belt & Terminal	San Antonio		7.31	
1917	Aransas Harbor Terminal	Morris	Cummins Cutoff		3.2
1917	Unknown				0.59
1918	Bryan & Central Texas Interurban	Bryan	Bryan Junction	11	
1918	Bryan & Central Texas Interurban	Interurban Junction	Whittaker	12.34	
1918	Dayton-Goose Creek	Dayton	Goose Creek	22.9	
1918	Galveston, Harrisburg & San Antonio	Chaney Junction	West Junction	12.18	
1918	Galveston, Harrisburg & San Antonio	Rosenberg	Damon Mound	20.95	
1918	Gulf & Northern	Newton	Wiergate	14.83	
1918	International & Great Northern	Houston		1.38	
1918	Midland & Northwestern	Florey	Seminole	17.64	
1918	St. Louis Southwestern of Texas	Camp McArthur Junction	Milepost 4.2	4.2	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1918	South Plains & Santa Fe	Lubbock	Seagraves	63.86	
1918	Texas & New Orleans	Between Houston	Clinton	1.51	
1918	Unknown			0.06	
1918	East Texas & Gulf	Hicks	Hyatt		5
1919	Dayton-Goose Creek	Goose Creek	Baytown	2.5	
1919	San Antonio & Aransas Pass	Between Kenedy	Houston	3.87	
1919	Texarkana & Fort Smith	Griffing	Port Neches	6.02	
1919	Unknown			0.17	
1919	Texas Southeastern	Neff	Vair		7.7
1920	Cisco & Northeastern	Cisco	Breckenridge	28	
1920	Houston & Texas Central	Dallas		5.71	
1920	Houston & Texas Central	North Junction	East Junction	1.29	
1920	North Texas & Santa Fe	State Line (Magoun)	Spearman	75.18	
1920	Ringling, Eastland & Gulf	Mangum	WFR&FW Junction	26.68	
1920	St. Louis, Brownsville & Mexico	Between Rio Grande Junction	Slinkert	2.04	
1920	Wichita Falls, Ranger & Fort Worth	Dublin	Breckenridge	66.8	
1920	Chicago, Rock Island & Gulf	Bridgeport	Coal Mine		2.4
1920	Galveston & Western	Galveston			4.5
1920	Greenville & Northwestern	Anna	Blue Ridge		11.83
1920	International & Great Northern	Houston			1.38
1920	Lufkin, Hemphill & Gulf	Between Bronson	Hemphill		1.72
1920	Riviera Beach & Western	Riviera	Riviera Beach		9.86
1920	San Antonio Southern	Macdona	Kirk		3.51
1920	Southwestern	Henrietta	Archer City		29.09
1920	Texas, Arkansas & Louisiana	Atlanta	Bloomburg		7.7
1920	Unknown				6.09
1921	Uvalde & Northern	Uvalde Junction	Camp Wood	37.1	
1921	Wichita Falls & Southern	New Castle	Jimkurn	37.85	
1921	Wichita Falls, Ranger & Fort Worth	Breckenridge	Jimkurn	8.17	
1921	Unknown			0.96	
1921	Texarkana & Fort Smith	Between Ruliff	Deweyville		1.6
1921	Texarkana & Fort Smith	Neches Junction	Port Neches		3.53
1921	Texarkana & Fort Smith	Chaison Junction	Neches River		1.08
1921	Texarkana & Fort Smith	Griffing	Port Neches		6.03
1921	Texas & Pacific	Between Texarkana	Fort Worth		1.27
1922	Rio Grande	Brownsville		3.78	
1922	Sabine & Neches Valley	Deweyville	Gist	11.76	
1922	Texas & New Orleans	Turpentine	Angelina River	9.13	
1922	Wichita Falls & Oklahoma	Byers	State Line	5.7	
1922	Unknown			0.21	
1922	Aransas Harbor Terminal	Aransas Pass	Port Aransas		1.15
1922	El Paso Southern	El Paso			2.91
1922	Fort Worth Belt	Fort Worth			14.99

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1922	Fort Worth & Denver Terminal	Fort Worth			13.81
1922	Galveston Wharf	Galveston			35.1
1922	Texas Short Line	Grand Saline	Salt Works		1.4
1922	Texas Short Line	Alba	Coal Mine		1.41
1922	Weatherford, Mineral Wells & Northwestern	Between Weatherford	Graford		2.44
1923	Groveton, Lufkin & Northern	Between MKT Junction	Vair	1.25	
1923	Texas Midland	Commerce	Greenville	14.02	
1923	Beaumont Wharf & Terminal	Beaumont			4.99
1923	Bryan & Central Texas Interurban	Bryan	Bryan Junction		11
1923	Bryan & Central Texas Interurban	Interurban Junction	Whittaker		12.34
1923	Bryan & College Interurban	Villa Maria	College Station		6.5
1923	Caro Northern	Caro	Mt. Enterprise		16.63
1923	Dallas Terminal & Union Depot	Dallas			1.09
1923	Marshall & East Texas	Marshall	East Winnsboro		73.32
1923	Midland & Northwestern	Midland	Seminole		65.14
1923	Timpson & Henderson	Timpson	Henderson		34
1923	Unknown				1.44
1924	Asphalt Belt	Asphalt Belt	Dabney	18	
1924	Houston & Brazos Valley	Hoskins Junction	Hoskins	14.63	
1924	Rockdale, Sandow & Southern	Marjorie	Sandow	6	
1924	Dallas, Cleburne & Southwestern	Egan	Cleburne		9.82
1924	Eastern Texas	Lufkin	Kennard		30.3
1924	El Paso & Northeastern	Between El Paso	State Line		1
1924	Texas & New Orleans	Angelina River	Milepost 3.88		3.88
1924	Union Terminal	Dallas			2.76
1924	Unknown				0.53
1925	Rio Grande City	Rio Grande City	Sam Fordyce	18.03	
1925	San Benito & Rio Grande Valley	Kern	Sammons	32.38	
1925	South Plains & Santa Fe	Doud	Bledsoe	64.6	
1925	Unknown			0.79	
1925	East Texas & Gulf	Hicksbaugh	Wurtsbaugh		6
1925	Rio Grande & Eagle Pass	Darwin	Minera		1.5
1925	San Antonio & Aransas Pass	Eastern Extension			4.43
1925	Texas & New Orleans	Milepost 3.88	Turpentine		5.25
1926	Caro Northern	Caro	Mt. Enterprise	16.68	
1926	Houston & Texas Central	Dallas Belt Line		8.86	
1926	Jefferson & Northwestern	Marietta	Naples	9	
1926	Panhandle & Santa Fe	Panhandle	Isom (Borger)	31.16	
1926	St. Louis, Brownsville & Mexico	Raymondville	Monte Christo	32.23	
1926	St. Louis, Brownsville & Mexico	Hargill	Edcouch	11.07	
1926	St. Louis, Brownsville & Mexico	Faysville	Edinburg	7.6	
1926	Unknown				0.5
1927	Chicago, Rock Island & Gulf	Amarillo	Stinnett	57.7	
1927	Fort Worth & Denver South Plains	Estelline	Quitaque	43	

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1927	Houston North Shore	Houston	Goose Creek	27.73	
1927	Panhandle & Santa Fe	White Deer	Skellytown	10.4	
1927	Rio Grande, Micolithic & Northern	Micolithic	Mica	6.4	
1927	San Antonio & Aransas Pass	Falfurrias	McAllen	72.6	
1927	San Antonio & Aransas Pass	Edinburg Junction	Brownsville	62.52	
1927	Brownwood North & South	Brownwood Junction	May		17.65
1927	Houston & Texas Central	Between Austin	Llano		2.05
1927	Port Bolivar Iron Ore	Longview	Ero		29.61
1927	Texas & New Orleans	Rockland	Turpentine		10.11
1927	Unknown				5.15
1928	Cisco & Northeastern	Breckenridge	Throckmorton	37.46	
1928	Fort Worth & Denver South Plains	Quitaque	Dimmitt	88.55	
1928	Fort Worth & Denver South Plains	Silverton	Lubbock	73.52	
1928	Quanah, Acme & Pacific	MacBain	Floydada	26.87	
1928	St. Louis, Brownsville & Mexico	Raymondville	Santa Monica	19.31	
1928	San Benito & Rio Grande Valley	San Benito	Abney	18.62	
1928	San Benito & Rio Grande Valley	Santander	La Paloma	6.04	
1928	San Benito & Rio Grande Valley	Fernando	South Leona	5.9	
1928	Weatherford, Mineral Wells & Northwestern	Between Weatherford	Graford	1.42	
1928	Caro Northern	Caro	Mt. Enterprise		16.68
1928	Unknown				0.39
1929	Chicago, Rock Island & Gulf	Stinnett	Hitchland	49.78	
1929	Clinton-Oklahoma-Western of Texas	Pampa	State Line	56.5	
1929	Hamlin & Northwestern	Hamlin	Flat Top	10.2	
1929	Texarkana & Fort Smith	Grffing	Neches River	10.51	
1929	Texarkana & Fort Smith	Neches Junction	Sun	6.22	
1929	Texarkana & Fort Smith	Chaison Junction	Neches River	1.32	
1929	Texas-New Mexico	Monahans	State Line	34.27	
1929	Texas-New Mexico	Wink Junction	Wink	3.24	
1929	Unknown			1.41	
1929	Denison, Bonham & New Orleans	Bona	Bonham		24.15
1929	Houston & Texas Central	Waco	Ross		7.52
1929	Kansas City, Mexico & Orient of Texas	Main Line	Plaster Works		1.63
1929	Trinity Valley & Northern	Fullerton	Lumm		12.2
1930	Cane Belt	Between Cane Belt Junction	Thompsons	17.79	
1930	Chicago, Rock Island & Gulf	Dalhart	Morse	59.55	
1930	Kansas City, Mexico & Orient of Texas	Paisano	Presidio	72.44	
1930	Kansas City, Mexico & Orient of Texas	San Angelo	Sonora	65.46	
1930	Texas Short Line	Grand Saline	Van	11.51	
1930	Unknown				1.95

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1931	Cane Belt	Between Sena Junction	Thompsons	15.99	
1931	North Plains & Santa Fe	Dumas Junction	State Line	100.86	
1931	North Plains & Santa Fe	Spearman	Morse	18.58	
1931	Quanah, Acme & Pacific	Quanah	Acme	5.83	
1931	St. Louis, Brownsville & Mexico	Edcouch	Weslaco	10.69	
1931	Sugar Land	Cabell	Hickey	11.94	
1931	Unknown			4.51	
1932	Fort Worth & Denver Northern	Childress	Pampa	110.01	
1932	Warren Central	Katy	Warrenville	12.9	
1932	Unknown			0.54	
1932	Burlington-Rock Island	Cleburne	Hillsboro		29.89
1932	Galveston, Harrisburg & San Antonio	Van Vleck	Hawkinsville		17.67
1932	Galveston, Harrisburg & San Antonio	Strang	Seabrook		12.75
1932	Groveton, Lufkin & Northern	Groveton	Vair		22.4
1932	Sugar Land	Anchor Junction	House		21.13
1932	Texas & New Orleans	Sabine	Milepost 10.2		10.2
1933	Houston & Texas Central	Mexia	Nelleva		87.11
1933	Jefferson & Northwestern	Linden Junction	Naples		29.31
1933	St. Louis, Brownsville & Mexico	Lela Pens	Port O'Connor		16.07
1933	St. Louis, Brownsville & Mexico	Buckeye	Collegeport		16.9
1933	St. Louis Southwestern of Texas	Prestridge	White City		30.02
1933	San Antonio & Aransas Pass	Luling	Gonzales		18.82
1933	San Antonio & Aransas Pass	Gonzales	Shiner		21.1
1933	San Antonio Southern	Jourdanton	Christine		9.57
1933	Texas & Gulf	Gary	Grigsby		27.16
1933	Texas Midland	Commerce	Greenville		14.99
1933	Texas & New Orleans	Nome	Sour Lake		8.33
1933	Trinity Valley & Northern	Dayton	Fullerton		5.35
1933	Unknown				2.81
1934	Bois D'Arc & Southern	Bois D'Arc	Byron	7.1	
1934	East Texas & Gulf	Hyatt	Hicksbaugh		3.6
1934	Gulf, Colorado & Santa Fe	Bragg	Saratoga		9.17
1934	International & Great Northern	Calvert	Calvert Junction		5.3
1934	Stephenville North & South Texas	Hamilton	Comanche		35.78
1934	Stephenville North & South Texas	Edson	Stephenville		37.02
1934	Texas & New Orleans	Chaney Junction	Eureka		10.54
1934	Texas & New Orleans	Gallatin	Rusk		
1934	Texas & New Orleans	Hutchins	Lancaster		15.03
1934	Texas & New Orleans	Mexia	Other		
1934	Warren Central	Katy	Warrenville		12.9
1934	Unknown				7.81
1935	Chicago, Rock Island & Gulf	Bridgeport		2.22	
1935	Bartlett Western	Bartlett	Florence		23.22
1935	Burlington-Rock Island	Hubbard	Hillsboro		25.18

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1935	St. Louis Southwestern of Texas	Between Texarkana	Fort Worth		6.3
1935	Texas & New Orleans	Between Waco	Cuero		8.19
1935	Unknown				0.88
1936	Quanah, Acme & Pacific	Matador Junction	Matador		8.08
1936	Trinity Valley Southern	Oakhurst	Dodge		5.92
1936	Waco, Beaumont, Trinity & Sabine	Trinity	Colmesneil		69.25
1936	Weatherford, Mineral Wells & Northwestern	Salesville	Graford		12.04
1937	St. Louis, Brownsville & Mexico	Brazoria	Clements	4.28	
1937	Abilene & Southern	Anson	Hamlin		17.41
1937	Concho, San Saba & Llano Valley	Miles	Paint Rock		16.67
1937	Fort Worth & Rio Grande	Fort Worth			6.13
1937	Texas & New Orleans	Between Houston	Cuero		9.58
1937	All terminal-wharf properties	Reclassification			50.93
1938	Gulf, Colorado & Santa Fe	Ladonia	Honey Grove		12.06
1938	Lufkin, Hemphill & Gulf	Bronson	Hemphill		10.48
1938	Shreveport, Houston & Gulf	Manning	Prestridge		8.94
1939	Gulf, Texas & Western	Jacksboro	Salesville		23.11
1939	Marshall, Elysian Fields & Southeastern	Marshall	Elysian Fields		17.5
1939	Rio Grande, Micolithic & Northern	Micolithic	Mica		6.4
1939	St. Louis Southwestern of Texas	Lufkin	Prestridge		11.64
1939	Unknown				2.72
1940	San Benito & Rio Grande Valley	Abney	Esoes	3.45	
1940	Cane Belt	Eldridge	Bonus		5.81
1940	Fort Worth & Rio Grande	Paul Junction	Brady		5.83
1940	Houston & Brazos Valley	Freeport Junction	Bryan Mound		4.56
1940	Louisiana & Arkansas	Farmersville	McKinney		16.22
1940	St. Louis Southwestern of Texas	Corsicana	Hillsboro		40.2
1940	Waco, Beaumont, Trinity & Sabine	Weldon	IGN Crossing		6.6
1940	Unknown				3.17
1941	Port Isabel & Rio Grande Valley	Port Brownsville	Esoes		10.71
1941	Roscoe, Snyder, & Pacific	Snyder	Fluvanna		17.75
1941	Weatherford, Mineral Wells & Northwestern	Mineral Wells	Salesville		7.88
1941	Unknown				1.83
1942	Burlington-Rock Island	Mexia	Hubbard		22.53
1942	Chicago, Rock Island & Gulf	Jacksboro	Seymour		75.08
1942	Gulf, Colorado & Santa Fe	Galveston			6.21
1942	Gulf & Interstate	Port Bolivar	High Island		26.71
1942	Jefferson & Northwestern	Jefferson	Linden		19.93
1942	Roby & Northern	Roby	North Roby		4.67
1942	San Benito & Rio Grande Valley	Between Rio Hondo	Monte Christo		11.06
1942	San Benito & Rio Grande Valley	Ohio Junction	Boulevard		6.42
1942	San Benito & Rio Grande Valley	La Paloma	Santander		5.93

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1942	Stephenville North & South Texas	Gatesville	Hamilton		32.72
1942	St. Louis, Brownsville & Mexico	Sugar Mill Spur			2.61
1942	Sugar Land	Cabell	Hickey		11.66
1942	Texas & New Orleans	Glidden	La Grange		24.76
1942	Texas & New Orleans	Luling	Lockhart		14.97
1942	Texas & New Orleans	Ennis	Kaufman		28.42
1942	Texas & Pacific	Mingus	Coal Mine		2.85
1942	Uvalde & Northern	Uvalde Junction	Camp Wood		37.1
1942	Unknown				4.17
1943	El Paso & Southwestern of Texas	Reclassification		4.5	
1943	Unknown			4.53	
1943	Wichita Falls & Oklahoma	Wichita Falls	State Line		27.12
1943	Cisco & Northeastern	Cisco	Throckmorton		65.44
1943	Fredericksburg & Northern	Fredericksburg	Fredericksburg Junction		23.4
1944	Gulf & Northern	Newton	Wiergate		14.82
1944	International-Great Northern	Navasota	Madisonville		44.7
1944	Rio Grande & Eagle Pass	Farias Siding	Gardner		14.47
1944	Texas Central	De Leon	Cross Plains		40.6
1944	Texas & New Orleans	Guy	Damon		5.72
1944	Unknown				1.83
1945	Eastland, Wichita Falls & Gulf	Mangum	Ringling Junction		26.62
1945	Sabine & Neches Valley	Deweyville	Gist		11.76
1945	Unknown				0.8
1946	Aransas Harbor Terminal	Aransas Pass	Port Aransas		6.81
1946	Bois D'Arc & Southern	Bois D'Arc	Byron		7.1
1946	Unknown				3.6
1947	Rio Grande & Eagle Pass	Laredo	Farias Siding		7
1947	Texas & New Orleans	Dallas	Hiland Junction		3.69
1947	Unknown				0.53
1948	Texas & Northern	Daingerfield	Lone Star	7.6	
1948	Unknown				0.03
1949	Point Comfort & Northern	Lolita	Point Comfort	13.54	
1949	Unknown			0.19	
1949	San Benito & Rio Grande Valley	Los Indios	Head Gates		1.18
1949	Waco, Beaumont, Trinity & Sabine	Livingston	Luce		23.55
1950	Unknown				4.24
1951	Texas & New Orleans	Burnet	Lampasas		22.6
1951	Unknown				3.51
1952	Nacogdoches & Southeastern	Milepost 2	Milepost 14		12
1952	Sugar Land	Cabell	Pryor		3.51
1952	Unknown				1.78
1953	El Paso & Southwestern of Texas	El Paso			2.68
1953	St. Louis Southwestern of Texas	Commerce	Sherman		52.28
1953	Unknown				0.34
1954	Nacogdoches & Southeastern	Nacogdoches	Milepost 2		2

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1954	Texas & New Orleans	Dallas			3.62
1954	Wichita Falls & Southern	Dublin	South Hanlon		62.49
1954	Wichita Falls & Southern	Wichita Falls Junction	Graham		63.6
1954	Unknown				0.26
1955	Colorado River Western	Altair	Helm	7	
1955	Gulf Colorado & Santa Fe	Sanger	Dallas	48.63	
1955	Unknown				1.4
1956	Hamlin & Northwestern	Hamlin	Flat Top		10.2
1956	Louisiana & Arkansas	Near State Line			7.09
1956	Missouri-Kansas-Texas of Texas	Greenville	Mineola		49.56
1956	Missouri Pacific	Anchor	East Columbia		10.33
1956	Paris & Mt. Pleasant	Paris	Mount Pleasant		51.43
1956	Unknown				1.31
1957	Missouri Pacific	Brownsville	Southmost		7.59
1957	Missouri Pacific	Faysville	Monte Christo		8.81
1957	Missouri Pacific	La Paloma Junction	La Paloma		1.09
1957	Missouri Pacific	San Benito	Hidalgo		47.72
1957	St. Louis, San Francisco & Texas	Red River	Vernon		12.39
1957	Texas & New Orleans	Dunagan	Dorr Junction		18.75
1957	Unknown				4.79
1958	Missouri Pacific	Artesia Wells	Asherton		32.1
1958	Missouri Pacific	Raymondville	Santa Monica		19.31
1958	Texas-New Mexico	Wink Junction	Wink		3.24
1958	Texas & New Orleans	Kaufman	Greenville		41.93
1958	Wichita Falls & Wellington of Texas	State Line	Wellington		16.48
1958	Unknown				11.66
1959	Gulf Colorado & Santa Fe	Brownwood	Paul Junction		44.88
1959	Gulf Colorado & Santa Fe	Cresson	Weatherford		19.97
1959	Gulf Colorado & Santa Fe	San Angelo	Sterling City		46.17
1959	Missouri Pacific	Heyser	Austwell		16.42
1959	Missouri Pacific	Pleasanton Junction	Gardendale		73.28
1959	Texas & New Orleans	Giddings	Cameron		50.2
1959	Texas & New Orleans	Sheridan	Yoakum		33
1959	Texas & New Orleans	Stockdale	Salado Junction		33.48
1959	Texas Short Line	Alba	Grand Saline		9.79
1959	Unknown				1.36
1960	Chicago, Rock Island & Gulf	Wilco	Dalhart		12.5
1960	Unknown				4.07
1961	Missouri Pacific	Weslaco Spur		1.67	
1961	Gulf, Colorado & Santa Fe	Guy	Nash Dome		4.24
1961	Gulf, Colorado & Santa Fe	Between Cleburne	Cresson		1
1961	Gulf, Colorado & Santa Fe	Dar Junction	Garwood		0.53
1961	Missouri Pacific	Edcouch	Weslaco		7.56
1961	Missouri Pacific	East Waco			1.57

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1961	Panhandle & Santa Fe	Reclassification			8.24
1961	Southern Pacific	Between Hempstead	Brenham		10.39
1961	Missouri Pacific	Guy	Nash Dome		4.23
1961	Texas & New Orleans	Beaumont	Loeb		9.57
1961	Texas & New Orleans	Between Yoakum	Cuero		1.05
1961	Texas & Pacific	Reclassification			5.2
1961	Waco, Beaumont, Trinity & Sabine	Missouri Pacific Line	Carlisle		17.91
1961	Unknown				2.23
1962	Missouri Pacific	Angleton	Rosharon		13.3
1962	Missouri Pacific	Beaumont			3.59
1962	Southern Pacific	Between Hempstead	Brenham		8.07
1962	Texas Short Line	Grand Saline	Van		11.39
1962	Unknown				1.61
1963	Unknown			0.91	
1963	Angelina & Neches River	Dunagan	Chireno		21.76
1963	Missouri Pacific	Mauriceville	Newton		48.94
1964	Missouri Pacific	Faysville	Edinburg		7.6
1964	Missouri Pacific	Hargill	Stone		7.58
1964	Southern Pacific	Altair	Sheridan		11
1964	Southern Pacific	Yorktown	Kenedy		23.05
1964	Unknown				4.14
1965	Denison & Pacific Suburban	Denison	Sherman Junction		6.93
1965	Kansas, Oklahoma & Gulf of Texas	Red River	Denison		8.83
1965	Missouri Pacific	Bryan	Navasota		27.49
1965	Missouri Pacific	Jourdanton	Kirk		29.2
1965	St. Louis-San Francisco	Sherman			2.1
1965	St. Louis Southwestern of Texas	Addison	Dallas		12.13
1965	Southern Pacific	Between Corpus Christi	San Antonio		6.08
1965	Southern Pacific	Bremond	Waco		40.99
1965	Unknown				2.58
1966	Sabine River & Northern	Echo	Mulford	4.7	
1966	Missouri Pacific	Asphalt Belt Junction	Uvalde		13.77
1966	Southern Pacific	Reclassification			10.13
1966	Unknown				0.76
1967	Missouri Pacific	Waco	Marlin	24.13	
1967	Sabine River & Northern	Mulford	Bessmay	24.3	
1967	Unknown			0.28	
1967	Missouri Pacific	Mart	Marlin		20.39
1967	Missouri Pacific	Waco	Maypearl		57.31
1967	Southern Pacific	Baer	Virginia		2.64
1967	Southern Pacific	Rio Grande Bridge	West Bridge Junction		3.08

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1967	Southern Pacific	Waco	Rosebud		36.7
1967	Texas Central	Bellmead	Dublin		102.33
1967	Texas Central	Gorman	Stamford		100.56
1968	Texas & Pacific	San Martine	Rockhouse	26.86	
1968	Fort Worth & Denver	Stamford	Spur		82.63
1968	Gulf & Interstate of Texas	High Island			3.66
1968	Missouri Pacific	Edcouch	Monte Alto		6.46
1968	Missouri Pacific	Mart	Wardlaw		14.74
1968	Missouri Pacific	Maypearl	Everman		29.29
1968	Missouri Pacific	Mineola	Lindale		10.84
1968	Unknown				2.88
1969	Atchison, Topeka & Santa Fe	New Mexico	Duval Plant	22.16	
1969	Chicago, Rock Island & Gulf	Graham	South Hanlon		37.56
1969	Missouri Pacific	Alton	Monte Christo		7.04
1969	Missouri Pacific	Long Mott	Seadrift		8.6
1969	Missouri Pacific	Place Junction	Port Isabel		29.02
1969	Unknown				4.98
1970	Fort Worth & Denver	Wellington	Pampa		78.29
1970	Missouri-Kansas-Texas	Whitesboro	Henrietta		99.33
1970	Missouri-Kansas-Texas	Wichita Falls			5.39
1970	Missouri Pacific	Clemons Branch			2
1970	Missouri Pacific	Hoskins Branch			4.58
1970	Missouri Pacific	Between San Juan	Edinburg		7.05
1970	Southern Pacific	Camp Stanley	Kerrville		49.19
1970	Texas State	Palestine	Rusk		33.03
1970	Unknown				1.19
1971	Missouri Pacific	Between San Juan	Edinburg		2.29
1971	Pecos Valley Southern	Saragosa	Toyahvale		5.93
1971	Southern Pacific	Stockdale	River Junction		44.19
1971	Unknown				7.43
1972	Abilene & Southern	Winters	Ballinger		16.09
1972	Atchison, Topeka & Santa Fe	Homer Junction	Menard		27.58
1972	Atchison, Topeka & Santa Fe	Brady	Eden		30.55
1972	Chicago, Rock Island & Pacific	Amarillo	Stinnett		44.82
1972	Chicago, Rock Island & Pacific	Amarillo (reclassification)			10.07
1972	St. Louis Southwestern of Texas	Lime City	Gatesville		19.13
1972	Southern Pacific	Cuero	Yorktown		31.72
1972	Unknown				4.12
1973	Unknown			2.04	
1973	Missouri Pacific	Palmhurst	Alton		2.21
1974	Fort Worth & Denver	Wellington			1.85
1974	Texas Mexican	Various			4.38
1975	Western	Dittlinger	Solms	1.95	
1975	Kansas City Southern	Port Arthur			3.31
1975	Southern Pacific	Commerce	Paris		36.37

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1975	Southern Pacific	Altair	Helms		9.02
1976	Atchison, Topeka & Santa Fe	San Angelo	Sonora		64.97
1976	Fort Worth & Denver	Teague	Mexia		14.2
1976	Fort Worth & Denver	Stamford	Rotan		40.18
1976	Missouri-Kansas-Texas	Georgetown	Austin		27.79
1976	Missouri Pacific	Mission	Palmhurst		2.3
1976	Texas Export	Bridgeport	Graham		54
1977	Missouri Pacific	Raymondville	Monte Alto		21.5
1977	Southern Pacific	Quinif	Rosebud		14
1978	Fort Worth & Denver	Sterley	Silverton		19.71
1978	Texas South-Eastern	Blix	Vair		2.4
1979	Missouri Pacific	Thedford	Lindale		2.7
1979	Southern Pacific	Brenham	Giddings		34.92
1979	Southern Pacific	Fannin	Beeville		38.43
1979	Southern Pacific	Skidmore	Alice		39.9
1979	Southern Pacific	Falfurrias	Edinburg		58.7
1980	Missouri Pacific	Spaulding	Rio Grande City		20.2
1980	Missouri Pacific	San Martine	Rockhouse		27.2
1981	Quanah, Acme & Pacific	Paducah	Floydada		67.2
1981	Southern Pacific	Old Bayshore line (partial)			0.99
1981	Southern Pacific	Seagoville	Bonita Junction		137
1981	Atchison, Topeka & Santa Fe	Pampa	Oklahoma border		56.62
1981	Missouri Pacific	Hawdon	Herbert		12.1
1981	Southern Pacific	Oasis	Soumethun		0.66
1982	Missouri Pacific	Mission	Hidalgo Industrial		3.1
1982	Atchison, Topeka & Santa Fe	San Angelo	Maryneal		53.4
1982	Chicago, Rock Island & Pacific	Glenrio	Bushland		100
1982	Chicago, Rock Island & Pacific	Texola	Yarnall		91
1982	Chicago, Rock Island & Pacific	Etter	Wilco Spur		17
1983	Atchison, Topeka & Santa Fe	White Deer	Skellytown		10.4
1983	Southern Pacific	Rush	Keltys		43.13
1983	Atchison, Topeka & Santa Fe	Whiteface	Bledsoe		24.2
1983	Southern Pacific	Briggs			2.8
1983	Southern Pacific	Gregory	Portland		3.9
1983	Southern Pacific	Alice	Falfurrias		39.3
1983	Union Pacific	Houston (Magnolia Belt)			2
1984	Roscoe, Snyder, & Pacific	Roscoe	Snyder		27.4
1984	Missouri Pacific	Swan	Thedford		3.2
1984	Atchison, Topeka & Santa Fe	Stowell	White's Ranch		12
1985	Southern Pacific	Kosmos	Rockport		7.55
1985	Southern Pacific	Bay City	Palacious		31.12
1985	Missouri Pacific	Sugarland	Pryor		0.95
1986	Union Pacific	La Pryor	Blewett		22

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1986	Southern Pacific	Gay Junction	Guy		15.77
1986	Union Pacific	Houston (Texas Med. Ctr-IH45)			2.5
1987	Southern Pacific	New Gulf	Bay City		23.511
1987	Union Pacific	Hawdon	Rosharon		7.5
1987	Burlington Northern	Acme	Paducah		37.4
1987	Southern Pacific	Bellaire Branch			1.697
1987	Texas Northwestern	Morse	Hardesty		45
1987	Texas Northwestern	Pringle	Stinnett		11
1988	Missouri Pacific	Abilene	Winters		31.2
1988	Missouri Pacific	Crystal City	La Pryor		17.1
1988	Missouri Pacific-MKT	Hunter	Ogden		16.7
1988	Missouri Pacific-MKT	Denison	Bells		14.8
1988	St. Louis Southwestern	Gresham	Jacksonville		23.6
1988	St. Louis Southwestern	Corsicana	Waco		52.87
1989	St. Louis Southwestern	Atco	Lime City		16.18
1989	Missouri Pacific	Huntsville			0.36
1989	Angelina & Neches River	Clawson	Keltys		4
1989	Southern Pacific	Elam	Seagoville		7.06
1990	Missouri Pacific	Nena	Italy		10.5
1990	Kansas City Terminal	Newgulf	Smithers Lake		22
1990	Kansas City Terminal	Rayner Junction	Garwood		8.5
1990	Kansas City Terminal	Wadsworth	Matagorda		8.5
1990	Crosbyton RR	Lubbock	Crosbyton		36.14
1990	Atchison, Topeka & Santa Fe	Orla	Pecos		40.1
1990	Southwestern	Spearman	Morse		17.86
1991	Kansas City Terminal	Sealy	Wharton		47.99
1991	Southern Pacific	Rusk	Jacksonville		14.44
1991	Burlington Northern	Estelline	Plainview		82.95
1991	Southern Pacific	Houston Heights Lead			2.8
1992	Burlington Northern	Childress	Wellington		30.81
1992	Missouri Pacific	Sherman	Whitesboro		18.11
1992	Missouri Pacific	Denton	Coors		7.97
1992	Missouri Pacific	Italy	Hillsboro		18.23
1992	Burlington Northern	Lubbock	Sterley		44.98
1993	Missouri-Kansas-Texas/Union Pacific	Dallas	Highland Park		3
1993	Missouri Pacific/Union Pacific	Everman Branch (near Everman)			1.62
1993	Missouri Pacific/Union Pacific	A&S Branch (near Abilene)			3
1993	Missouri Pacific	Near Deny			3
1993	Southern Pacific	Kenedy	Beeville		29
1993	FPRR	Floydada	Plainview		22.4
1993	Southern Pacific	Houston	Eagle Lake Junction		57.74

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
1993	Southern Pacific	Houston	Katy		27.92
1993	Southern Pacific	Wharton	Victoria		62
1994	Missouri Pacific	Near Swan			0.7
1994	Southern Pacific	Hillister	Loeb		36.72
1994	Southern Pacific	Hillister	Dolan		32.05
1994	Southern Pacific	Rockland Branch (near Dolan)			23.22
1994	Southern Pacific	Near Kenedy			46.7
1994	Southern Pacific	Beeville	Sinton		29
1994	Angelina & Neches River	Near Dunagan			4
1995	Southern Pacific	McHattie	Wharton		23.3
1995	St. Louis Southwestern	Simtrott	Wylie		23.2
1995	St. Louis Southwestern	Lufkin Junction	Branchline		3.54
1995	Texas & Oklahoma	TX/OK Border	near Sweetwater		156.19
1995	MW	Weatherford	Mineral Wells		21.21
1995	Austin & Northwestern	Smoot	Giddings		53.5
1995	Dallas Area Rapid Transit	Dallas			0.74
1995	CHRC	Paris	Farmersville		56.5
1996	Missouri Pacific	New Boston	Clarksville		38.5
1996	Southern Pacific	Seabrook	San Leon Line		10.5
1996	Texas Northeastern	New Boston	Clarksville		38.5
1996	Southeastern International	Fannett	Stonewall		13.57
1997	Longhorn	Burnet			0.25
1997	South Plains Lamesa	Slaton	Lamesa		49.06
1997	Dallas Area Rapid Transit	Tenison Park	Plano Pkwy		15.45
1997	Dallas Area Rapid Transit	Near Dallas			6.99
1998	Track Tech, Inc.	Amarillo	Bushland		13.9
1998	Track Tech, Inc.	Near Lubbock			6.25
1998	South Orient	Mertzon Station	Near Presidio		307
1999	Union Pacific	San Antonio			2.16
1999	Union Pacific	Near Arcola			3.17
2000	UP	Dallas			0.4483
2000	DART & UP-line	Dallas			1.585
2000	UP-Orange Industrial Lead	Kilowatt			0.75
2000	Union Pacific	Houston	Chesterville		49.42
2000	Union Pacific	Waco			0.43
2000	Union Pacific	Leon Springs	Camp Stanley		3.49
2001	Union Pacific	New Boston			1.2
2001	UP-Gatesville Industrial Lead	Waco			0.7
2002	West Texas & Lubbock RR Company, Inc.-University Ave	Lubbock			1.1
2003	Missouri-Kansas-Texas	Denison	Sherman		10.51
2003	Union Pacific	Paris	Bonham		33.5
2003	Dallas Area Rapid Transit	Westmoreland	Tenison		11.45
2003	UP-Columbia Tap Industrial Lead	Houston			0.9
2004	Burlington Northern Santa Fe	Bay City	Newgulf		20.89
2004	Texas North Western Railway Co	Capps	Morse Jct.		21.9

Year	RR Line	Beginning Point	End Point	Miles Constructed	Miles Abandoned
2005	UP-Main Switch	Brownsville			2.2
2005	Union Pacific - Waxahachie Industrial Lead	Waxahachie	Nena		4.57
2006	Dallas Area Rapid Transit	Plano	Allen		8.85
2006	Union Pacific	Troup	Whitehouse		7.25
2006	Timber Rock RR, Inc.	Silsbee	Dobbin		116
2006	Timber Rock RR, Inc.	Dobbin	Somerville		54.72
2007	Union Pacific	Beckmann	Milepost 256		2.74
2007	Southwestern RR Company, Inc.	Spearman	STATELINE OK		85.3
2007	Union Pacific	Terminal Jct.	Cargill		4.1
2007	UP-Huntsville Industrial Lead	Huntsville			1.67
2008	Union Pacific	Chesterville	Eagle Lake		8.3
2008	UP-Port Arthur Industrial Lead	Port Arthur			1.21
2008	Union Pacific	Sinton	Sinton Jct.		1.52
2008	Union Pacific - Bonham Industrial Lead	Texarkana	National Jct.		0.3
			Totals	***18,663***	***9,090***