Clark County Kansas

913 Highland Street
Ashland, KS 67831
www.clarkcountyks.com

County Commissioners
Jim Daily
First District
Charles R. McKinney
Second District
Howard L. Wideman
Third District

County Clerk
Rebecca Mishler
PO Box 886
Ashland, KS 67831
(620) 635-2813
(620) 635-2051 (fax)

County Treasurer
Crystal Roberts
PO Box 185
Ashland, KS 67831
(620) 635-2745
(620) 635-2655 (Fax)

Register of Deeds
Brenda Ketron
PO Box 222
Ashland, KS 67831
(620) 635-2812
(620) 635-2393 (fax)

County Appraiser
Jeremy McCully
PO Box 727
Ashland, KS 67831
(620) 635-2142
(620) 635-2955 (fax)

County Sheriff
John Ketron
PO Box 566
Ashland, KS 67831
(620) 635-2802
(620) 635-2148 (Fax)

County Attorney
Allison Kuhns
PO Box 885
Ashland, KS 67831
(620) 635-2131
(620) 635-2788 (Fax)

August 21, 2019

Sunflower Recreational Trails, Inc.
DBA: Sunflower Rail-Trails Conservancy, Inc.
P.O. Box 44-2043
Lawrence, KS 66044

Attention: Clark Coan; SRTC Board of Directors

Via: U.S. Mail, Return Receipt

Re: Notification of Fire, Health and Erosion Hazards to Angle Road Bridge; Necessary Mitigative Action: SRTC Short Grass Prairie Trail

With this correspondence, The Clark County, Kansas Board of County Commissioners (BoCC) is notifying Sunflower Rail-Trails Conservancy, Inc. (SRTC) of a fire and environmental hazard posed by accumulations of large woody debris against the railroad bridge where the Short Grass Prairie Trail alignment crosses Little Sandy Creek at Angle Road, location coordinates 99.8352019°N, 37.1350470°N.

On June 10, 2013 the U.S. Surface Transportation board (STB) approved a petition by the Short Grass Prairie Trail, Inc. (SGPT) and the Sunflower Rail-Trails Conservancy, Inc. (SRTC) for SRTC to assume responsibility for 30.3 miles of railbanked right-of-way between Englewood and Protection, Kansas in Clark and Comanche counties. The petition included a statement of SRTC's "*willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assesses against, the right-of-way as required by 49 CFR §1152.29*."

The provisions of the railbanking agreement, the NITU petition, and federal statutes and regulations that form the basis of the STB's authority to grant an NITU require compliance with those political subdivisions who have oversight responsibilities.

As a political subdivision of the State of Kansas, the Clark BoCC hereby notifies SRTC that accumulations of debris lodged against the wooden trestle where the Short Grass Prairie Trail alignment crosses Little Sandy Creek inhibits stream flow, has altered the stream bed, and presents a structural hazard to our county bridge (Exhibit A).

Accumulations of woody debris at the SRTC trestle pose a public health and safety hazard due to fire risk, and an environmental hazard in the event the preservative-impregnated wood timbers were to catch fire. Further, the integrity a county-owned bridge where Angle Road crosses Little Sandy Creek could be compromised in the event the SRTC trestle were to fail as a result of stream pressure on the debris Pile.

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As part of reviewing this situation, the Clark BoCC sought opinions from a licensed Kansas Professional Engineer (PE), and the Fire Chief of Clark County. These opinions, attached as Exhibit B and Exhibit C, confirm the necessity for immediate and effective mitigative action at the Short Grass Prairie Trail trestle for which SRTC has accepted responsibility.

We expect SRTC's full compliance with the provisions of 16 U.S.C. § 1247(d), 49 CFR § 1152.29 (a), and 49 CFR § 1152.29(f) as the federal laws form the basis of SRTCs agreement and NITU petition.

As the name implies, the Kansas Recreational Trails Act (KRTA) codified at K.S.A. § 58-3211 et seq., mandates health, safety and fire responsibility for trail providers who have NITU petitions:

K.S.A. § 58-3212. **Duties of responsible part**y. (a) *The responsible party, at all times after transfer of the deed to the responsible party, shall*:

> (a) (5) *develop and maintain the recreational trail in a condition that does not create a fire hazard*;

And,

> K.S.A. § 58-3212 (a)(11)(A) **Maintain the trail;** (B) "*maintain all bridges, culverts, roadway intersections and crossings on the trail, essential to the reasonable and prudent operation of the trail or needed for drainage, flood control or the use of easements for crossing the trail between adjacent properties, or cause maintenance thereof by other parties that have assumed contractual responsibility therefore;"*

Prior to this correspondence, the Clark BoCC has not required SRTC to post a bond to ensure adequate maintenance of the trestle in accordance with KSA § 58-3212 (b), and we reserve the right to do so:

> *"If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located a bond or proof of an escrow account in a Kansas financial institution, as defined by K.S.A.* § 16-117 *and amendments thereto, payable to the county*."

Having documented an immediate, health, safety and property risk, the Clark BoCC, having oversight responsibility, expects the following mitigative action by Kansas Rails-Trails Conservancy, Inc:

1. Within ten (10) business days of receipt of this letter, notify the Clark BoCC of your intent to accept responsibility under federal and state law, provisions of the NITU petition, and agreements with the Central Kansas Railway, LLC or its successor(s);
2. Within sixty (60) calendar days of receipt of this letter, provide a project plan and timeline for completing the necessary permitting, procedural, and debris removal tasks necessary to mitigate the fire, erosion and structural hazards at the Angle Road bridge;
3. Because of the federal nexus created by the NITU, the Clark BoCC requests SRTC to investigate and provide this board with documentation of all permits required from federal and state agencies. This could include 404 permits from the U.S. Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), or the Kansas Department of Wildlife, Parks and Tourism (KDWP&T);

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4. Within ninety (90) days of this letter, complete the removal of large woody debris at the trestle, conduct necessary stream channel work, and correct soil erosion associated with the presence of debris;
5. Within one-hundred and twenty (120) days of this correspondence provide documentation of completed activities suitable for review by the county engineer and fire chief.

Thank you for your prompt attention to this matter.

Affirmed,

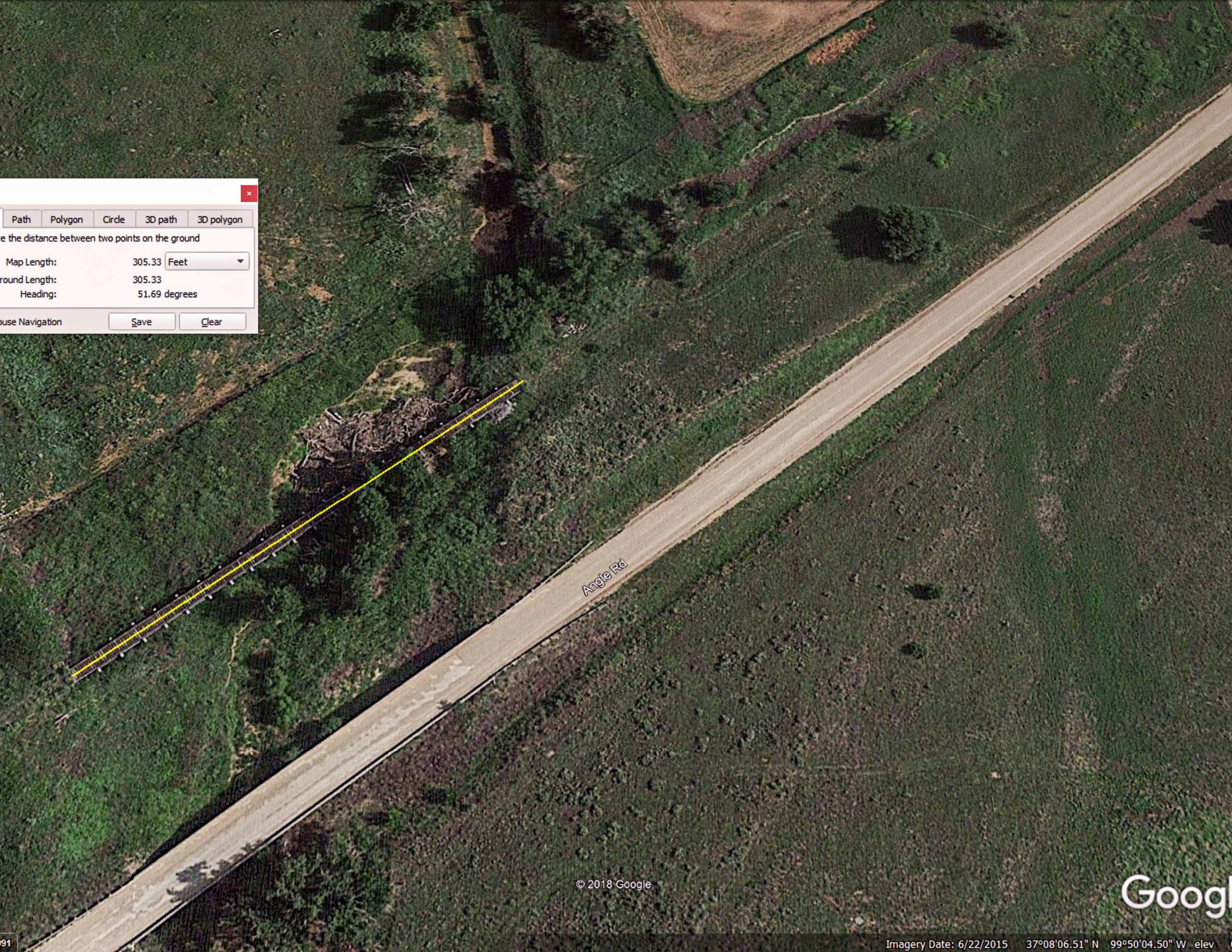
Jim Daily
First District

Charles R. McKinney
Second District

Howard L. Wideman
Third District

cc:

A. D. Begeman - Chair, STB
A. Forstall - Industry Analyst Rail Customer and Public Assistance, STB
K. Cameron - Director of Property and Real Estate WATCO Railroad
Hon. Chairman R. Highland - KS House Agriculture Committee
Coldwater City Council
Comanche County BoCC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37°08'06.51" N
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Exhibit B

July 23, 2019
Angle Road Inspection Report
Kirkham Michael Professional Engineers

KIRKHAM MICHAEL

Iowa • Kansas • Nebraska

www.kirkham.com

July 23, 2019

RE: Inspection/Opinion of Angle Road Bridge
Bridge No. 000000000130050 (LPA ID: FAS 5)
Clark County, Kansas

Clark County Commissioners
913 Highland
Ashland, Kansas 67831

Dear Clark County Commissioners:

FAS 5 is a five span, reinforced concrete slab continuous (RCSC) bridge located 4.0 miles south and 3.5 miles west of Ashland, KS (Latitude: 37°8'4.54"N, Longitude: 99°50'6.80"W). FAS 5 is located along Angle Road (RS 119) which is a major collector route in Clark County. Numerous vehicles travel across FAS 5 every day heading northeast to Ashland, southwest to Englewood, or to local farms. There are also two large cattle operations located southwest of this bridge.

It was brought to my attention that there is a 22 span, timber bridge (300' long) located about 160 feet north of FAS 5 with a significant amount of timber debris collecting on the upstream side. The timber bridge appears to be an old railroad bridge that has been left in place. On July 17, 2019, I visited FAS 5 and the timber bridge to inspect the location. Below are two photos taken while visiting each bridge.

Bridge FAS 5: Looking East

Timber Bridge: Looking Northeast (Timber Debris)

Due to years with little precipitation and the recent fires, several trees have died along the Little Sandy Creek. The dead tree limbs, branches, and other debris is now washing down the creek and accumulating on the piers of the timber bridge. The timber debris pile is approximately 100 feet long by 30 feet wide. Below are some identified issues associated with the timber debris pile:

- The debris accumulation is obstructing the water way opening that may result in significant erosion of streambanks and scour at abutments and piers.
- The debris pile produces additional lateral load to the piers of the timber bridge during periods of high flow that may eventually cause failure of the structure. If the timber structure fails, the timber debris along with the timber bridge would wash down and potentially impact FAS 5.
- Dry timber burns easy. The timber debris pile could create a large fire that could damage the timber bridge and spread elsewhere.

To address these issues, I recommend that the timber debris pile is removed, and the area is monitored for future debris build-up. The debris should continuously be removed as more accumulates. All timber debris should be properly disposed.

Sincerely,

Tanner B. Yost

Tanner B. Yost, P.E.
Clark County Engineer

Exhibit C

July 18, 2019
Inspection Report
David Redger
Clark County Fire District Chief

CLARK COUNTY FIRE DISTRICT #1

Ashland Division

615 W 4th Street, P.O. Box 844
Ashland, KS 67831

July 18, 2019

Clark County Commissioners
Box 886
Ashland KS 67831

Commissions:

The debris trapped against the railroad trestle along *Little Sandy Creek* presents a potential fire hazard for the area. Any spark, natural or manmade in the area would lead to a large conflagration. A fire of any kind, due to the nature of the debris and the surrounding vegetation, would be unable to control before consuming a large area, wiping out not only the railroad trestle but also the county bridge on *Angle Road.*

It is my recommendation, the debris trapped against the railroad trestle be removed as quickly and safely as possible. Additional trees and other debris further up the river present the potential of adding to the existing debris and causing an additional hazard to the area.

Respectfully,

David A. Redger, Fire Chief
Clark County Fire District #1
Ashland Division

DAR/drr