

**North Carolina Rail-Trails**

**PROJECT DEVELOPMENT GUIDE**

(Selected sections)

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**INTERIM EDITION PENDING REVISIONS**

**{In January 2010 updating of this guide was initiated to reflect several changes in Federal and State law since the guide was released in 1995. We are making the Guide available to users of our web site as an interim source since it still contains much useful guidance. We expect to post the updated version in the Spring of 2011.}**

# SQUARE ONE---Starting Your Inquiry

## Avoid false starts and misunderstandings:

*Get your rail-to-trail initiative off to a solid start with a preliminary study. Rail corridor ownership is not obvious and may not even be immediately known by the state or the railroad.*

**OVERVIEW** - Corridor ownership determines potential property uses. Continue your investigation by checking out possible conflicts, community plans, public attitudes and neighboring property owner reactions.

Let government agencies and the railroad company know of your interest while gathering preliminary information. Form a study group to help make community contacts and determine rail-trail feasibility.

### Somebody owns your corridor

Start your rail-to-trail quest by stop using the word “abandoned.” It can easily lead to public confusion. Although the term is commonly used to denote the end of rail service, railroad property is never abandoned. A corridor is not like a derelict ship on the high seas. The property always belongs to someone.

Service has obviously stopped when the tracks are removed, but the corridor property is not abandoned. Rusty tracks make it difficult to discern if the line is under used or is about to **be / go either word** out of service.

Railroads are required to tell the state the status of their systems. The quickest indication of intent can come from the NC Department of Transportation Rail Division. Your inquiry should include the name of the operating railroad company, the county or counties that contain the line, and the beginning and end points.

If there are no tracks or you learn that rail service is winding down, ask the Rail Division if it has an intent to put the line in the state railbanking program. Even if the Rail Division expresses an interest in railbanking, it may not yet know the line’s property status. That will have a major bearing on the course you pursue.

First, you need to determine what the railroad’s legal interest, if any, will be in the property after it ceases service. You can’t develop a rail-to-trail conversion strategy without this information.

Don't assume that the railroad company owns the property. In fact, the state's railroads own little of the property they have operated on over the decades. Many of the railroads were built on easements or established by charter grants, which allowed railroad construction to cross private lands almost at will. Old state charters granted rights-of-way to railroads. State law now treats charter grant rights-of-way as easements.

If the present railroad holds anything less than a fee simple absolute deed, the state law allows the corridor to revert to adjoining property owners. Even some fee simple deeds have reversionary clauses that return the land to the original parcels after rail service ends.

The situation can be complicated by rail lines being made up of combinations of easement, charter grant, fee simple absolute and reversionary deeds. Often, even the railroad company can't give you a definitive answer without extensive research of its records. And the railroad won't want to go to that trouble and expense without good reason.

You can find the answer in the Registrar of Deeds office at the county courthouse. **You** don't have to be a lawyer; a thorough review of the indexed deeds will do. For instruction on how to conduct this deeds search. See Appendix A.

What you find at the courthouse will determine how you will pursue the rail-trail potential.

**No Property Records** -- This indicates that the railroad was established under charter grant and will be treated as a reversionary easement. The state has the railroad charter in its archives. There is, however, some small chance that the Railroad holds unrecorded deeds in its archives.

**Recorded Easements** -- This indicates that the railroad negotiated with private property owners for a dedicated right-of-way that was limited to railroad operations. When rail service ceases, the right-of-way is voided under state law.

**Fee Simple Determinate** -- This type of deed granted ownership to the railroad, but the grantors retained reversionary interests if the properties are ever used for any purpose other than railroad operations.

**Fee Simple Absolute** -- This establishes that property owners granted warranted deeds to the original railroad company and that the railroad holds absolute ownership.

As stated earlier, it is common to find a mix of property conditions along a single rail line. This, of course, complicates your corridor acquisition or access strategy.

## **Take a good, hard look**

Next, you will want to make a physical inspection of the corridor. What is the general condition of the roadbed? Are the bridges in place? Has development or farming encroached on the right-of-way? Does

the line still have historical assets such as depots? Does it pass through or near parks, schools or other public facilities? What is its alternate transportation value? Is it used by power lines or other utilities?

Treat this exercise as if taking an inventory. Make notes and take photographs. Reference the data to a corridor map. A large-scale county map or township plats will serve your purpose.

## **There may be other plans**

How does a rail-trail mesh or clash with existing community, county or regional plans and projects? The answers could help or hinder your rail-trail ambitions. Keep in mind that a corridor, especially a long corridor, can extend across several jurisdictions.

Start your research at the planning departments of local governments. Ask whether there are existing or future projects along the railroad. What types of land use zoning, if any, apply to the corridor and neighboring properties? You may learn that new roads, utility lines commercial development, subdivisions and other infrastructure will impact upon your corridor project.

Specifically, determine whether any greenway plans exist. What are the locations of existing and new public parks? Could the rail corridor improve the greenway plan or parks access?

Be certain to ask about the Local Transportation Improvement Plan(TIP), which is required of metro areas under federal law. You may find plans to remove critical bridges or to cut the corridor with intersecting road improvement projects. Determine if there are any pedestrian paths or bikeways in the transportation plan. Your rail corridor may qualify for federal funding under the heading of alternate Transportation Enhancements.

Check for other public works. Do any utilities exist in the corridor? Is the corridor considered in any future sewer or water line extension?

Also check with the district offices of private utility companies. There could be interest in helping preserve the corridor for electric power, gas and communication lines.

The local or regional economic development director will probably be interested in your ambitions and may tip you off to long-range plans that could have an impact on the corridor.

## **Start your own selective service**

You'll need help and support from other citizens. Start recruiting the core group that will help study the rail-trail initiative. Many libraries and Chambers of Commerce maintain lists of local organizations. That is a starting point for identifying existing groups that may become your rail-trail allies. In all likelihood, people who are active in these groups will become your most effective volunteers.

Begin by contacting organizations that would have the most direct interest in helping you realize your rail-trail ambitions. This, of course, will vary greatly from community to community.

**Recreation** -- Bicycle, running, walking and saddle clubs are obvious supporters. Don't overlook informal groups, such as mall walkers. Also talk to local government parks and recreation departments. They can be good sources of additional contacts.

**Conservation** -- Nature study and environmental protection groups are prime candidates. Also talk to natural science teachers in local education systems. They will probably share your interest in the corridor's education value and have additional contacts to pursue.

**Preservation** -- Most communities have some type of historical club or commission. They can be very helpful, as they already know many of the preservation groups and often have useful contacts.

**Transportation** -- Metro areas often have both formal and informal groups that advocate greenways, bikeways and pedestrian paths as off-road transportation alternatives. School administrators may be looking for alternatives that will improve student safety, reduce parking needs and relieve motorist congestion around schools. A local government transportation specialist may know of others who would share your interest.

**Development** -- Chambers of Commerce, Rotary Clubs, Ruritans and similar organizations are interested in the local economic climate. Many counties or regions have an economic development commission or corporation. Talk to them about the corridor as an avenue for urban renewal, tourism and other economic development opportunities.

One good contact will likely lead to others. Most communities have informal volunteer networks. Get plugged in.

## **Form trail feasibility study group**

You will have already gathered quite a bit of information and started building a network during the previous steps. Now it is time to take the first step toward a more formalized community initiative. At this point you are looking for allies with good heads on their shoulders. Be selective. Keep the study group small and somewhat confidential. You are not yet ready to talk to the news media.

You should be able to identify individuals from your government and community contacts to serve on a corridor study group. If they have not already volunteered, begin a quiet recruiting drive. Put your thoughts and a tight summary of your research on paper. Conclude this letter with a request that they join you in studying the feasibility of the rail-trail. Follow up the letter with telephone calls a few days later.

Determine a meeting date and send a very brief agenda to the group ahead of time. Make it clear that the group's primary task is to frame the issues to others in the community.

Your study group, if you have the right people, will probably identify additional points that need investigation. It is suggested that you go against popular practice and not do committees at this point. Committees have a way of escaping task responsibility. Instead, break down issues and assign each individual a specific task and a deadline. When the group is satisfied that all the factors are on the table, it is time to draft a Project Prospectus.

## **Draft the project prospectus**

The Project Prospectus should be considered a community white paper that will have limited circulation. It is the entire study group's responsibility to organize the information but, hopefully, you have recruited a study group member who is an effective writer.

Keep in mind that the Project Prospectus will be used to introduce the rail-trail concept to community leaders and influences. The document should begin with a one paragraph project description. Next, the project's community benefits should be briefly explained, one-by-one. Then list the community groups that have expressed interest.

It would be nice to stop there. However, you also need to address the negatives that your study has uncovered. Public figures do not want to put their influences on the line, only to be blind-sided by unaddressed issues. You can state possible solutions for the problems but, if you don't have good solutions, honestly state that the problem needs additional attention. Invite the reader to contribute to the solution. One of the unanswered issues will probably be project financing. Admit it and don't let it bother you at this point.

The Project Prospectus does not have to be elaborate. The information and logic should provide the impact. It is helpful to include a corridor map and a few photographs of people using an existing rail-to-trail conversion, elsewhere. This will help the reader visualize the hidden value of what now is probably a forgotten and rundown strip of property.

## **Give trail study a limited test**

You've done your homework. You've started your private sector network. Now it is time to give your rail-trail project its first public test: Local political reaction.

Politicians are by necessity tuned into the public pulse. Start with politicians who are perceived to be most likely to favor your proposal. This is good practice for approaching other politicians who may not be as interested or open minded. Local government planners should be able to give you suggestions on which elected officials to approach first and how; that's how they get their own programs approved and keep their jobs. It is quite likely that a government planner has already mentioned your private corridor study to officeholders.

Assuming you have no existing political contacts in your community, start by making a brief personal visit to your targeted council or commission member. State the nature of your proposal, supply a copy of the Project Prospectus and try to nail down a time you can call back for a reaction.

A council or commission member who is friendly to your project may do you a favor by asking pointed questions. That shows interest. He or she wants to be sure you have all your ducks in a row before talking to other political figures who will be tougher or, tougher yet, the general tax-paying public. If the politicians you first approach really like the project, they may give you advice on approaching others or, better yet, offer to privately share the proposal with fellow council or commission members. If so, your study group has done a good job and you're in luck. You've tapped into the political power network

## **Start outside resource shopping**

Several state and federal programs encourage rail-to-trail conversions. (See resource appendices at back.) You should be aware that none of these programs will take up your initiative and marshal the project. That will remain the responsibility of you and your local supporters. The assistance you receive at this early stage will be information to help you plan the project.

As you develop the plan, a government agency can offer staff resources to review your work and may even do its own feasibility study. While your study and support group is still doing most of the work, this over-the-shoulder involvement can become valuable when various government units and agencies start networking support for your project.

Before contacting the administering agencies, you should determine whether your corridor project is primarily recreational or has realistic transportation value. While there is an overlapping gray area, generally parks, conservation and recreation programs favor rail-trails. If there is alternative commuting potential, you can tap into transportation programs with greater funding opportunities.

Here, you run into the great government paradox. The recreation, conservation and preservation agencies have willing staff but little direct assistance funding available. The transportation agencies will have more direct funding available, but not have enough staff or interest to help you acquire and apply it. Both will need coaxing and all the help you can give them to justify funding your project down the road.

## **Determine the railroad's intentions**

What will the railroad company want to do with its remainder interest in the corridor after service has stopped? Though you are not yet ready to start negotiating with the railroad, you'll have to learn of its intentions as part of your project evaluation.

Even though the railroad may not own the corridor in fee, it still owns the rails, ties, bridges and other improvements. Normally, the railroad will contract with a salvage company, which buys and removes the tracks.

You will most certainly want to get an indication of what will happen to the bridges and tunnels. Bridges, especially high trestles, and tunnels are an interesting abandonment paradox. To you they are extremely

important elements in preserving the useable continuity of the corridor. To the railroad, bridges and tunnels are lingering public liability exposure.

The railroad will often stipulate that bridges are to be removed as part of the salvage contract in order to end any liability. Bridge removal costs the salvage company more than it can recover in material sales. Thus the bridges are of negative value except if the corridor can be converted to a trail.

County planning departments often have communications with the railroad company prior to abandonment, but not always. You may be able to get information from the county planner about the anticipated abandonment date and salvage intentions. If not, the planner may contact the railroad on your behalf to get this information, usually quicker than the company will respond to an individual citizen.

If that doesn't work, the state DOT Rail Division will certainly know the abandonment schedule, but may or may not know the salvage details. Again, you can ask the division to inquire on your behalf. Even if you already know the abandonment and salvage dates, it is to your advantage to remind the Rail Division that you are interested in the rail-trail potential. It could be a corridor that fits into the state railbanking plan. Follow up with a copy of your Project Prospectus.

North Carolina Rail-Trails maintains relations with the operating railroad companies. NCRT will know who to contact at the railroad and can help you open the subject of rail-trail potential. **The state Parks and Recreation Division trails program also maintains informal contacts with the railroads and monitors rail abandonments.** Both of these resources will be interested in your rail-trail study and can provide various forms of assistance.

## **Identify all corridor neighbors**

You will need to organize a plan for approaching individuals who own property adjacent to the corridor. If the corridor is owned in fee by the railroad, the adjoining property owners are the project's neighbors. If the railroad was established by easement or charter right-of-way, the neighbors probably hold title to the underlying property and are the actual owners of the corridor. In either case, they **MUST** be dealt with in a sensitive way.

While the following may seem like a lot of extra work, it is extremely important to get your project off on the right foot with the adjoining property owners. Should you decide to skip this step, you are almost certain to later spend a great deal of time and effort trying to turn around the hostile attitudes that have grown from false assumptions or fueled by misleading rumors.

First you need to identify each and every property owner. This can be done at the county tax offices. Much of this information is now computerized and the search method will vary slightly from county to county. The tax maps can be on paper, microfilm or computer.

First assemble a list of tax maps that contain the corridor, and then compile the needed information from one end of the corridor to the other. Each adjoining property will have a property identification number and sometimes the owner's name. The owner's addresses can be obtained by entering property identification numbers on the computer or looking them up on a computer printout.

It is worth taking the time to accurately compile this information because you will be making extensive use of it. Logging it on a desk top computer mailing program or data base will save considerable time and effort over the course of your project.

## **Test Property Owner Reactions**

Share this information with your study group and any close supporters that have come to your aid. You will be looking for property owners who have some type of personal relationship with members of your study and support group. Use these personal connections to informally test the reactions you will get later to the rail- trail proposal. These informal channels will start developing feedback, both positive and negative. This feedback should all be recorded in your growing data base.

Through these personal contacts, selected property owners give not only their own reactions, but often volunteer information that will help to anticipate the reactions of their neighbors. Keep in mind that the other purpose of these private contacts is to avoid springing the project on them as a surprise.

In most cases your group will identify a few property owners who openly favor the rail-trail project. Ask these individuals to join your study group as members or advisors. They can be valuable project ambassadors to their neighborhoods and your early warning network for detecting opposition.

Use your data base and the human resources of your expanding study and support groups to personally contact the remaining property owners. The timing will depend largely on what your early friend-to-friend contact reveal.

When ready, approach this task as conducting an opinion survey. On each visit, explain that your group is only studying the feasibility of a rail-trail project and that you are seeking their opinions. Have a system of recording their questions, comments and overall reaction to the project concept. You may want to develop a questionnaire to guide the interview and information gathering.

You will have to explain, in very basic terms, what a rail-trail is and who will be using the facility. You should provide a brief information piece which includes a list of community benefits. Field any questions that you can honestly answer and let the property owners know that you will get back to them on the unanswered topics.

Your handout should include how to contact the study group for more information. You want to start dialogues and really don't want the property owners to bother public figures. Besides, at this point, you should know much more about the feasibility issues than do the local agencies or elected officials. You're becoming the rail- trail expert of this unique local undertaking.

## **Take stock before launching action:**

*You will be dealing with a complex mix of property issues, political realities, public attitudes and limited resources.*

**OVERVIEW:** Are there logical solutions to property complexities? Can you work with, around or through opposition? Will you be able to sway political support? Will your core group scramble for additional support and resources?

Estimate the resources that will be needed. Take measure of the core support group. The initiative will require sustained efforts. Half-hearted commitments do not create rail-trails.

### **Is the corridor attainable?**

How complex is the corridor ownership? Has it reverted or **will** it revert to adjoining property owners? Does the railroad company own any or all of the property? Could it be a railbanking candidate?

The research you compiled during the project evaluation will help determine your strategy. Your options are state or federal railbanking, purchase, leasing easements, or even donation. The best practice is to devise primary and backup strategies.

A mixed ownership situation will require a combination of strategies. Any existing breaks in corridor continuity add yet another level of complexity.

Some strategies require more effort than others. Make a realistic assessment of your determination to pursue acquisition possibilities. Be aware that any corridor strategy will require many hours of letter writing, telephone contacts and meetings over a long period of time.

### **Are the political seeds growing?**

Your earlier project research again will pay off in established political contacts. Keep your local governments informed about your intentions. Politicians abhor surprises, especially about something as important as a tract of land that spans their jurisdictions.

Local government participation is a major factor in nearly every rail-to-trail project. You will have to work up some degree of political support, even if your evolving strategy is to privately finance and manage your rail-trail.

Keep your political readings low key at this point. It can be done with a personal visit or telephone call to individual council or commission members. A project update is a good way to measure your city council's and/or county commissions support for or acquiescence to your project. Besides their positive, negative or noncommittal reactions, be sure you take note of new questions your project update generates.

If their positions are not apparent, go ahead and ask them individually if they can support your rail-trail. That's fair and they expect it. Be aware that people in politics generally like to hold out on making decisions and commitments until the last moment. They may respond to your inquiry with a question or qualifying condition. Pay attention to it; that may be as close as you'll come to their answer.

You'll probably end up with a few ayes and nays, and mostly uncommitted. Make note of any shifts from previous reactions by individuals. That may be your best indication of which way the political winds are blowing.

## **Are trail neighbors friendly?**

Even the best conducted adjoining property owner contact efforts will probably identify a few trouble spots along the corridor. Your study and support groups contacts should give you a good grasp of neighboring fears, wants and real needs.

You'll initially hear several times the complaint: "I don't want strangers going through my backyard." That is a real fear in many minds. It is illogical in light of actual rail-trail experience, but they have none. You'll have to dispel the apprehensions through education.

Some property owners might demand privacy fences and security measures. Can they be reasoned out of it or will you have to comply?

Have you spotted the NIMBY? That's the person who is against anything new or out of the ordinary (Not In My Back Yard). Can you sway or neutralize the NIMBY?

What of the person with property on both sides of the corridor. It's reasonable that they want access. How can you accommodate the need?

Are there any conflicts with road building or other infrastructure plans? Are there workable compromises?

Your biggest problems probably will be the individuals who simply want the corridor to revert to their private property. They may not say what's really on their minds. Instead, they make unrealistic issues of crime, litter and noise.

You are bound to have some or all of these corridor neighbors. Are you prepared to patiently resolve these matters?

***The need to be sensitive to property owner reactions and concerns can't be overemphasized. Many rail-trail hopes have been quickly sunk by uninformed property owners firing public broadsides.***

***The ideal way to approach property owners is friend-on-friend, neighbor-to-neighbor or peer-to-peer. This can be readily implemented in small towns and rural counties. Its organization becomes more complex along longer corridors and the personal ties more tenuous with metro density. It may be necessary to use less personal relationships in these situations.***

*The character of each town, county and city is different. It would be presumptuous to recommend one standard method of making property owner contacts. Whether you go door-to-door, call ahead for an appointment or use casual contacts to open the rail-trail subject will depend on local customs and etiquette. However, any method that results in one-on-one, face-to-face exchanges is preferable to mailed questionnaires or telephone surveys. It is the first step toward establishing long-term relationships between neighbors.*

*Therefore, be mindful that first impressions are important between strangers. Be friendly and above all, don't argue a property owner's objections. Simply record the concern in as much detail as possible. That is the sole purpose of the visit at this point.*

*End of Box*

## **How will you feed the kitty?**

In all likelihood you'll arrive at the decision point with little in the way of financial resources in hand. Don't let that discourage you. At this juncture your human resources are far more important than money.

That may sound naïve to a cynical politician, bureaucrat or business person. However, if your core support group has ample enthusiasm and commitment, they will find the wherewithal. Where there is the will, there is a trail!

Start by evaluating the group's human resources. By now you should be able to identify individuals' talents for research, planning, organizing, speaking, writing, promoting, persuading and scrounging.

Yes, scrounging. Talented scroungers will lead you to additional talents, materials and financing. Good scroungers have absolutely no reservations about asking anyone for what is needed. You may surprise yourself by how good you can become at scrounging. Remember, you're asking on the community's behalf not for yourself. Don't be shy.

If you haven't yet raised any project seed money, now is the time to give it some thought. **Telephone tolls quickly put dents in personal finances.** You'll need printing, photography and perhaps video. Imprinted T-shirts, jackets and caps create visibility and return cash. You'll at least need sufficient resources to make your project appear tangible to the community.

If you can't raise the necessary seed funding within your support group. You'll have to develop a simple plan for soliciting from the community. It doesn't have to be cash. It is often easier, especially early on, to fill many of your needs with donated materials and services.

Perhaps you can find businesses that will let you use their WAT telephone services. Graphics, printing and video firms often have ways of absorbing small community projects. You can try tapping local user groups, such as hike and equestrian clubs, for small amounts. Target service clubs and professional groups for cash, goods, and services. There might even be a corporation or two that will view your modest seed money needs as a good way to leverage a community investment. Ask local trusts or foundations about their grant programs and office resources. Look around; it's probably there for the asking.

## How does it all add up?

You've researched property issues, uncovered corridor problems, tested the political waters and evaluated resources. It's time for your study and support group to look into the tunnel. Do you want to go in?

Use the decision process of writing down the pluses on one sheet of paper and the minuses on a second sheet. Then go back and rank each plus and minus. You'll be looking at a project balance sheet. How does it add up?

Next, ask yourselves if you have rational ways of addressing or offsetting the minuses. Again, rank the probability of success on each item. These are the footnotes to the balance sheet.

. Preserved Todd Depot that served the famous Virginia Creeper in Ashe County



## One last thing before launching

Let's assume that your balance sheet looks like the rail-trail is a feasible project. Who is going to do it?

Look in the mirror. Look around the table. Will your study and support group become an operational organization? Is there enough commitment to push the project to conclusion over a period of many months or even several years?

Ask the question. Discuss it openly. Find out how much time and effort each individual is willing to devote to the project. Now is the time to find if you have a diehard corps marching with you.

While you can recruit special talents for short-term tasks, it's absolutely essential to have a core that's committed to pushing the project through to completion.

If that core is there, look inside it for grit. Who can be counted on to keep pushing through the inevitable rejections and unforeseen setbacks? Yes, it takes a large measure of persistence to create a rail-trail. Don't leave the starting gate without it.

## Set out your plan and put it in action:

*Focus on acquiring or gaining access to the corridor. Build your organization and direct it toward that primary goal.*

**OVERVIEW** - Corridor status will determine the available strategies. Determine if federal or state railbanking is possible. State property laws are major rail-trail obstacles.

Communicate trail benefits to community. Use available technology and media. Be prepared to deal with opposition. Recruit community influences and resources to your initiative. Work on government agency and private funding partnerships.

## **Formalize the project proposal**

You've decided to give it your best shot. You are going to take your project to the entire community as a public proposal. That means anticipating all the questions and supplying the probable answers or options.

The public proposal can take several forms, depending upon your available resources and how many government jurisdictions are involved in the project. A single local government and modest-size community can be addressed with a comprehensive brochure. If there are several cities and counties to address, it may be necessary to compile a professional or at least professional-appearing master plan and a supporting brochure for the general public.

Whatever the format, keep in mind that you are addressing multiple audiences. At a minimum, the document should:

1. *State your goals as simply as possible.*
2. *Justify your goals with community benefits.*
3. *Cover all the issues as succinctly as possible.*

You want to address the anticipated issues with answers before the questions are asked by others. Don't be overly optimistic or pessimistic; just state the facts from your investigative studies.

You will be publicly stating your best solutions to a number of complex topics. If the answer is not presently available, say so. Don't get caught in a discrediting bluff.

The issues will probably twist and turn as you go public with the project. Keep your eraser handy and your thinking cap in place. You will be shepherding a dynamic situation as public policy evolves around your project. It is a good idea to keep an updated draft of your proposal handy. You can use it to quickly extract current positions on fluid issues.

## **First, determine corridor strategy**

The primary issue that has to be addressed by your project proposal is how you will go about acquiring or gaining public access to the rail corridor. The way you tackle the task depends on who presently holds the right-of-way and who owns the property. *(We told you so: If you don't know the answers - or don't now understand the difference – back up to the very beginning of this guide. Don't proceed on rumors and assumptions or you'll be spinning your wheels!)*

There is a major distinction between whether or not the railroad has or has not officially abandoned service with permission of the US Department of Transportation Surface Transportation Board (STB). If the STB has not yet approved the withdrawal of rail service there is opportunity to petition for federal railbanking under the National Trails System Act.

STB railbanking under the trails act gives government units and responsible organizations the opportunity to apply for interim trail use until such time that the right-of-way may again be needed for rail service. Applying for interim trail use is a relatively simple exercise. However, be aware that there are very tight time constraints on when you can petition the STB for interim trail use. Also be aware that federal railbanking requires the voluntary cooperation of the operating railroad company. For a detailed explanation of how and when to file for STB federal railbanking. See Appendix B.

The major advantage of STB federal railbanking is that it avoids the thorny issues of corridor property ownership under state laws. The federal railbanking law establishes that the right-of-way remains in effect, even though rail service is suspended.

On the other hand, if the STB already has approved the withdrawal of rail service, you are then faced with a far more complex situation. State, local government and private railbankings are subject to state property statutes, court decisions and legal opinions, all of which are in conflict with North Carolina's own railbanking laws. Welcome to the Tar Heel legal thicket! (See Appendix C.)

Looking at the state and local options in a top-down order:

**State Railbanking** - The NC Department of Transportation is the only state agency authorized to do a state railbank. A line's future rail service value must be established before the Rails Division can move on railbanking. Funding is limited and selection is stringent. The state railbanking law allows NCDOT to lease corridors to local governments for interim trails use. However, a separate rail corridor leasing law limits leasing to lines the NCDOT holds in fee simple absolute. A Justice Department Opinion also states that NCDOT must keep tracks in place on lines held in anything less than fee simple absolute. In effect, any line held in less than fee simple absolute just sits there growing brush and weeds.

**Local Railbanking** – Another state law authorizes local governments to obtain rail corridors through donation or purchase. That limits the local option to the few corridors that railroads hold in fee simple absolute. Otherwise, a local government must purchase or condemn corridor property that has reverted to adjoining property owners. Condemnation, which carries an equal or higher cost than negotiated purchase, is not politically attractive.

**Private Acquisition** - This is a possibility for a land trust or other nonprofit organization. Outright purchase is again limited to lines held by railroads in fee simple absolute. Otherwise, the trust or organization must negotiate for the purchase of corridor property that has reverted to adjoining landowners, a costly solution.

**Easements** - A more likely option is for a local government or land trust to negotiate scenic, conservation or recreation easements with the adjoining landowners. While complicated, easements are a permanent solution to public access over private lands.

**Leases** - A less permanent but also less complex option is corridor leasing. This could be accomplished by a local government, land trust or nonprofit organization. It may even be feasible to obtain donated leases from adjoining property owners. If the property owners do not buy into the project benefits, the cost of leasing could approach the market price of the property.

There is a very good chance that you will be facing a mixed property situation. For example, railroads often were established by charter grant then, later, they acquired fee property in towns and cities. That resulted in a patchwork of right-of-way easements and fee ownership, which means that the various adjoining landowners get treated in different ways when the rail line goes out of service.

That is another good reason you did your up-front research. When you first started making neighboring property contacts you were armed with this ownership knowledge. Thus you were able to avoid misconceptions and resulting hard feelings that could later develop, right? Of course you did because you did your homework.

It should be noted that likely state agencies, such as Parks and Recreation, are prohibited from **holding property rights...?? This has changed?** Only the Department of Administration and NCDOT are able to hold property for the state under current law. This, of course, severely limits other state agencies' abilities to participate in your project, even though they may want to.

*The section below is a side bar recommendation*

## **Stay Focused On Corridor**

**Although there are no hard and fast rules for establishing rail-trails, you are going to get a couple axioms at this point.**

**Axiom One: Concentrate on acquiring or gaining public access to the rail corridor.**

**It is easy to get distracted by funding, multiple user issues, development, safety and other matters. You have to address these items, but don't get bogged down by them.**

**Axiom Two: Good things start happening when you get your hands on the corridor.**

**This is like a corollary to Axiom One. The project stops being a pipedream and becomes reality. Both the public and private sectors start looking at your efforts differently. Things become easier. Holding property opens doors to new supporters, funding and development possibilities.]**

## **Up-size the organization**

You will need to metamorphose into a public action group as you move from the feasibility study to a full-blown rail-trail initiative. This is the public education and influence building phase.

You also need to develop an organizational structure, perhaps even become a tax-exempt nonprofit organization, which is a corporation. You will recruit new members and talents to fill out your human

resources needs. And the material resources scrounging plan goes into high gear, primarily to build favorable public visibility for your project.

This is the time that you formally invite trail user groups to join or endorse your initiative. Don't limit the quest to bicycle, walking and saddle clubs. Approach additional conservation groups, the PTA, inter-faith councils, service organizations, garden clubs, historic preservation groups, chowder-and-marching societies or whatever your Community has that should be interested in a community-improving greenway trail.

The more contacts you make, the more voices, talents and resources you will have to draw on when they are needed. Try to get these groups committed to an active role in your project, such as decking a specific bridge, restoring a depot or corridor beautification. Those in-kind commitments carry public influence and are like money in the bank. They can be used later to leverage development grants. During this phase you will put more effort into expanding and cementing the citizen/government partnerships needed to implement your plan. Looking professional and behaving responsibly in public will make your organization attractive to politicians and government agencies.

Another round of updating public figures on your project is a good way to keep them informed and to ask for their active support. The local government will eventually have to vote for or against your project, perhaps several times, during the course of events. Keep this point firmly in mind: Your political task is to create a climate that makes it easy to vote "aye." Think of this task as reducing political risk to a minimum.

One sure way to expand your influence is to recruit support from the business sector of your community. Most business leaders are by nature cautious. You may not get them to personally join your initiative, but you want them behind you as a block. They have networks that can help you with material needs, special talents and behind-the-scene influence.

Major business sector support, such as help with acquisition funding, stays in the wings and only comes from behind the curtains at the last possible moment. Of course you diligently cultivate business support, but often you won't know what support is actually coalescing until it almost miraculously appears. This can be frustrating. Business interests know the drama is good publicity for their companies and the business community. Business people want bang for the buck and they don't waste shots.

## **Be ready to communicate**

Make a list of the various audiences you need to influence. How many different forms of communication do you need to cover the bases?

It could be as simple as one or two pamphlets. A newsletter is an efficient way to keep all parties informed of progress. A slide show or video production adds a measure of realism.

Start with the assumption that the general public (i.e.: taxpayers) has absolutely no idea what this thing is you call a rail-trail. Only a small handful has ever heard the term and even fewer have seen one. Although

rails-to-trails is a simple concept, it is hard for the public to mentally visualize the transition from neglected railroad to linear park. You need to educate the public and build interest at an individual level.

Project visibility will be increased by giving the rail-trail an easily recognized name. Incorporating the name into a logo is even better. Think long term on this one. If at all possible, develop a professional graphic. You'll want a marketable identity. Use the advantages of unique local characteristics, such as terrain, history or traditions. If you're stumped, consider having contests for name and logo design. That's a good way to get others thinking about your project and to participate.

When you get your information act together, first visit the local media and brief them on your Project. Try to nail down a solid, on going news contact at each newspaper and broadcast station Your need at least one key person at each medium who is fully informed and, hopefully, tips you off to unpleasant project surprises that may be developing in your community. It works to their interests, too. You become their authoritative contact of record.

This media groundwork opens the door to favorable treatment of your news releases. As your media relations develop, there are opportunities to suggest or provide news features about your rail-trail project. Familiarity makes it easier to place guest editorials, to get on talk shows and to have your public service announcements aired.

**A word of caution:** Never, never divulge any "off-the-record" background information that you don't want aired or in print, period.

Be aware of media propensity for conflict. Despite your best efforts, conflicting opinions and situations are more readily reported than all the good project news that you can generate. Conflicts get bigger headlines and more news airtime. The best you can do is to make sure your side of a conflict is aired. Master the sound bite: Make your position clear in one terse sentence.



**Jacksonville Rail-Trail, Onslow County**

## **The Basic Trail-Building Tool**

**Axiom Three: Rail-trails are built with information and communications; not earth, stick and stone.**

The best rail-trail building tool is a desktop computer. Typically, you use it to start building mail and telephone lists. From that database you print mailing labels and begin distributing individualized letters with a mail merge. You can add cost-saving fax capability for the price of dinner out and a movie. Powerful desktop publishing software can be added for as little as \$100 and adequate programs are available for much less. Having these capabilities on your desk not only cut communications costs but also give you the flexibility to react to changing situations. When you need big quantities of newsletters or other documents, many print shops can reproduce directly from your compact disk. If you or your organization lacks a computer, put your best scrounger to the task of begging or borrowing one. Even an old computer is better than no computer at all. That's almost another axiom.]

## **Anticipate negative newsmakers**

On the other hand, it is usually in your best interest to address some potential problem issues before opposition forms and acts. This affords the opportunity to air your side and to show that you are on top of the problem. Be honest, always.

Also on that subject, prepare ahead of time your answers to opposition "trash talk." It can usually be anticipated in terms of unfounded alarms about privacy, crime, litter and noise. Again, if you have done your groundwork with the adjoining property owners, this problem can be minimized through education.

In warning, there are bound to be two or three detractors who are the loudest and totally irrational in their claims. They probably have hidden motives. Unfortunately, the general public doesn't know that. The loudest could be proud-spirited individuals who have taken a firm public stand against your project and, having never been wrong about anything in their entire lives, are not going to admit being in error about your trail. Facts and reason only infuriate them.

The best strategy is to isolate them by educating others. The troublemakers may fall silent when they find themselves alone and without an audience. Unfortunately, the media tends to use them for simplistic quotes and emotional sound bites, even after the public is on to them.

The worst hidden agenda is greed. Greed-driven detractors seldom fall silent. They want their piece of the corridor pie and perhaps others, too. You have to be careful how you respond. If you expose their greed, they will wrap themselves in the public image of victims of government, the railroad or your organization. Be aware that they are playing with dynamite: *Personal property rights*.

Your best strategy, again, is to isolate greedy detractors. Increase your efforts to sell the public benefits of the project to the community. The public will eventually recognize the hidden motives.

## **Court the funding partnership**

While you are beating the rail-trail drum in public, you also will be working to get major commitments toward funding the corridor acquisition. This is not bake sale money that will pass through your organization. We are talking about the heavy-duty funding. This is a behind-the-scene partnership that steps up to hit home the project.

A few corridor partnerships come together almost overnight; the vast majority take months to form. The partnership is the cast of players on your side when you step toward the negotiating table. There are many possible combinations: State and local government agencies, foundations, land trusts, corporations and wealthy angels.

Your organizations contribution is sweat equity and dodging bullets in public. The partnership represents the big pockets, often operating in the background, which will fund corridor acquisition. The mix depends in part on the corridor acquisition or access strategy. One partner will be designated to take title to the corridor property, hold an interim trail lease or certificate, or perhaps accept parcel easements. This could be a government unit, land trust or nonprofit organization.

One of the major private corporation partners could well be a power company or other utility. It may have a utility distribution line on the corridor or want to hold open the future options. The public utility might even acquire the corridor and lease it to local government for a trail.

The other deep pockets may want a government agency or land trust to lead the march to the table. This could well be the case if the strategy is a clear-cut railroad buy out.

The railroad will be more willing to talk when it learns that the acquisition partnership is in place. Your project has moved uptown, but still in the alley off main street. Sensitive negotiations will start behind the public support campaign.

**(RAIL WITH TRAIL – Libba Cotton Trail takes traffic off street between Carrboro and UNC Campus.)**



# Get to the table and cut a corridor deal:

*YOU will be closing on success when the railroad sits down to negotiate with the project partners.*

**OVERVIEW** - Each project partner will have expectations and limitations. You may need a mix of public and private funding at the table.

Know who you are negotiating with: Railroads are real estate companies and many other things in addition to trains. Their purpose is to maximize profit from assets.

Determine exactly what is for sale. Differentiate between real and not-so-real assets. Close the gap with appraisal methods and swaps. Be sure of what you are buying.

## Let the contract game begin

Much of your recent effort has been directed toward bringing all parties to the negotiating table and to cut a deal for the corridor. You have orchestrated your initiative to make local government and perhaps a state agency project partners. Other pockets...er, partners might be a contributing foundation or a land trust. On the other side of the table will be the railroad company, which wouldn't be there unless it had already decided it wanted out by selling real property or its right-of-way operating improvements.

## Understand players' limitations

The negotiators will move toward the table with their own individual expectations and limitations. All the pieces must be meshed to reach an agreement. The contract starts as a blank piece of paper and is eventually covered with compromises...or crumpled on the floor.

The railroad company, moving at its own pace, first has to be convinced that your partners have serious intentions and the resources to cut a deal. Remember, a railroad is part of a for-profit conglomerate. Actual railroad operations may be only a small part of its overall business. The railroad negotiator will probably be a property manager or an internal real estate agent.

The railroad's agent will be primarily interested in maximizing proceeds from corridor assets, whether real or imagined. Both are the railroad's table stakes. The railroad is leaving town and thus does not have to be overly concerned about that balance sheet item called goodwill.

Your government agency partners will have been given directions from their local commission, council or state-level department. They will be dealing within the constraints of laws, policies and politics. Public budgets always arc strained and your agency partners will probably be pooling some combination of matching federal, state and local funds, with each source having limiting regulations.

That is why it is advantageous to also have a more flexible private pocket as a partner. This could be a contributing foundation or a land trust working on your behalf. They have the flexibility to use creative alternatives for filling out a deal. A relatively small contribution might make a big difference. It's called funding leverage.

## **Pin down what's being sold**

The first big issue will be the question: What exactly is being put on the table? It depends.

This goes back to where you started your research: What is the railroad's remainder interest? Does the railroad hold fee simple absolute title to the entire corridor? Part of the corridor? None of the corridor?

The railroad may have to be bought out, even if it holds only an operating right-of-way easement. We won't go into the details at this point but, if your corridor is being federally railbanked under the National Trails System Act, the ICC issues something called a Public Use Condition, along with the Certificate of Interim Trail Use. (See Appendix B.) The ICC holds that, under the PUC, the party taking over corridor management must negotiate with the railroad for its improvements. This is trump card, which the railroad may or not play.

On the other hand, if rail service has been terminated with ICC permission, then you are on a market level playing field. What real property does the railroad actually own? What is its value?

The railroad may want you to pay "accumulation value," that is price of the land plus a premium for putting together continuous property. You, of course, ask: Who else will buy the entire corridor? It's a standoff.

A more reasonable approach is "across the fence value." This looks at the values of properties that border the corridor. It will probably have to be determined by an independent real estate appraiser. Whatever the total figure, it is higher than your side wants to pay. Due to selling and transfer costs, it is to the railroad's advantage to sell all its property at one time, rather than dozens of piecemeal transactions. Unused property is a non-performing asset on the railroad's books. Taxes and other overhead go on. The appraised value should be discounted to reflect these realities.

Railroads usually own depots and other properties along a corridor. Do you want them as part of the deal? If so, include them in the package. They could end up costing more later.

Who wants the rails and ties? You don't and the railroad probably doesn't, either. In most cases the railroad will contract to have the rails and ties removed right after service is officially terminated.

What about the bridges? That is a bit tricky. You want the bridges and the railroad would like you to pay for them. In reality, the bridges represent potential public liability. The bridges it leaves behind are of negative value to the railroad. Negotiate.

There are no set rules and not two corridor situations are exactly alike.

## *[A side bar **Times Are A Changing***

*Railroad attitudes toward corridor preservation are changing. Rail industry sources have told North Carolina Rail-Trails that the days of major rail route abandonments are winding down as freight volume rebounds. The state is now down to nearly half of its original rail corridor system.*

*Railbanking under state and federal laws holds open options while relieving carriers of or corridor maintenance, liability and taxes. It also preserves essential bridges, culverts and tunnels. As the rail carriers' fortunes continue to improve, operating companies are expected to become more cooperative and perhaps active corridor preservation participants. Interim trails could enrich the rail industry's future, a point that shouldn't be ignored during negotiations.]*

## **Okay, let's swap something**

Your side might make up for funding shortfalls or be able to sweeten the deal for the railroad by offering swaps. Your community may have some unused public land that would be attractive to the railroad. You could swap potential development land for corridor property. Railroad corporations also are land speculators.

Perhaps the railroad has another active line in the area. Will it adjust its corridor price in exchange for a new agreement on street crossings maintenance or other cost-savings? How about a rail bridge or two over streets or highways? Government might take over the bridges, thus relieving the railroad of maintenance costs and liability. Creative swaps can solve problems for both sides of the table.

For example, the railroad may own adjacent land that it would like to turn into an industrial park. Local government might offer utility extensions or tax abatement.

If your side has enough enticements, it might even persuade the railroad to turn over the corridor as an outright donation. It has happened. A nearby example is the 5-mile New River State Trail in southern Virginia. Donation can be a public and government relations plus for the railroad, in addition to being a tax deduction.

## **Important closing considerations**

Not only what the railroad is selling, but also how it is selling is of major importance. Will the railroad warrant a fee simple absolute deed, or will it only provide a quitclaim deed?

Railroads favor quitclaim deeds; they don't stand the expense of going back through the old deeds and the risk of defending titles. A quitclaim only relinquishes the railroads further rights to the corridor; it does not warrant the railroad's right to sell the property. It is possible that the current railroad company received the right-of-way from a predecessor railroad via quitclaim deed.

You can get a quitclaim cheaper, but it can be risky, especially if your side is at all unsure about the property ownership situation. The buyer will need to have the titles professionally researched and an opinion rendered by a qualified attorney.

Another risk that must be considered is environmental hazards. Ironic as this may seem, consider spills from past train wrecks, wastes from defunct industries that operated on the corridor and illegal dumping by outlaw disposal companies. A government agency or land trust will not want to assume public liability.

An environment study is mandatory if public funds are involved in the corridor acquisition. The environmental study findings should be a condition of the purchase contract. Even if the study doesn't uncover hazards, the contract should reflect the railroad's residual environmental responsibilities under federal laws.

(Photo 'FOR SALE – Memories and new possibilities')

**Plan trail development in stages:** *Consider multiple user needs, primary safety and commitments to trail neighbors before project embellishments.*

**OVERVIEW:** Signs serve notice of the public right-of-way. Road intersections and bridges are priority safety items. Increasing trail use can lead to incompatibilities.

A public way requires primary public facilities. Complete steps for a fully functional trail. Don't stop there; encourage community imagination to run wild on a maturing attraction.

## **Finally, getting to the fun part**

You have been wishfully looking at the corridor for months or even years. Now it is going to be a trail and it is almost like seeing the corridor for the first time.

It is probably decorated with trash. Weeds, brush and saplings abound. The roadbed may be a washboard from salvage operations. The bridges look like huge skeletons. Isn't it beautiful?

Rome wasn't built in a day and your rail-trail doesn't have to cone to full flower overnight. Because it is linear, you can develop in stages as resources allow. Look behind you. By now, there are probably many hands anxious to pitch in and play in the tangible dirt.

## **First, consider user universe**

Accommodating the multiple user groups should be given ample forethought. Perhaps you won't be able to accommodate all users on all portions of the trail, at least initially.

Mixing saddle riders with bicyclists and skaters could be risky on high traffic sections, such as through metro areas. It might be necessary to divide user traffic and provide appropriate surfaces. Families with

small children, physically impaired users and older citizens need special consideration. Skaters and skateboarders need a smooth surface and don't **take to moguls or other interesting diversions**. Metro area trails are a challenge to creativity. Study corridor width and terrain for Solutions.

It is easier to accommodate user mixes in lower traffic rural trail sections. A smoothed cinder or ballast surface can be adequate for horseback riders, pedestrians and wide-tire bicycles. As rural traffic grows, you may have to resort to lessons learned in the metro areas.

## **Stage One: Put trail to basic use**

Trail traffic doesn't just happen en masse; it grows over time. This allows for staged development. Most people are surprised how little initial development is needed to put a rail-trail into use. Some bush hog and grader passes make most of the roadbed ready for primary trail use.

Signs and bulletin boards are important. Signs establish the public right-of-way and deter trash dumping, motor vehicle incursions and firearms. Stop signs at road intersections and posted trail regulations establish enforcement authority while reducing public liability.

Street and road crossing barriers are a good practice. You will want to slow, if not completely stop, trail users. Especially at high-speed highway crossing. Users, particularly children, get lulled into forgetting about motor vehicles when they are on trails.

Do not open a trail section until the bridges have been properly decked and safe side rails erected. For liability reasons, make sure that bridges are posted off limits until they are improved.

First stage development is the time to take care of neighboring property owner problems. It proves good faith on your part and makes for a friendlier trail environment. It might be hard to spare the cost of a fence or other request, but it is a good long-term investment.

## **Stage Two: Add public facilities**

A popular trail will develop a secondary list of needed amenities. Parking areas will keep popular access points from becoming congested or worse: Users pulling cars onto neighboring private property.

Improved access areas will lead to the need for drinking fountains and restrooms. Public demand can overwhelm neighboring restaurants and other businesses that serve trail users unless you stay ahead of the situation.

Longer trails will develop demands for remote public facilities. Connected parks can meet some of this demand but you may have to budget separate facilities during second stage development. Wayside shelters and off trail scenic views are popular. Don't ignore the need for telephone access, both for personal use and in the event of emergencies.

## **Stage Three: Groom and embellish**

The first two development stages will provide a fully functioning trail facility, ready to serve growing numbers of users. Now you have the luxury of working on the rail-trail of your dreams. The frills, bells and whistles may take longer, but now you have time and broad public support on your side.

You've met all the basic needs and it is time to haul out all the imagination that the community can muster. You may want to resurface or even pave the entire trail; provide separate equestrian paths; build connector trails; incorporate public meeting or entertainment areas within and adjacent to the corridor; create playgrounds or whatever strikes the community's fancy.

The old, rotting depot might be brought back to life as a way station, featuring community and railroad history. Many restored depots are leased to restaurants, boarding hostels, bike shops and other trail-related commercial uses. A depot could become a day care center with nature study just down the trail.

Functional landscaping can improve privacy and add beauty to safety barriers. Creative plantings, such as a wild flower garden at a turn in the trail, can pleasantly surprise users. A trail is a natural setting for enjoying public art. The trail corridor is a great place to express community creativity and show imagination.

What once was a weed-infested eyesore is transformed to a community showpiece and meeting place. You've navigated the obstacles from vision to reality. Ain't it grand!

## **Appendix A:** *Researching railroad corridor property ownership*

### **1. Research rail line history**

A thorough deeds search is essential to determining a railroad's corridor property interests. The information that you compile will provide insights to the problems to be encountered in acquiring or gaining public access to a railroad corridor under state law. This deed research is not needed if you are able to obtain federal interim trail use under National Trails System Act Section 8(d) railbanking.

To begin your search, you must first establish the history of the rail line ownership. Most rail lines have changed names and ownership several times from their origins to the present. It may be possible to obtain this information from a local historical society or local history books at the library. Be sure to determine the dates of railroad construction and changes of ownership.

The line's history can also be obtained by writing to North Carolina Rail-Trails, PO Box 61348, Durham NC 27715 or by Email at: [alcapehart@embarqmail.com](mailto:alcapehart@embarqmail.com). Identify the line by stating the present or most recent railroad operating company, the county or counties involved, and the communities located on the line.

With the rail line ownership history in hand; you will conduct your deed search at the Registrar of Deeds office in the county or counties that contain the rail corridor.

## 2. Compile deed index list

Deeds are listed in Index Books two ways: Grantor (the seller) and Grantee (the buyer). Locate the Grantee Index Book that covers the years during which the rail line was established. At the front of the book will be an alphabetical listing of Grantees.

Look for the name of the original (earliest) railroad company. Any deeds that were registered will be referenced by page numbers in the same Grantee Index Book. If you find nothing, also look under “Railroads” as deed references may be lumped together under that index.

Turn to the given page or pages and again look for the name of the original railroad. Individual deed listings will name the Grantor, plus the Deeds Book Number and Page Number where the deed is recorded. Make a list of these Grantors with Book and Page numbers.

Next, search Grantee Index Books that cover the years that a successor railroad company took over the line. Repeat the above steps to obtain Deed Book and Page listings. Then repeat again for each subsequent railroad company up to the present. The result will be lists of deeds granted to all railroad companies over the history of the line.

## 3. Read and study deeds

You now are ready to study the individual deeds. You can do this in the original Deed Books or, in many counties, on microfilm copies of the Deed Books.

The deed will begin by identify the Grantor (seller), the Grantee (buyer) and the date of the transaction. It will then state what money or other consideration was paid to the Grantor. Next will be a description of the property that established the location and size.

The property description can be very accurate, such as a town plat lot number or a surveyor’s metes and bounds measurements. More likely, century old deeds will have vague descriptions, such as “a strip of land 100 feet wide across grantor’s approximated 25 acres.” Distances on each side of the railroad’s centerline survey were another common description. Long-gone trees, rocks, posts and other contemporary landmarks were commonly used. Finding the exact location and boundary can tax the skills and patience of experienced attorneys and surveyors.

*Toward the end of the deed is the heart of the matter: The terms and conditions on which the property was conveyed to the Grantee. Read this part carefully. The language needs to be picked apart and examined.*

Despite language that may sate that property rights are granted forever, what it may be granting is only a right-of-way, which the state courts treat as a reversionary easement. Look for words that limit property

use solely to “building a railroad,” “establishing a right-of- way” or “operating a railroad.” That is another test for easement.

Some deeds that grant fee simple title may have conditional clauses that limit property use only to railroad operations and business. Even if the railroad paid market value for the property, this determinative clause could return ownership to the grantor’s original parcel if any attempt is made to use the property for other than railroad purposes.

Make notes of your research on each deed. It is not unusual to find both right-of-way easements and fee simple deeds on the same rail line. There is an equal possibility that there are gaps between recorded property deeds. If the gaps are many and large, this indicates that a right-of- way was established by state charter grant. Unless the present railroad can come forward with unrecorded deeds, the courts will most likely treat the gaps as reversionary right-of-way easements.

#### **4. Determine what the RR has sold**

To complete the property ownership study, you will need to identify what properties, if any, the railroad companies have sold off over the years. For this, go to the Grantor (seller) Index Books. Look for names of the railroad companies that operated the line over the many decades.

Follow the Grantor listings to the Deed Books, just as you did with the Grantee search.

*[A side bar*

#### ***Up-chain vs. Down-chain***

*This method of deeds research is called an up-chain title search, which is the opposite of down-chain title search that attorneys normally conduct. A down-chain search usually does not extend back in time more than 40 or 50 years, or until the attorney is confident a bona fide chain of title is established. The reason for reversing this procedure on rail/road properties is that most of the pertinent information was recorded when the rail corridor was established. Down chaining from the present to the railroad’s origins would be much more difficult and time consuming. It should be noted that this limited up-chain search does not detect conflicting deeds that may have been overlaid on the earlier railroad deeds. Because North Carolina is a “race” state, the earliest recorded deed takes precedence. ]*

