



RAILS-TO-TRAILS COMMON QUESTIONS

QUESTION	ANSWER
What does rails-to-trails mean?	Rails-to-trails is a shorthand term referring to the conversion of an abandoned railway into a public recreational trail. The National Trails System Act permits the conversion of abandoned railways into recreational trails, providing a more functional current use for the property, while also preserving the railroad right-of-way in case the railway is needed for use as a railroad again in the future; a process known as “railbanking.”
How does a railway become a recreational trail?	A railroad applies to the Surface Transportation Board (STB) for approval to abandon a railway. Once the STB approves the abandonment, a trail sponsor files a trail use request with the STB, asking that the abandonment be converted into public recreational trail use.
What or whom is a trail sponsor?	Typically, a trail sponsor is an entity (e.g., city, county or state) or a person requesting the abandoned railroad to be converted into trail use and will be responsible for the trail’s construction, but anyone can apply.
Are rail-trails common?	Yes, rail-trails are constantly being planned and constructed across the United States.
Why might I have a claim?	Under the law of most states, if the railroad had initially acquired only an easement over the property for railroad purposes, then once a railway is abandoned, the easement should be extinguished, and the property should revert to the adjoining landowners. However, reversion of the property in these instances is blocked by the recreational trail use. Instead, a new easement is created for a recreational trail over the property where the railway used to exist. Federal courts consider the creation of this new easement to be a taking under the Fifth Amendment to the United States Constitution.
What is a taking under the Fifth Amendment to the United States Constitution?	The United States Supreme Court ruled that the National Trails System Act was constitutional because the federal government has the power of eminent domain: the right to seize your private property for a public purpose (taking). However, being that the Fifth Amendment to the United States Constitution provides, “nor shall private property be taken for public use, without just compensation,” the federal courts ruled that property owners whose land is taken as a result of the National Trails System Act must be compensated.



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How do you know if the railroad only had an easement over my property?	Our team compare maps available at the National Archives with the current map of your property to determine which railroad deed is applicable to you, then obtain a copy of and review the deed to determine what interest the railroad may have acquired. If maps are not available at the National Archives or if it is not clear from the maps which railroad deed is applicable to your property, our team traces your chain of title all the way back to the date the railroad was constructed to find the deed.
How much of my property can be taken?	The taking is limited to the original size of the railway.
Can I stop the trail or get my land back?	No. The Supreme Court of the United States has ruled that landowners cannot stop this Rails-to-Trails process from occurring. However, landowners can file suit against the United States to enforce their constitutional right to just compensation under the Fifth Amendment.
What happens if I choose not to file a suit?	Your constitutional right to just compensation under the Fifth Amendment will not be protected. The taking will still occur and the trail will be constructed, but you will not be paid any compensation for the taking.
Will the trail sponsor build a fence between the trail and my property?	Possibly, but there is no requirement the trail sponsor do so. This is something landowners should discuss with the trail sponsor. If the trail sponsor does not build a fence and you would like one between your property and the trail, filing suit could be a good way for you to fund construction of a fence.
How much compensation could I receive?	The amount of compensation you might receive will depend on the property values in your area, the amount of railway frontage your property has and the width of the railway. Our team will establish that the federal government must pay fair market value for the property taken, along with interest from the date it was taken.
Will this cost me?	No. Our team takes every case on a contingency fee, which means we only get paid if we win your case. If our team wins your case, our fee is a percentage of the award. If our team loses your case or, after investigation, feel you do not have a claim, we will simply notify you that we no longer represent you. You will never receive a bill from us.



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How long will the process take?	On average, a case takes about two years to complete. Our team strives to ensure cases are litigated as efficiently and expediently as possible without sacrificing the quality of our work.
What if I sell my property during the case?	The claim belongs to whoever owns the property at the time of the taking. As long as you owned the property on the date the trail use was authorized, it does not matter if you sell it later.
How does this apply to me, as there is a road between my property and the railroad?	You could still have a claim because this is a very common situation in our cases. Whether you have a claim will depend on what type of interest the entity who built the road acquired to construct and maintain it. Our team investigates this as part of your case.
How does this apply to me, as the boundary line of my property stops at the railroad?	Most states recognize some form of the centerline presumption, which presumes that landowners whose property adjoins a railway own to the centerline of the railway. This presumption typically exists regardless of whether your current legal description or survey shows your property stops at the railway.
Will this lawsuit affect the trail process?	No. Any suit is solely against the federal government and will not affect the trail project in any way.
Why Flint Cooper?	Our team is passionate about the protection of constitutional rights. Our team of experienced attorneys has successfully represented landowners across the country against the federal government, and is one of only a few firms with experience litigating rails-to-trails cases. As our team performs all the work necessary to win your case, no active participation from you is required. Our team will keep you updated throughout every step of the process.

Welcome to Flint Cooper. If you are interested in our firm representing you, then please use your mobile device and simply scan the QR code to learn more or sign up now within seconds.

