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June 29, 2009

225305

Francis P. Mulvey, Acting Chairman
Charles D. "Chip" Nottingham, Vice Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket # STB Ex Parte 690

Dear Chairman Mulvey and Vice Chairman Nottingham:

The 1983 Trails Act is having the opposite effect of the law's intended purpose of rail banking. It is interfering with the resumption of trains on abandoned railroad beds because trail proponents are using the seriously flawed act to protest whenever a reversion to train use is attempted. This has been the case since the early days of the law's passage but has now been formalized in the movement "trails without rails."

Those exploiting the law are impeding efforts by President Obama and many members of Congress to revive rail transportation for both passenger travel and hauling of goods as a way to combat global warming. A revival of trains would reduce traffic congestion by taking large numbers of cars and trucks off the road and, in doing so, reduce carbon emissions.

Train revival would also reduce the number of new roads that will have to be built to accommodate more vehicles in the future, which will preserve natural areas, farmland, and other resources.

Trail advocates claim that trails can be used for transportation, but the reality is that trails are almost entirely recreational. Multi-use trails are unrealistic for bicycling, since the usual activities of jogging, skateboarding, and dog walking interfere with efficient transportation.

Moreover, the routes of trails usually do not directly link to destination points for work and other non-recreational purposes. Trails are banned for use at night in most cases, because of the high potential for crime, which further constrains use for transportation. To have adequate numbers and locations of trails for transportation would involve massive destruction of land and equally massive taking of private property.

Bicycling experts typically prefer the use of existing infrastructure for transportation use and cite the high accident rates for bicyclists on trails, particularly at the junctures with streets and roads. See, for example, worldwide statistics on the Web site of British bicycling expert John Franklin, <http://www.cyclecraft.co.uk/digest/research.html>.

American bicycling expert John Forester also argues for the use of existing infrastructure, full rights for bicyclists to use streets and roads, and the need for greater bicyclist education (<http://www.johnforester.com>).

Bicycling safety expert William Moritz, in a 1998 report published by the U.S. Transportation Research Board, concludes: "Supporting off-street bicycle paths because they are 'safe' while rejecting on-street bicycle facilities because they are 'unsafe' is not supported by the evidence. On-street bicycling is safer than sidewalk or bicycle path riding, and adding bicycle facilities improves the safety yet again." ("Adult Bicyclists in the United States: Characteristics and Riding Experience in 1996," Annual Meeting of the U.S. Transportation Research Board, 1998, <http://www.bicyclinglife.com/Library/Moritz2.htm>.)

Cities around the country and the world are accommodating bicycling without blocking the use of trains, seizing property, taking away homeowners' privacy and safety, or damaging natural areas.

As a long-time conservationist, I am concerned about the fragmentation of wildlife habitat that trails create. Trails themselves, if the users stayed on them and didn't wander, would be damaging enough. But the alternative name for trails illustrates an inherent problem: "linear parks." Roads are not called linear parks, even though trees and shrubs often exist alongside, because they are exclusively functional; only the roads themselves are used by the public. But trail users frequently assume that everything within sight and beyond is a public park, with the result that there is widespread trespassing in all directions—causing damage to habitat and native plants.

A review by the Canadian Wildlife Service of bird studies around the world concluded that trails in urban areas result in fewer total bird species. For example, in a Spanish wooded park with a trail, 16 of 17 area-sensitive bird species were negatively affected. High levels of human use "leads to disturbance of forest breeding birds during crucial reproductive activities such as egg incubation and feeding of young. Overall, it appears that direct disturbance, from activities such as walking or cycling either on or off trails, can be detrimental to all but a few very tolerant species. The disturbance level may be enough that it contributes to the actual loss of some species from urban forest fragments." ("Area-Sensitive Forest Birds in Urban Areas," http://www.on.ec.gc.ca/wildlife/factsheets/pdf/fs_forestbirds-e.pdf.)

Conservationist Denis Hall, president of the High Country Citizens' Alliance in Colorado, cites studies showing that many birds avoid heavily frequented trails and that other species, such as ever-diminishing populations of amphibians and many small mammals, will not even cross them. Hall observes, "We humans don't like public trails leading through our front yards or living rooms, and wild animals respond similarly." ("A Deeper Ecology of Trails," High Country Citizens' Alliance, <http://www.hccaonline.org/page.cfm?pageid=2070>.)

Even the trails group American Trails admits to some of the problems associated with trails, though its cataloging is mild and incomplete: "Lack of trail etiquette and environmental ethics can lead to user conflicts, unpleasant trail experiences, and impacts to the environment. Littering, excessive speed, not yielding to others, not staying on trails, vandalism, and an inability of managers to enforce regulations leads to continued user conflicts and environmental impacts." ("Nevada's 2005 State Recreational Trails Issues," American Trails, <http://www.americantrails.org/resources/pressing/nyplanissues.html>.) Trails that have managers, however, are the exception. Nearly all trails require self-policing or policing by adjacent property owners, an approach that has failed.

Trains, in contrast to trail users, stay on a track and appear only infrequently in many cases rather than creating a nonstop commotion as trails present. Hence, nearby wildlife and native plants are better able to coexist with trains. The ecological footprint of trains is smaller than that of trails. Furthermore, most trail users drive to reach trails, exacerbating traffic problems and producing needless carbon emissions.

Perhaps the greatest threat to the environment and property rights from the Trails Act is that turning abandoned railroad beds into trails is merely a pretext for far greater damage. Under the guise of "connectivity," the concept for a dense network of trails rivaling streets and roads in scope is being pushed by a vocal minority across the country. The goal is to have trails within a 10-minute walk of everyone's home and also to link all the parks within a community by foot or bicycle. If implemented, this radical plan would mean an enormous loss of habitat and private property throughout the country. It would tear apart communities because of the extreme inequality of rights, in effect creating a caste system.

Public trails on private property are discriminatory. Property owners become second-class citizens, forced to give up land, peace, privacy, and safety while the majority of property owners continue to enjoy full rights.

Traditional patterns of infrastructure, in which all residents have a street or road in front of their property, entails mutual respect—and mutual deterrence. Community members realize that if passersby started regularly leaving streets and roads to trespass, social chaos would result.

Public infrastructure should be in front of homes and businesses, not in the isolated and secluded backsides that entail dangers for property owners and trail users alike.

Even where trails haven't been built on confiscated property, as occurred through the Trails Act, the abutting owners have few rights. The two main paved trails in the Ithaca, N.Y., area are a case in point. Trail users often leave the trails and go onto adjoining properties. Not only do they freely trespass, they also use the properties as toilets.

Snowmobiles use one of the trails during the winter, despite being banned. Noisy late-night parties often take place on a rural section of this trail.

The trails are supposed to be used only during daylight hours, but since there is no enforcement, trail users violate the rule with impunity. People are on the trails (with their cars parked nearby) in the middle of the night even in freezing winter temperatures. In the case of one trail, drug selling is strongly suspected.

Dogs running loose—some of them aggressive—are common on all trails, as is the dog waste that many dog owners leave for others to step in or clean up.

Recent attempts at property taking in the Ithaca area for trails illustrate the mob mentality that exists when a handful of people covet what others own. One proposed taking, in the City of Ithaca, did not involve a railroad bed; the other involved a railroad bed that had been abandoned over a century ago in the rural Town of Caroline. The trails had been planned in secret for a long time, with no advance notice to the property owners.

By the time the property owners in the city found out—years later—a grant for construction had already been obtained, and now the city is proceeding with eminent domain. In the case of Caroline, a secret trails committee that included members of the town board had been meeting for over a year.

In both cases, the property owners were treated like prey at public meetings by the trail groups. They were called selfish for protesting public use of their land and the reduced functional value to them of their own properties. In the case of Caroline, the trail promoters falsely claimed that the property owners didn't own their land, that they had conveyed all rights for the railroad bed to a utility company. This was despite the fact that the easements were restricted in use, and some deeds had no active easement whatsoever. The City of Ithaca property owners were even told that they would be dead someday anyhow so what difference did it make if they lost their land. These projects represented the unraveling of civilized society.

The pattern has been played out all over the country—with abandoned railroad beds as the stalking horse—embittering countless property owners and outraging much of the community.

Another serious issue is the high rate of crime on trails. Trail proponents claim that crimes are nonexistent, rare, or minor. But a Google search quickly reveals otherwise. If staff members at the STB or elsewhere would like to research the topic to verify what communities are facing, the following key words will bring up many reports: trail crime, trail raped, trail homicide, trail shot, trail stabbed, bike trail crime, bike trail rape, bike trail homicide, trail stabbed, trail molested, bike trail stabbed, bike trail molested, bike path assaulted, bike path police, bike path danger, bike path arrest, bike path crime, bike trail suspect, bike path suspect, bike path gang.

My own interest in the negative effects of trails began five years ago when 43 miles of trails, the majority of them on private property, were proposed in my town's comprehensive plan. The various routes would have crossed many environmentally

sensitive areas, bisected farms, and taken away large portions of backyards. Fortunately, the plan was rejected by the town board. I have continued to research trails ever since, however, and am increasingly concerned.

No railroad bed exists on my and my husband's property that prompts me to submit these comments to the Surface Transportation Board. Nor do I have any financial or other interest in the railroad industry. I am, instead, alarmed by the environmental and destabilizing societal aspects of trails, issues that were never considered by the sponsors of the Trails Act and need to be addressed to halt serious problems.

Among the modifications the STB should recommend to Congress is that the rail banking law be modified to say that no buildings or other obstacles be allowed to be placed on railroad beds abandoned since the 1983 law went into effect, but that the railroad beds will revert to their rightful abutting private owners and not to trail groups.

At the bare minimum, suggestions for reform should include that no trail plans under consideration be conducted in secret: property owners should be notified immediately, before the plan is introduced to elected officials for public discussion. Should a trail plan advance beyond the stage of notification to property owners, elected officials should be forced to answer questions at public hearings rather than ignore property owners and the public before proceeding to a vote as they usually do now. Included in the process should be a full environmental and economic review by an independent entity.

These reforms are the barest essentials to maintain a fair and democratic society.

Sincerely,



Zorika Henderson