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October 16, 2008

**VIA FACSIMILE AND U.S. MAIL**

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E. Street, S.W  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
OCT 17 2008  
Part of  
Public Record

Re Buffalo and Pittsburgh Railroad, Inc. Abandonment Exemption in Erie  
and Cattaraugus Counties, New York, STB Docket No. AB-369 (Sub No.  
7X)

Dear Secretary Quinlan:

We represent Erie Cattaraugus Rail Trail, Inc. ("ECRT"), a not-for-profit corporation focused on promoting public awareness, appreciation and respect for public, natural and historic resources in Western New York. Buffalo and Pittsburg Railroad, Inc. ("BPRR") has filed a verified notice of exemption under 49 CFR 1152 Part F – Exempt Abandonments to abandon a 27 6-mile line of railroad extending from milepost 8.4 (in the Town of Orchard Park, County of Erie, State of New York) to milepost 36 (in the Town of Ashford, County of Cattaraugus, State of New York) ("Abandoned Line"). Pursuant to 49 CFR 1152.29, ECRT is hereby petitioning the Surface Transportation Board ("STB") for an interim trail use and rail banking designation for the Abandoned Line. ECRT is also formally expressing its interest in acquiring the right to use the right-of-way ("ROW") of the Abandoned Line for a proposed public multi-use trail.<sup>1</sup>

<sup>1</sup> Please note that ECRT has no interest in the rails, ties, or signal equipment belonging to BPRR. However, ECRT does have a continued interest in using the bridges, culverts, tunnels, etc. as part of the proposed public multi-use trail.

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In support of this Petition, the following documents are attached hereto and incorporated herein

**Exhibit A** Map of Abandoned Line ROW

**Exhibit B** "Statement of Willingness to Assume Financial Responsibility"

**Exhibit C** Affidavit of Service upon the Surface Transportation Board and Buffalo and Pittsburgh Railroad, Inc.

**Exhibit D** Verification

Also enclosed with the original copy of this Petition is the required \$200 filing fee.

On September 22, 2008, the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP") filed a request for interim trail use and expressed its interest in acquiring the Abandoned Line BPRR, in a letter to the STB dated September 26, 2008, agreed to enter into negotiations with OPRHP for the acquisition of the Abandoned Line. ECRT representatives have spoken to OPRHP about their interest in establishing, operating and maintaining the Abandoned Line as a public multi-use trail. Preliminary discussions envision OPRHP holding title to the Abandoned Line and ECRT establishing, operating and maintaining a public multi-use trail on the line. ECRT is specifically submitting this separate Petition to preserve its interest in using the Abandoned Line ROW for an interim trail, even if negotiations between BPRR and OPRHP fail to result in an agreement as to the acquisition of the land.

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### REQUEST FOR INTERIM TRAIL USE

ECRT is filing this Petition to express its interest in interim trail use of the Abandoned Line Pursuant to 49 C.F.R. §1152.29 if "any state, political subdivision, or qualified private organization is interested in acquiring or using the right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to 16 U.S.C. § 1247(d), it must file a petition (in an exemption proceeding) indicating that it would like to do so. Further, pursuant to 49 CFR 1152.29 a petitioner must submit a description of the ROW to be abandoned (1152.29(a)(1)), a statement indicating the petitioner's willingness to assume certain responsibilities for the ROW (1152.29(a)(2)), and an acknowledgement of its responsibilities and risks associated with interim trail use and/or rail-banking (1152.29(a)(3)). We have set forth the requirements and are responses thereto below.

1. **Map and Description**

*The petition must include "a map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used " 49 C F R §1152.29(a)(1).*

**Response:** A map is attached as Exhibit "A". The Abandoned Line extends 27.6 miles from Milepost 8.4 in the Town of Orchard Park, Erie County, New York to Milepost 36 in the Town of Ashford, Cattaraugus County, New York. The ROW is part of a line of railroad proposed for abandonment in STB Docket No. AB-369 (Sub No. 7X)

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2. **User's Responsibility**

*The petition must include "a statement indicating the user's willingness to assume full responsibility: for managing the right-of-way: for any legal liability arising out of the use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and for the payment of all taxes assessed against the right-of way." 49 C F R. §1152 29(a)(2).*

**Response:** Pursuant to 49 C F R §1152 29(a)(3), ECRT has prepared and attached as Exhibit "B" a "Statement of Willingness to Assume Financial Responsibility".

3. **Acknowledgment of Continuing Responsibilities**

*The petition must include "an acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities described above, and subject to possible future reconstruction and reactivation of the right-of-way for rail service." 49 C.F.R. §1152 29(a)(3)*

**Response:** ECRT hereby acknowledges that use of the Abandoned Line ROW requires it to continuously meet its responsibilities described in the Statement of Willingness to Assume Financial Responsibilities and is subject to possible future reconstruction and reactivation of the right-of-way for rail service. See, Exhibit "B".

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4. **Proof of Service**

*The petition must include proof of service indicating that a copy of the trail use request has been served on the carrier seeking abandonment at its address of record 49 C.F.R. §1152.29(a)(3)*

**Response:** An Affidavit of Service is attached as Exhibit "C".

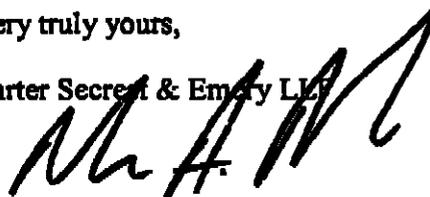
**CONCLUSION**

This Petition seeks an interim trail use and rail banking designation for the Abandoned Line. ECRT would like to acquire the right to use the Abandoned Line ROW for a proposed public multi-use trail. Lastly, ECRT is specifically submitting this separate Petition to preserve its interest in using the Abandoned Line ROW for an interim trail, should BPRR and OPRHP fail to reach an agreement as to the acquisition of the land.

Thank you for your time and consideration.

Very truly yours,

Harter Secrest & Emery LLP

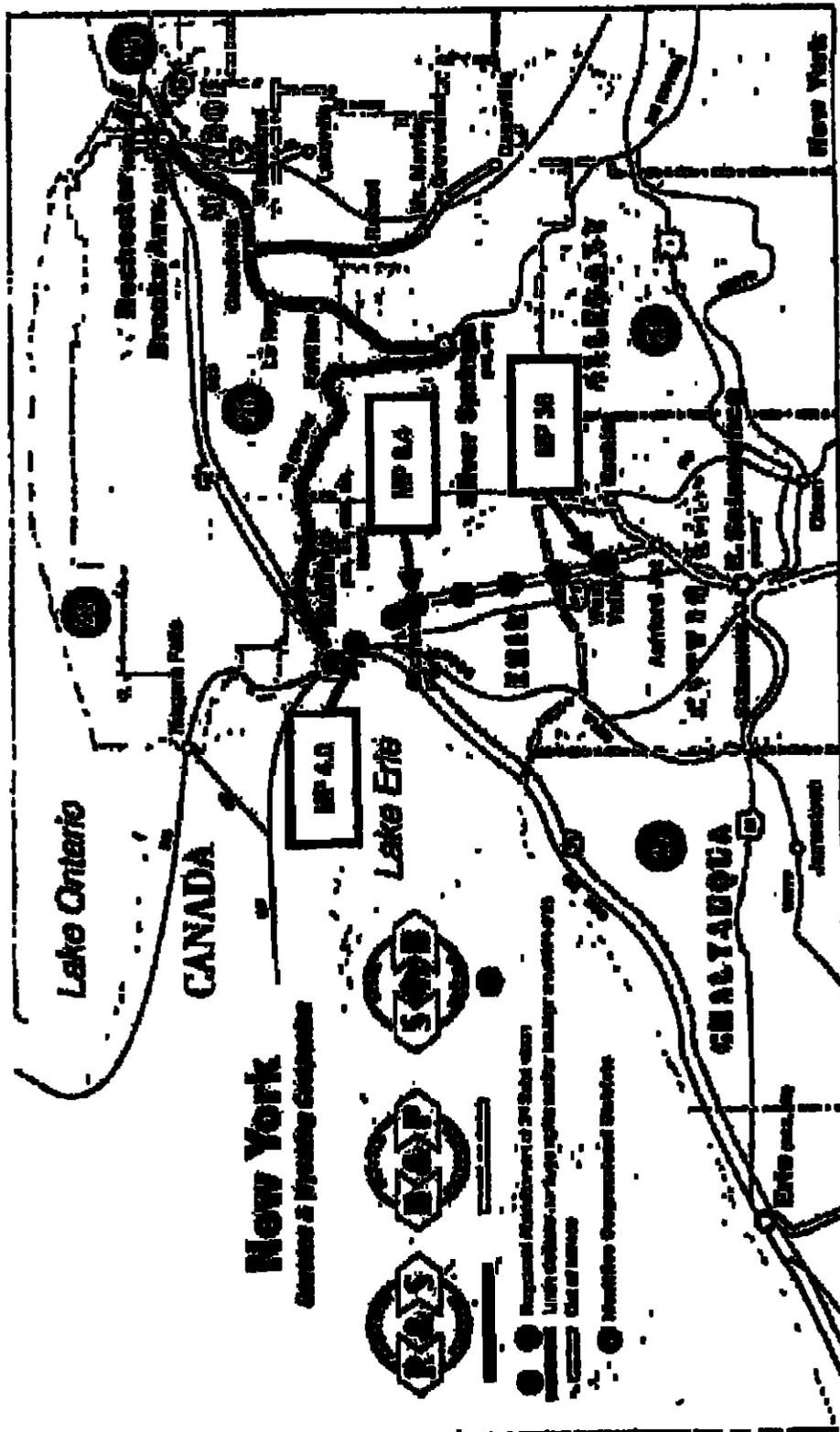


Marc A. Romanowski

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E-MAIL: [mromanowski@hselaw.com](mailto:mromanowski@hselaw.com)

MAR/lks  
Enclosures



## **Exhibit "B"**

### **Statement of Willingness to Assume Financial Responsibility**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, Erie Cattaraugus Rail Trail, Inc , (Interim Trail User) to the extent permissible by New York Law, is willing to assume full responsibility for management of, for any legal liability arising out of the use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by the Buffalo and Pittsburg Railroad, Inc (Railroad) The property extends from railroad milepost 8 4 near the Village of Orchard Park, to railroad milepost 36, near the Town of Ashford; a distance of 27 6 miles in Erie and Cattaraugus Counties, State of New York. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB Docket No. AB-369 (Sub No. 7X).

A map of the property depicting the right-of-way is attached Erie Cattaraugus Rail Trail, Inc (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board

**IN THE MATTER OF:**

**BUFFALO AND PITTSBURGH RAILROAD, INC  
ABANDONMENT EXEMPTION IN ERIE AND  
CATTARAUGUS COUNTIES, NEW YORK**

**AFFIDAVIT OF SERVICE BY  
FACSIMILE**

**STB DOCKET NO. AB-369  
(SUB NO. 7X)**

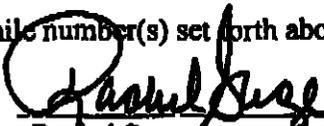
STATE OF NEW YORK     )  
COUNTY OF MONROE    ) SS.

Rachel Sage, being duly sworn, deposes and says that: I am an employee of Harter Secrest & Emery LLP, attorneys for Erie Cattaraugus Rail Trail, Inc. herein; on October 16, 2008, deponent served the within Trail Use Request on the following parties:

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E. Street, S.W  
Washington, D C 20423-0001  
Facsimile 212-640-8501

Eric M. Hocky, Esq  
Thorp Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street, Suite 1910  
Philadelphia, PA 19103  
Facsimile 202-246-0458

by delivering the same via facsimile to the facsimile number(s) set forth above.

  
\_\_\_\_\_  
Rachel Sage

Sworn to before me this  
16 day of October, 2008

  
\_\_\_\_\_  
Notary Public

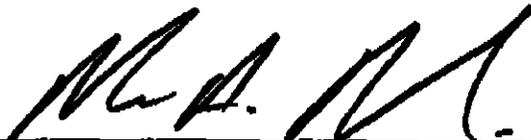
**JUSTICE L. LAMM**  
Notary Public, State Of New York  
No. 016122221  
Qualified in Monroe County  
Commission Expires April 25, 2009

Exhibit "D"

VERIFICATION

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss :

MARC A. ROMANOWSKI, ESQ., being duly sworn, deposes and says that he has read the foregoing Petition and knows the contents thereof; and that the same is true to his own knowledge. Deponent's belief as to all matters in the said Petition not stated upon his own knowledge are based upon investigations which deponent has caused to be made concerning the subject matter of this case and information acquired by deponent. Further, as counsel to Erie Cattaraugus Rail Trail, Inc., I have been authorized to file this Petition

  
\_\_\_\_\_  
MARC A ROMANOWSKI

Sworn to before me this 16  
day of October, 2008

  
\_\_\_\_\_  
Notary Public

SUSAN E. FINN  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires Nov 30, 2009