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KNRC Rails to Trails Program for Local Government Briefing Paper

Several Kansas Natural Resource Coalition (KNRC) counties are hosts to public rails-to-trails projects. Rail trail projects typically occur in rail line corridors that are no longer in use, and for which full abandonment has not taken place. The presence of completed rail trails may be viewed as a positive contribution to some local governments, while others may see them as problematic, or as a tax, maintenance, or nuisance liability.

Under provisions of the National Trails System Act¹, these rights-of-way have been placed in rail banking by the U.S. Department of Transportation's Surface Transportation Board (STB) through the implementation of notices or certificates of interim trail use (NITUs or CITUs). This should be viewed as a federal permitting program that is subject to provisions and compliance.

An entity or organization desiring to develop a rail-trail makes application for a NITU/CITU by submitting a letter of interest to the STB. The application must include a *Statement of Willingness* affirming that the applicant will **assume legal responsibility for the liability and maintenance of the right-of-way, which includes assessed taxes.**

If the railroad that proposes abandonment of a rail line agrees, the STB issues a NITU or CITU for a 180-day negotiation period between the railroad and the proposed trail sponsor. The negotiation period can be extended with the consent of both the railroad and the proposed trail sponsor. If the railroad and the proposed trail sponsor come to agreement, a real estate transaction is closed and the NITU/CITU becomes a permanent condition obligating the trail sponsor for the duration of the NITU/CITU.

Rail banking prevents full abandonment of the right-of-way or reversionary return of rail corridors to property owners. This preserves the right-of-way, and the STB's jurisdiction over it for potential future reactivation for rail service.

For their part, reversionary landowners can be significantly disadvantaged.

Nongovernmental organization trail sponsors across the United States have proven reluctant to pay property taxes, and because the property cannot be taken for back taxes, county governments often incur revenue losses from rail trail projects.. In 2005, the Kanza Rails-Trails Conservancy, Inc. filed protests over ad valorem property taxes paid to various Kansas counties over multiple tax years. In 2007 the Board of Tax Appeals of the State of Kansas ruled for Kanza, and ordered the counties to repay taxes collected from Kanza for the 2004-2006 tax years.

¹ 16 U.S.C. § 1247(d).

In 1996, the Kansas Legislature passed the Kansas Recreational Trails Act² (KRTA), which became effective July 1, 1996. The statute applies to any NITU/CITU for which approval to enter negotiation for interim trail use is dated July 1, 1996 or later. It prescribes a range of statutory duties that a trail sponsor must perform under state law.

Litigation relating to the KRTA and a rail trail project in McPherson County³ a landowner blocked access to a right-of-way on his property for several years, preventing opportunity for the trail sponsor to perform its KRTA-mandated duties. The court's final decision was filed on June 1, 2018, ordering that the trail sponsor be allowed access to the approximately 0.75 mile of right-of-way to perform maintenance and construct the trail for public use. The defendant property owner was ordered to remove fencing and other barriers from the right-of-way and allow the plaintiff trail sponsor access to perform the work necessary for eventual opening of the public trail

Presently, it is unknown whether the defendant landowner plans to appeal the June 1st order.

KNRC staff have developed a *Rails to Trails Program for Local Government* based on federal and state mandates⁴ and local public health and safety considerations. The KNRC program will allow member counties the ability to easily monitor compliance with federal and state mandates and NITU/CITU permit conditions, providing opportunities and a compliance background for correction at all levels.

The draft KNRC program has reached a point where where staff are ready to work with affected KNRC member counties. This pilot approach will allow us to research, simplify, and refine the program, and could include resolutions, ordinances, and field-testing with the help of county commissioners and staff. One objective is to provide a program that oversees trail sponsors in a way that documents compliance with permit conditions and federal and state law.

The full KNRC document begins with a summary of how the *National Trails System Act* works in practice, and how trails-to-trails compliance could work at the local level. This is followed by the KNRC compliance program, which includes rail trail oversight and local requirements for trail sponsors proposing projects in affected KNRC member counties.

The KNRC document also includes a number of appendices, governing statutes, and reports to Congress. Staff have also included a reference section with historic complaints, a ruling by the Kansas Board of Tax Appeals, and an example of success by an affected KNRC member county.

KNRC staff propose to work with affected KNRC member counties who are interested in adopting a rail trail oversight management program. Staff will also provide support to member counties who may need assistance with non-compliant trail sponsors, which may include county challenges to a trail sponsor's NITU/CITU status.

Please contact KNRC staff for more information or to obtain a copy of the draft *Rails to Trails Program for Local Government* document.

² K.S.A. 58 §§ 3211-3216

³ *Central Kansas Conservancy, Inc. vs. Clinton L. Sides, et al.*, 15-CV-67

⁴ 16 U.S.C. § 1247(d), 49 C.F.R. Part 1152, K.S.A. 58 §§ 3211-3216