



Railbanking

From the High Line in New York to the Atlanta BeltLine to the extensive trail network in the Seattle metropolitan region, we have worked on projects that have transformed the urban landscape by finding new uses for rail corridors that enhance the quality of life in our clients' cities. Our clients are enthusiastic about the preservation of underutilized rail corridors as recreational trails, and we work closely with them to accomplish that objective through the federal railbanking program.

The conversion of underused rail corridors to public recreational or multi-modal trail use is an integral feature of the regulation of the nation's rail system. We are actively involved in negotiating and administering railbanking agreements on behalf of state and local governments. These matters frequently include such issues as:

- Transfer of ownership interests in rail corridors
- Establishment of easements to provide for various rights and obligations with respect to the construction of trails or other public facilities
- Use and maintenance of trails
- Shared use of corridors for trail and transit functions
- Agreements governing the future reinstatement of rail service
- Disagreements with adjacent property owners or holders of residual property interests over the continued right to use the corridor for trail use

Because railbanking agreements typically involve complex issues relating to real property rights, transaction structure and timing, and conformance with strict regulatory requirements, most railbanking transactions demand a diverse range of negotiating skills and detailed knowledge of specialized agency practice. Kaplan Kirsch & Rockwell has extensive experience in moving projects efficiently through the regulatory process at the Surface Transportation Board. We have established relationships with the nation's major railroads, who are frequent negotiating partners.

Representative Cases

Fillmore & Western Freight Service, LLC—Emergency Petition for Declaratory Order, STB Docket No. FD 35813 (Service Date March 10, 2015) (obtained dismissal of action seeking to block ability of the owner of the right-of-way to terminate leases with railroad based on non-performance)

Ballard Terminal Railroad Company, L.L.C.—Acquisition and Operation Exemption—Woodinville Subdivision, STB Docket No. FD 35731 (Service Date Dec. 30, 2014) (obtained dismissal of action in which a short-line freight operator attempted to obtain operating rights to a railbanked line despite the lack of any property interest in the line and no demonstrated demand for service or financial capacity to reactivate service)

Maryland Transit Admin. v. Surface Transp. Bd., 700 F.3d 139 (4th Cir. 2012) (represented Maryland Transit Administration in challenge to STB's indemnity requirements for trail sponsors under the National Trails Act based on sovereign immunity grounds)

GNP Rly, Inc.—Acquisition and Operation Exemption—Redmond Spur and Woodinville Subdivision, STB Docket No. FD 35407 (Service Date June 15, 2011) (obtained dismissal of action by a start-up entity seeking to reactivate service on the line despite not having any property rights in the line, the absence of existing demand for service, and the lack of financial capacity to reactivate the line)

Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, STB Docket No. AB-167 (Sub-No. 1094), *et al.* (Service Date



KAPLAN KIRSCH ROCKWELL

June 13, 2005) (provided representation in the creation of the New York City High Line park out of elevated rail line on City's east side between 18th and 34th Streets)

Representative Experience

- Counseled New York City on regulatory strategy and resulting proceedings to preserve former freight rail facilities for development of the High Line public park.
- Assisted state transportation agency in strategic planning for, and regulatory actions to support, the disposition of state-owned rail rights-of-way for trail use.
- Advised county government in series of complex multi-party transactions to acquire freight rail corridors for interim trail use, obtained federal authority to railbank the line, and litigated to defend county's interests in administrative and judicial proceedings.