

# 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  
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PO Box 886  
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County Treasurer  
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Register of Deeds  
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May 13, 2020

Mr. Richard Stein, President  
Sunflower Recreational Trails, Inc.  
DBA: Sunflower Rail-Trails Conservancy, Inc.  
P.O. Box 44-2043  
114 Pawnee  
Lawrence, KS 66044

Via: U.S. Mail, Return Receipt

Re: Response to the September, 2019 SRTC correspondence, mitigation at Angle Road Bridge; revision of trail development plan, filing of bond and liability insurance; and, resolution of NITU Ambiguities raised by STB April 30, 2020 decision.

Reference: STB Docket No. AB-406 (Sub-No 5x) Short Grass Prairie Trail, Kansas

Dear Mr. Stein:

The Clark, Kansas Board of County Commissioners (BoCC) has reviewed the Sunflower Rail-Trails Conservancy (SRTC) record, applicable federal and state statutes, correspondence from August and September of 2019, and other information associated with the Short Grass Prairie Trail (SGPT) project (Attachment A).

The scope of our review includes a Trail Management Plan (TMP) submitted to Clark County in March, 2000,<sup>1</sup> review of the fire and structural threats recognized by your group as posing a hazard to the county Angle Road bridge, and requirements for control of noxious weeds along the SGPT alignment. (Attachment B).

Clark county recently adopted a rails to trails trail management program for local governments,<sup>2</sup> and the BoCC is applying that policy and the TMP as part of our governmental oversight responsibilities for the SGPT project (Attachment C).

This correspondence notifies SRTC of deficiencies in your September 2019 letter, requests update of the TMP, requires a noxious weed control plan with schedule, and informs SRTC of our intent to pursue bonding/escrow and liability insurance instruments for the SGPT. These mutually negotiated instruments are necessary to assure that maintenance is performed along the inactive SGPT alignment; that liability protections are assured and provided for; and, that adequate safeguards are in place to mitigate the recognized hazards at the Angle Road bridge.

<sup>1</sup> *Short Grass Prairie Trail Plan*. Submitted by the Short Grass Prairie Trail, Inc. PO Box 902 Ashland Kansas. March 01, 2000.

<sup>2</sup> *Rails to Trails Program for Local Government*. Background, Recommended Policies and Procedures. The Kansas Natural Resource Coalition. N. MacLeod, J.R. Carlson, et al. June 2019.

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## NITU Ambiguities; SGPT Project Viability Questions -

As can be understood from the recent Decision by the Surface Transportation Board (STB)<sup>3</sup> two notice of interim trail use (NITU) certifications are necessary to execute construction of the entire SGPT trail throughout Clark, Comanche, Kiowa, and Pratt counties of Kansas. The April 30, 2020 STB decision, included as Attachment D, identifies substantive ambiguities of the segment of the SGPT across Comanche, Kiowa, and Pratt counties, leading to questions about the overall viability of the SGPT trail project as railbanking has not been consummated.

If the Kansas & Oklahoma (K&O) railroad failed to complete the railbanking process by not filing with the STB the executed interim trail use agreement, then by regulation the railbanking process was not consummated, and the NITUs expired on August 2, 2008 and June 27, 2009.

The implications of the expired NITUs, beyond the back-tax liability owed to the counties by the K&O Railroad, render the legitimacy of the SGPT project in question for the 46.8-mile rail line between milepost 589.2 at Coats and milepost 636.0 at Protection in Comanche, Kiowa, and Pratt counties. Our review has also revealed that the quit claim deed and donative bill of sale filed with the STB as part of the April 30, 2020 Decision were insufficient for STB to conclude that railbanking was properly consummated.

As SRTC is aware, Kansas statutes require that the responsible trail provider complete development of rail-trails within a period of time equal to two years times the number of counties the trail is located in. Using the July 1, 2013 date of the Clark and Comanche county NITU, SRTC is required by statute to complete construction of the SGPT before the end of the 2021 calendar year. Because full development of the SGPT falls under two NITUs - one of which appears to not be in force - the Clark BoCC has an interest in how SRTC intends to resolve the NITU ambiguities for the segment across Comanche, Kiowa, and Pratt counties. As a result, we are requesting quarterly updates, beginning no later than June 15, 2020, of the progress of how the NITU ambiguities are being addressed and resolved with the STB.

## Fire and Structural Threats; Angle Creek Bridge -

Because the correspondence record indicates SRTC has not been fully responsive to the schedule, interagency documentation items, or material threats identified in our August 21, 2019 correspondence, the Clark BoCC is requiring SRTC to provide proof of sufficient liability insurance for the NITU portion across Clark County. Please contact this BoCC within thirty (30) calendar days of receipt of this correspondence with evidence and a proposal of how SRTC intends to meet this fiscal obligation. Should the Clark County BoCC determine that the amount of liability insurance proposed or currently carried by SRTC to be insufficient for the SGPT alignment across Clark County, SRTC will need to reach agreement with Clark county as to the amount of liability insurance SRTC proposes to carry for that portion of the SGPT alignment covered by the NITU within our county.

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<sup>3</sup> Decision. Surface Transportation Board. Docket No. AB 853 (Sub-No. 1X) Kansas & OKLAHOMA RAILROAD, Inc. ABANDONMENT EXEMPTION IN COMANCHE KIOWA AND PRATT COUNTIES, KS. April 30, 2020.

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In its September 2019 correspondence, SRTC acknowledged its responsibility to remedy the threat to the county bridge at Angle Road posed by the pile of large woody debris (LWD) lodged against the railroad trestle, immediately upstream of the bridge. SRTC proposed two options: 1) Mechanical removal of the LWD, burning it in an upland location; or, 2) burning the LWD in place.

We believe the second option may not be viable because burning in place could result in damage to or destruction of the trestle and release volatile and toxic preservative chemicals. Further, the LWD is located upstream of known critical habitat for the threatened Arkansas River shiner (*Notropis Girardi*), and as a result, burning the LWD in place potentially violates the federal Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA), and/or the Waters of the United States (WOTUS) rule.

Mechanical removal of the LWD and restoration of the watercourse could require detailed planning and permits to ensure the project will not result in streambed changes that could otherwise endanger the structural integrity of the bridge after the LWD is removed.

While Clark County appreciates SRTC's acceptance of responsibility, the Clark BoCC needs assurance that following information - requested by our August 21, 2019 letter - will be provided from your group as part of hazard mitigation at the Angle Road bridge:

1. A formal statement of SRTC's "*intent to accept responsibility under federal and state law, provisions of SRTC's NITU petition, and SRTC's agreements with the STB and the Central Kansas Railway, LLC or its successor(s);*"
2. "*A project plan and timeline for contracting and completing the permitting, procedural requirements, and debris removal necessary to mitigate the hazards at the bridge;*" and,
3. Documentation of consultation with the agencies of jurisdiction, resulting from the federal nexus created by the STB's NITU, including copies of correspondence to and from those agencies.

As noted, we have reviewed the TMP provided in March, 2000 in fulfillment of trail planning requirements. For the most part, the TMP is adequate, but we are requesting SRTC to revise and update Section VI(A)(2), control of noxious weeds, no later than 90 days after receipt of this correspondence.

Kansas law requires that the responsible party provide weed control in accordance with to the noxious weed definitions at KSA 2-1314. For calendar year 2020, the Clark County BoCC is requiring SRTC to comply with Section VI(A)(2) of the existing SGPT TMP until a revised plan is submitted to the Clark BoCC. Because noxious weeds have been identified at the Angle Road bridge site, Clark County is also requiring weed control before or concurrent with the LWD mitigation project.

Please note the TMP must also be submitted to the city councils of Ashland and Englewood, Kansas for their review and recommendations.

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In its previous correspondence, Clark County reserved the prerogative to require bonding or proof of escrow sufficient to cover the cost of annual maintenance for the portion of the SGPT alignment in Clark County. Either one of these financial instruments can be required for responsible parties that are not government entities.

Clark County requests that SRTC contact the Clark County Clerk within thirty (30) calendar days of receipt of this letter to schedule a date and time with the BoCC to receive discussion on the Angle road hazards and to determine the amount of the bond or escrow account.

Thank you for your prompt attention in this matter.

Affirmed,

Jim Daily  
First District



Charles R. McKinney  
Second District



Howard L. Wideman  
Third District



## Enclosures:

- Attachment A** - Correspondence. *Per notification of Fire, Health, and Erosion Hazards to Angle Road Bridge; Necessary Mitigative Action: SRTC Short Grass Prairie Trail.* Sunflower Rail-Tails Conservancy, Inc. to Clark County Board of County Commission. September 2019.
- Attachment A** - Correspondence. Clark Board of County Commissioners to Sunflower Recreational Trails. *Notification of Fire, Health and Erosion Hazards to Angle Road Bridge; Necessary Mitigative Action: SRTC Short Grass Prairie Trail.* August 21, 2019.
- Attachment B** - *Short Grass Prairie Trail Plan.* Submitted by the Short Grass Prairie Trail, Inc. PO Box 902 Ashland Kansas. March 01, 2000.
- Attachment C** - Resolution 2020-05. A Resolution of Clark County, Kansas Board of County Commissioners Adopting The Rails to Trails Program for Local Governments. April 1, 2020 Short Grass Prairie Trail Plan. Submitted by the Short Grass Prairie Trail, Inc. PO Box 902 Ashland Kansas. March 01, 2000.
- Attachment D** - Decision. Surface Transportation Board. Docket No. AB 853 (Sub-No. 1X) Kansas & OKLAHOMA RAILROAD, Inc. ABANDONMENT EXEMPTION IN COMANCHE KIOWA AND PRATT COUNTIES, KS. April 30, 2020.

CC: A. D. Begeman, Chair, STB  
A. Forstall, Industry Analyst - STB  
K. Cameron, Director of Property and Real Estate - WATCO Railroad  
Hon. R. Highland, Chairman, Kansas House Agriculture Committee  
Comanche County, Kansas Board of County Commissioners  
Kiowa County, Kansas Board of County Commissioners  
Pratt County, Kansas Board of County Commissioners  
Hodgeman County, Kansas Board of County Commissioners  
Ashland, Kansas City Council  
Edgewood, Kansas City Council  
Coldwater City Council