

KANSAS FARM BUREAU LEGAL FOUNDATION

An Adjoining Landowner's Guide to Rails-to-Trails in Kansas

The idea sounds great. Take unused railroad corridors and convert them into recreational trails for the public to enjoy, while preserving a railroad's right to reactivate the line in the future. Landowners adjacent to the trails, however, commonly do not find the idea so appealing. First, these landowners often have expectations – sometimes founded, sometimes not – of title to the land being vested with them after a railroad corridor is no longer in use. Second, many trails remain in an unkempt state while the responsible party (i.e. the trail group) develops a plan and obtains funding to develop the corridor into a trail. Third, once the trail is operational, adjacent landowners deal with the results of more human traffic next to their property, which can lead to increased litter, trespass, and other crimes.

Because of these issues, landowners sometimes attempt legal challenges to the trail regarding ownership.¹ But, what can a landowner do after challenges to the ownership of the trail have failed? After all, are Rails-to-Trails really *all* bad for adjacent landowners? Maybe there is a way for neighbors to co-exist with the trails, and possibly even experience some benefit.

Why and how do rails-to-trails exist?

With this discussion, it is helpful to have general knowledge about what Rails-to-Trails are, and why they were created. The so-called Rails-to-Trails program was enacted by Congress in 1983 under the National Trails System Act.² Congress recognized the complexities of a railroad ever regaining access to abandoned rail corridors if the land interests vested with adjacent owners, but also appreciated the desire of railroads to eliminate responsibility for rails they no longer had a business reason to operate. The purpose of the Act was to preserve access to these corridors in case the rail system ever became desirable or necessary again, and to meet recreational needs for the public to enjoy and appreciate the outdoors. The Act preempts inconsistent state and local laws and operates to avoid abandonment of the rail corridors.³ The process of “railbanking” happens when a railroad notifies the Surface Transportation Board (STB) of its intent to abandon service on a particular line, and then, rather than

abandoning the corridor, the railroad transfers its interest in that corridor to a qualified private party or public agency for use as a trail until the line may be needed again for rail service.

What happens before a trail is developed?

Once a responsible party receives permission from the STB to enter into negotiations for interim trail use, they must notify adjacent landowners of their intention to build a recreational trail on the unused railroad corridor.⁴ They must also prepare a project plan and present it to the county commission and the governing body of each city where a portion of the trail will be located, and make reports to the local governing bodies regarding the status of the trail development or operation at intervals determined by the governing bodies.

Kansas law also requires a responsible party to complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located.⁵ It's unclear, though, what happens if a trail is not developed within that timeframe. Landowners and local governments should work in tandem to see that trail groups meet their statutory obligations. Many avenues, including litigation, could be explored to compel action by the responsible party.

What are the ongoing obligations of the responsible party?

Kansas statutes lay out the management responsibilities of the responsible party.⁶ Among some of those responsibilities are to:

- control noxious weeds;
- provide for trail-user education and signs regarding trespassing laws and safety along the recreational trail;
- provide for litter control along the trail (signage, trash receptacles, and cleanup);
- develop and maintain the trail in a condition that does not create a fire hazard;

- with few exceptions, designate the recreational trail for nonmotorized vehicle use only;
- prohibit hunting or trapping *on or from* the recreational trail;
- grant easements to adjacent property owners to permit such owners to cross the trail in a reasonable manner consistent with the use of the adjacent property;
- with regard to fencing:
 - maintain any existing or future fencing installed between the trail and adjacent property;
 - install between the trail and adjacent property fencing corresponding in class to that maintained on the remaining sides of such adjacent property; and
 - on request of an adjacent property owner, pay one-half of the cost of installing fencing between the trail and such property owner's adjacent property with a fence of the class requested by such property owner, if not all remaining sides of such property are fenced;
- maintain the trail and all bridges, culverts, roadway intersections and crossings on the trail; and
- pay taxes on the trail property, unless the responsible party is exempt under state law from paying property taxes (but even in that event, the adjoining landowners should have no property tax liability for the trail property).⁷

How does the trail affect an adjoining landowner's use of their own property?

It's no secret. The existence of a trail next to an adjoining landowners property, or running through their property, can complicate that person's use of their own land. For example, adjacent landowners may have questions about whether they can use controlled burning to maintain brush on their property. Perhaps an adjacent landowner would like to use the trail for purposes of checking their pasture fence, or for moving cattle. Maybe a landowner would like to post signage to deter trespassing or other criminal activity. The likely best approach to all of these issues is to work closely with the trail group, and to obtain their approval of these actions prior to taking them. The trail group may welcome controlled burning, but would most certainly, at a minimum, want to know when it will occur so the proper

warnings could be placed on the trail to protect trail users. We have heard from several trail groups that they want to be a "good neighbor" and to have a cooperative relationship with adjoining landowners. But, if an adjoining landowner finds that a trail group is not acting in good faith, or meeting their responsibilities, then it could be time for a different approach.

What can a landowner do if a responsible party is not meeting its responsibilities?

If an adjacent landowner has issues with a responsible party not fulfilling their statutory obligations, there are a few things that can be done:

- The first recommended step would be to contact the responsible party and inform them of any issues and discuss when the trail group may be able to remedy the insufficiencies.⁸
- The county commission has *some* local authority over the responsible party, so if reaching out directly to the responsible party does not provide results, then an adjoining landowner may consider contacting their county commissioner to get the issues addressed.
- Finally, an adjoining landowner and/or local government may choose to consult with an attorney to see what other options might be available, including litigation, to compel a trail group to meet its statutory obligations.
- It should also be said, if landowners or trail users ever see evidence of a crime on the trail, they should contact local law enforcement.

Conclusion:

There is little opportunity, if any, under state law, to have the authority of a trail group revoked once the group has been granted authority by the STB. While having a trail adjacent to a person's land may not be ideal, the best approach to the situation is likely one of cooperation with the trail group and its users, so that the doors of communication are open for when there are serious issues or concerns with the trail.

Members of Kansas Farm Bureau have the opportunity to consult with the Legal Foundation regarding issues, like Rails-to-Trails. While we are prevented from providing legal advice to our members, we may be able to provide some helpful research on issues, and attorney referrals when the need arises.

¹ For a discussion of the various types and outcomes of legal challenges made by adjoining landowners against converted trails, *see Rails-to-Trails Conversions: A Legal Review*, by Andrea C. Ferster, General Counsel, Rails-to-Trails Conservancy (2017), available at <https://www.railstotrails.org/resource-library/resources/rails-to-trails-conversions-a-legal-review/?collection=Policy>.

² 16 U.S.C.A. § 1241 *et seq.* There were prior laws that attempted some of the same things accomplished by the National Trails System Act, but this is the law that created the concept of railbanking.

³ K.S.A. 66-525 provides state law and procedures regarding railroad abandonment in Kansas. It is important to note, though, that this law does not apply when a corridor is railbanked. Railbanking effectively prevents abandonment of the right of way and preempts state law from applying, except for reasonable state laws regarding the management of railbanked trails. *See Miami County Bd. of Commissioners v. Kanza Rail-trails Conservancy Inc.*, 292 Kan. 285, 255 P.3d 1186 (Kan. 2011).

⁴ K.S.A. 58-3213.

⁵ K.S.A. 58-3213(c).

⁶ K.S.A. 58-3212.

⁷ Additionally, if the responsible party is not a governmental entity, they must file with the county clerk of each county where a portion of the trail is or will be located, proof of liability insurance, a bond or proof of an escrow account, conditioned on the responsible party's performance, and in an amount agreed upon between the responsible party and the county commission as sufficient to fully cover the annual costs of weed and litter control, maintenance of the trail, fencing costs, and the installation and maintenance of signs along the trail. K.S.A. 58-3212(b).

⁸ There are over two dozen rail-trails in the state of Kansas. If you are unsure of the responsible party for a particular trail, feel free to reach out to the Legal Foundation and we may be able to help find contact information.

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