



ACSM

American Congress on Surveying and Mapping
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March 6, 2006

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Ex Parte No. 647, *Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads*

Dear Secretary Williams:

The American Congress on Surveying and Mapping (ACSM) is pleased to submit the enclosed comments with regard to the subject matter.

Please notify me of any opportunities that may exist for us to participate in dialog regarding the effect on local communities by railroad abandonments, and other related issues such as right-of-entry upon railroad property by surveyors.

Sincerely,

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**Statement from
American Congress on Surveying and Mapping (ACSM)
on
STB Ex Parte No. 647
*Class Exemption for Expedited Abandonment Procedure for Class II and III Railroads***

The Advance Notice of Proposed Rulemaking served by the Surface Transportation Board on January 19, 2006 states in part that, “*In addition, some measure of the typical effect on local communities by such abandonments and the effects of deferred maintenance and increased rates on continued service on low volume lines would be helpful*”.

It is from this perspective that this statement from the American Congress on Surveying and Mapping (ACSM) is submitted. ACSM, through its largest member organization, the National Society of Professional Surveyors (NSPS), represents the interests of the professional surveying community on issues of national importance.

Each of the 50 states recognizes that professional surveying is distinct from the professions of engineering and architecture through their respective licensing structures. This is indicative of the fact that matters involving surveying should be addressed by representatives of the professional surveying community. When these matters are addressed only by those who are not among of the professional surveying community, the result is that the perspective of the professional surveyor goes unheard. Through the comments contained herein, ACSM wishes to avoid this circumstance in the referenced matter, and hereby offers to assist the Surface Transportation Board regarding future matters affecting surveyors and the public they serve.

Railroad rights-of-way are typically defined by their relationship to the centerline of the tracks. Those tracks, and the records and maps associated with them, have historically been used to establish the physical location of where the right-of-way lines touch the properties of abutting landowners. Because railroad lines have existed in the United States for many years, the legal descriptions for many abutting properties simply include statements similar to, “to the railroad right-of-way, and thence along it.....”. Therefore, the establishment or re-establishment of where those right-of-way lines lie is dependent on the location of the tracks, and the corresponding records and maps.

The abandonment of railroad lines has caused serious harm at the local level, creating discord among property owners whose properties abut the rights-of-way for the abandoned lines, local government officials, and the NITU trails people (National Trail System Act, 16 U. S. C. 1247 (d)). Often this discord results from the dismantling of the tracks. The reason for the negative impact is the destruction of a primary monument from which the respective right-of-way/property lines can be defined and marked on the ground.

Additionally, many of the records and maps (historic data required to be kept as public record under The ICC Act of 1913 that was maintained until the 1980s by all common carriers, and after 1983 by Class I railroads under 49CFR1201) have not been kept, causing further negative impact on abutting land owners in the identification and marking of their property lines. Where such records and maps do still exist, ACSM suggests that it should be mandated by STB that a railroad seeking abandonment turn over those records and maps (along with a list of land parcels still owned by the abandoning railroad in fee or under other color of title) to a local County Clerk and/or Recorder, or a similarly charged government office, rather than being destroyed or otherwise lost. The corporate address of the successor after abandonment should also be provided so local officials can remain in contact with those who own those land interests.

Those entities that become the owners of former railroad rights-of-way are potentially impacted as well because the facilities associated with their intended uses of this property remain within the limits of the property. The loss of evidence on which those limits can be defined places a burden on them and all abutting land owners.

The services of professionally licensed surveyors are routinely procured by land owners to identify and mark their property lines. The statutes and regulations associated with the practice of professional surveying in each of the states rightfully place upon the surveyor the responsibility to use due diligence, and adhere to a standard of care, in exercising their professional judgment in performance of these services.

The fact that the right of property ownership is an integral part of the culture of the United States is uppermost in the promulgation of such statutes and regulations, which are intended to protect the welfare of the public. Implicit among these protections is the right to expect reasonable access to the evidence that is used by professional surveyors to determine the location of property boundaries.

When the monuments on which property boundaries are based become lost or are destroyed, the public is harmed because of the effect on the efforts required by professional surveyors in fulfilling their responsibilities to their clients, and by any resultant increased costs to the land owner. The importance of the maintenance of property boundary monuments is recognized in state laws which make it illegal to purposely destroy these monuments. The importance of maintaining the integrity of property boundary monuments has been heretofore unrecognized in the railroad abandonment process.

ACSM recognizes the logic behind the removal of tracks when a railroad line is abandoned. We also understand that the railroad industry, when abandoning those lines, has no financial incentive to provide reference monuments from which the rail centerlines, and thus the rights-of-way, can be computed for surveying purposes.

During discussions in the 1990s with the ICC and railroad company legal counsel, a primary argument made was that the cost of such reference monumentation was prohibitive. With the advancements in measurement technology during the past decade, this argument is less valid today.

ACSM believes that as good corporate citizens, the railroad companies have an obligation not to destroy monuments to their property boundaries with other citizens (in this case, the tracks themselves) without leaving at least minimally adequate reference marks from which those boundaries can be more easily defined and physically located. Currently available measurement technology can allow this obligation to be fulfilled at much lower costs than in the past.

ACSM feels that it is not in the interest of the public good to allow the continuance of policy that places an undue burden for property boundary location on the local community property owners because of the destruction of monuments to those boundaries. STB should make it clear that modification of the federal rule for abandonment does not exempt the abandoning railroad from complying with state and local laws and regulations regarding the protection of property boundary monuments/markers, and other public welfare issues.

Likewise, the destruction of records and maps associated with the rights-of-way/property lines of abandoned railroad lines is not in the best interest of the public. These records and maps provide valuable information that is used along with property boundary markers or reference markers in the computation of the railroad track centerlines on which rights-of-way/property lines are based.

A discussion needs to occur regarding the maintenance of these records and maps. If the railroad companies cannot retain these records, the most logical repository is at a local county clerk's office, or a recorder of deeds office. If this is not feasible, other potential options may be the National Museum of Surveying, similar museums in some states, or the Geography and Map Division of the Library of Congress. Any of these options is preferable to the destruction of those records and maps simply because railroad companies no longer have use for them.

ACSM stands ready to engage in dialog with the Surface Transportation Board and the railroad industry with regard to our comments. We believe a reasonable amount of effort can be agreed upon on the part of the railroad industry to provide adequate references to right-of-way/property lines in the interest of protection of local community land owners. We also believe agreement can be reached regarding the maintenance of the records and maps that are critical for establishing the physical location of those rights-of-way/property lines.

Please contact the Executive Director of ACSM, Curtis W. Sumner, LS (curtis.sumner@acsm.net, 240-632-9716, ext. 106) with any comments, questions, or suggestions related to these comments.