

Briefing Paper

KNRC Releases its Rails-to-Trails Accountability Program for Local Government

Many counties across the United States are host to rail-trail projects in unused or abandoned rail corridors. Rail-trail projects, which fall under the jurisdiction of the U.S. Department of Transportation's Surface Transportation Board (STB), are often promoted by conservation groups as offering nature viewing opportunities or as an alternative pathway to traditional transportation. Rail-trail projects may also be viewed by local governments as a tax or maintenance liability, or by land holders as an unwanted encroachment or access nuisance to private lands.

Under provisions of the *Federal National Trails System Act*¹ railroad corridors may be placed in "rail banking" under a cooperative agreement-and-permitting system between the trail manager, the responsible railroad, and the STB. These permits, called notices or certificates of interim trail use (NITUs/CITUs), are issued to trail providers who accept responsibility for trail construction, maintenance, and associated land use or nuisance liabilities. In Kansas, state law delegates specific authority to county governments to impose weed control, signage, bonding, or other requirements upon rail-trail managers to ensure maintenance is performed and adequate protections for the public or landowners are in place.²

Organizations interested in rail-trail projects begin the application process by submitting a letter of interest to the STB and railroad. 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 and assessed taxes**. This transaction, if consummated, can reduce or eliminate the tax liability of the railroad as that responsibility is transferred to the rail-trail manager.

If an agreement is reached between the railroad and rail-trail manager, the STB issues the NITU/CITU, the real estate transaction is closed, and the NITU/CITU becomes a permanent condition, obligating the trail manager for the duration of that permit. One deficiency of the railbanking program is that landowners are shut out of the NITU/CITU process until the NITU/CITU is transferred or revoked and the railroad opts for full abandonment and reversion of the rail-trail corridor to landowners.

In some circumstances trail sponsors have been reluctant (or unable) to pay property taxes or maintain rail-trail corridors as prescribed by their NITU/CITU permits. In such cases, local governments and landowners have historically little recourse outside of the judicial system, because railbanked corridors cannot be taken by county governments for back taxes. Another substantive issue is nonperforming trail sponsors can be difficult to hold accountable because of their shell, IRS 501 (c)(3) nonprofit status.

In Spring, 2020 KNRC released a first-of-its kind, *Rails to Trails Accountability Program for Local Government (R2T)* for use by KNRC member counties. The R2T accountability program gives KNRC member counties new and effective tools to monitor NITU/CITU provisions, and an effective pathway to address non-compliance issues at the federal level. Please contact KNRC staff for more information or examples of how the *Rails to Trails Program for Local Government* program have already been effective for KNRC member counties.

¹ 16 USC 1247(d)

² Kansas Recreational Trails Act: KSA 58-3211 - KSA 58-3216.