



Using Railroad Property for Community Trails

Converting railroad property to non-motorized trails provides opportunities to encourage and expand walking, bicycling, and other forms of active transportation and recreation. Using railroad property in this way can benefit both the communities in which the trails are located and the railroad carrier.

Q: What are the benefits of using railroad property for non-motorized trails?

A: Converting railroad property to community trails can benefit communities by providing:¹

- Additional access to other parts of the transportation system and community without the additional cost of developing new rights-of-way.
- An option for community members to engage in a healthy, environmentally friendly, and economical mode of transportation in lieu of motor vehicles.²
- Scenic settings for physical activity as many railroads are located along rivers, valleys, and rolling hills.



RIGHT-OF-WAY

“Right-of-way” can be used to describe both a right of passage on property belonging to another person and that strip of land on which railroad companies construct rail beds.³

This fact sheet is a part of a series funded by the Kansas Health Foundation to increase physical activity through walking and bicycling in Kansas.



The information provided in this document is not legal advice. It is for informational purposes only and is not a comprehensive review of railroad or property law. Those interested in acquiring railroad property for trail or other use should contact an attorney.

- A generally flat or gently sloped terrain.
- An existing connection between communities.
- Preservation of historical railroad property, such as bridges, tunnels, trestles, and archaeological resources.
- Preservation of the country's built rail corridor infrastructure for continued and future public transportation use.

Q: What factors should a community consider when evaluating a railroad corridor for a rail-to-trail project?

A: Communities should assess a railroad corridor to determine if it is appropriate for trail development by considering the condition of the corridor, factors that would detract from the trail experience, and taxes or other charges that are imposed on the corridor.⁴

Q: How can railroad property be used to create opportunities for walking, bicycling, and other forms of non-motorized transportation and recreation?

A: Railroad property can be converted into community trails to benefit pedestrians, bicyclists, and other non-motorized transportation users in three general ways. These “rails-to-trails” efforts can involve rails-with-trails; railbanked rail-trails; or rail-trails.* The way a railroad property is converted into a community trail depends on how the railroad property is being used.

* For the purposes of this resource, “rails-to-trails” refers to the general process of converting railroad property into community trails. However, this term is sometimes used interchangeably with “rail-trail” (specifically defined below).

WAYS TO CONVERT RAILROAD PROPERTY TO COMMUNITY TRAILS

Type of Trail	Trail Definition	Current Use of Railroad Property	Process
Rail-with-Trail	Any shared-use path that is located on or directly next to an active railroad or fixed route transit corridor. ⁵	Railroad property actively used by railroad.	A trail manager must negotiate a use easement or license with the railroad company. ⁶ Generally this is reached through sale and/or liability sharing agreements. ⁷
Railbanked rail-trail	A method by which railroad corridors that would otherwise be abandoned can be preserved for future rail use through conversion to a trail in the meantime. ⁸	Railroad property not currently in use by the railroad but not yet officially abandoned by the railroad.	Railbanking takes place during the rail corridor abandonment process. The railroad first submits an initial notification to abandon with the Surface Transportation Board (STB). After the railroad submits the initial notification of intent to abandon, an interested trail manager files an Interim Trail Use request with the STB and the railroad must agree to negotiate the terms of lease, sale, or donation of the rail corridor. ⁹ The railroad may apply with the STB to reactivate rail service at any time. ¹⁰
Rail-Trail	A multi-purpose public path (paved or natural) created within an abandoned rail corridor right-of-way. ¹¹	Use of railroad property by the railroad has been abandoned.	In Kansas, a railroad is considered “abandoned” when the appropriate federal or state authority issues an abandonment order and does not reinstate the railroad’s ability to operate within two years of issuing the order. A railroad is also considered abandoned if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired. ¹²



RESPONSIBLE PARTY

Any person, for-profit entity, not-for-profit entity, or governmental entity that is responsible for developing, operating, or maintaining a recreational trail.¹⁵

bodies through which the trail will pass.¹⁶ With a rail-trail effort, the responsible party must determine ownership of the abandoned rail line and negotiate terms of the use of the property as a rail-trail with the property owner(s).

After proper notice has been given, the responsible party must acquire rights to use the railroad property as a recreational trail. The right to use railroad property for recreational trails can be obtained through:¹⁷

- **Purchase:** The land can be purchased outright.
- **Option to Buy:** A legal document giving a person the right to buy and outlining the required price as well as the applicable period.
- **Easement:** A right to use another person's property for a specific purpose; in this case, a trail.
- **Land Donations:** a landowner can donate property to an agency or organization.
- **Land Lease:** The land can be rented from the landowner for a set amount of time.
- **Bargain Sale:** The sale of property at less than the fair market value. The difference between a bargain sale and a purchase is that it often qualifies as a tax-deductible charitable contribution.

In addition, the responsible party must identify funding for the acquisition and development of railroad property for a trail. There are many federal, state, and local government funding mechanisms as well as grants, private partnerships, and other funding methods potentially available to finance the development of a trail on railroad property.¹⁸

Q: How does an interested “responsible party” acquire or obtain rights to use railroad property for recreational trail development?

A: Acquiring a right to use railroad property for community trails involves several steps and many federal and state laws are potentially applicable. A responsible party must first determine the property's railroad status (active, inactive, or abandoned). This information will assist in determining whether the property is available for trail use and whether federal resources are available to assist in the rails-to-trails conversion.¹³

If an active railroad line still exists on the corridor, a responsible party may want to consider a rail-with-trail. If the railroad line is inactive but not yet abandoned, railbanking may be appropriate. In railbanking situations, written notice must be given to each adjacent property owner regarding the responsible party's intention to build a recreational trail adjacent to the property.¹⁴ The responsible party must also prepare a plan for development of the trail and submit it to the commission of all governing

KANSAS RAILS-TO-TRAILS EXAMPLES

Flint Hills
Nature
Trail¹⁹

The Flint Hills Nature Trail runs for 117 miles (east-west) across northeast Kansas, linking six counties and dozens of towns between Osawatomie and Herington. The trail is built upon an old railroad corridor, which was developed beginning in 1886 — the Council Grove, Osage City & Ottawa Railway (which serviced coal mining) and the Missouri Pacific. The route fell out of service in the 1980s. The Rails-to-Trails Conservancy later acquired and railbanked the corridor in 1995 and then transferred it to the Kanza Rail-Trails Conservancy (KRTC) to develop. In 2001, the all-volunteer nonprofit began trail construction. As the overseeing body, KRTC divided the trail into geographic divisions, which manage the day-to-day operations and development of their local sections. As of 2013, more than 60 miles of the trail have been completed. KRTC hopes to have the trail fully smoothed-out with crushed stone in the next three to five years.²⁰

Gary L.
Haller
National
Recreation
Trail, a.k.a.
Mill Creek
Streamway
Park²¹

The Gary L. Haller National Recreation Trail along the linear Mill Creek Streamway Park parallels an active rail line for about 6 miles of its length at its southern end. The trail runs for 17 miles from the Kansas River at Nelson Island south to Olathe. Piecing together the trail corridor included acquiring property from nearly two dozen landowners and continued from 1987 to 1999. Although a segment of the trail is immediately adjacent to an active Burlington Northern Santa Fe (BNSF) corridor, the trail is developed outside of the railroad right-of-way and only intersects at three grade-separated crossings. The trail manager, Johnson County Parks and Recreation District, worked closely with the railroad to develop grade-separated crossings and was required to install a fence between the trail and active tracks.²²

Prairie
Spirit
Trail State
Park²³

The Prairie Spirit Trail is more than 50 miles long, from Ottawa to Iola, with a crushed limestone surface suitable for bicyclists and hikers. Developed on a corridor that was the first north-south railroad in the state, the Prairie Spirit Trail was railbanked in the early 1990s and developed in phases over the following decades. It remains the only rail-trail in the Kansas State Park system. To celebrate the 15th anniversary of the Prairie Spirit, the Rails-to-Trails Conservancy added the trail to its Rail-Trail Hall of Fame (August 2011) for embodying the unique natural and cultural history of the region and acting as a vanguard for other rail-trail projects.²⁴



Q: How can a responsible party determine the owner of railroad property?²⁵

A: The process for determining the current owner and the kind of interest that owner has in railroad property can be complex and time consuming. Railroad property ownership documents and records may consist of century old deeds. Interests in the land may also have unclear transfers of property, particularly if a transfer or sale of the land was never recorded or if the property was acquired through adverse possession.

Further, ownership documents must be compared to the law in effect at the time of the ownership, which may date back to the 1800s. The courts also differ in their interpretation of the law regarding railroad property ownership and the interpretation of railroad deeds.²⁶

ADVERSE POSSESSION

When someone obtains title to property through continuous, exclusive, and open use and enjoyment of the property for 15 years without the permission of the legal property owner.²⁷

As a result, a railroad may not have the legal ability to transfer title to railroad property and corridors that are officially abandoned and are not railbanked since these rights may belong to adjacent private landowners. Unless the corridor is owned outright by the railroad, the trail corridor may be broken up into many pieces of land and acquiring property rights from many landowners may be difficult or infeasible.²⁸ For these reasons, any organization or person interested in obtaining railroad property to use as a trail should consult an attorney.



RAILROAD ABANDONMENT AND RIGHTS OF ADJACENT PRIVATE PROPERTY OWNERS

The U.S. Supreme Court decided a case in 2014 that limits the ability to create trails on non-railbanked corridors created from federally granted rights-of-way through the General Railroad Right-of-Way Act of 1875.²⁹ This case holds that the General Railroad Right-of-Way Act only gave the railroad the right to use the land through an easement and did not give the railroad outright ownership of the land. As a result, when a railroad company abandons the use of the easement on the land, the easement for use by the railroad is extinguished and the underlying landowner regains exclusive rights to the property.

What does this mean for existing trails?

After examining the decision's potential impact, the Rails-to-Trails Conservancy* (RTC) believes that the vast majority of rail-trails and rail-trail projects will not be directly affected by this decision if any of the following conditions are met:³⁰

- The rail corridor is "railbanked."
- The rail corridor was originally acquired by the railroad by a federally granted right-of-way through federal lands before 1875.
- The railroad originally acquired the corridor from a private land owner.
- The trail manager owns the land adjacent to the rail corridor.
- The trail manager owns full title (fee simple) to the corridor.
- The railroad corridor falls within the original 13 colonies.

However, it is not possible to determine how many miles of railroad corridor might be affected by this decision because no federal database on federally granted rights-of-way currently exists.

* Since 1986, RTC's legal program has worked to preserve rail corridors as public recreation and transportation assets at the local, national and federal levels in more than 50 cases, as well as before Congress and administrative agencies.

Q: What other issues may come up when converting or operating railroad property as community trails?

A: Responsible parties interested in developing railroad property for community trails should be aware of different obligations that can arise. Obligations that commonly arise with trails on railroad property include management and financing; insurance and liability; safety and design; and operations and maintenance. Different types of rails-to-trails (rail-with-trail, railbanked rail-trail, and rail-trail) may present different considerations within each of these categories.³¹

In Kansas, in order to protect the city or county from damage if a responsible party does not fulfill the above obligations, the responsible party must file a bond or proof of an escrow account payable to the city or county in which any part of the trail is

located. The bond or account is conditioned on the responsible party's performance, and is in an amount agreed upon between the responsible party and the city or county as sufficient to fully cover the annual totaled costs of maintenance and safety obligations.³²

Q: Are there any funding programs that support using railroad property for trails?

A: Yes. The federal Transportation Alternatives program (TAP) funds several types of transportation-related activities, including the "Conversion of Abandoned Railway Corridors to Trails."³³ Examples of eligible projects include:

- Planning, designing, and constructing multi-use trails along a railroad right-of-way.
- Major reconstruction of multi-use trails along a railroad right-of-way.



- Developing rail-with-trail projects.
- Purchasing unused railroad property for reuse.

The TAP program is administered by designated state agencies.³⁴

Additionally, the Recreational Trails Program (RTP) is a set-aside program of TAP. It is administered by the Federal Highway Administration and provides funds to states to develop and maintain recreational trails and trail-related facilities for both motorized and non-motorized recreational trail uses.³⁵ Each state administers its own program.³⁶

Eligible projects include:³⁷

- Maintenance and restoration of existing rails-to-trails.
- Development and rehabilitation of trailside and trailhead facilities and trail linkages.

- Purchase and lease of trail construction and maintenance equipment.
- Construction of new trails (with restrictions for new trails on Federal lands).
- Acquisition of easements or property for trails.
- Assessment of trail conditions for accessibility and maintenance.
- Development of publications and operation of educational programs to promote safety and environmental protection related to trails (including supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training).

The Rails to Trails Conservancy can also provide additional information on funding trail acquisition, development and maintenance: www.railstotrails.org.³⁸

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Endnotes

- ¹ *Rails-with-Trails*, RAILS-TO-TRAILS CONSERVANCY 5 (2000), http://www.railstotrails.org/resources/documents/resource_docs/Rails-with-Trails%20Report%20reprint_1-06_lr.pdf.
- ² *Active Transportation and Health*, RAILS-TO-TRAILS CONSERVANCY (2007), http://www.railstotrails.org/resources/documents/whatwedo/TrailLink%2007%20Program_Active%20Transportation%20and%20Health.pdf; *Walking, Biking, and Climate Change*, RAILS-TO-TRAILS CONSERVANCY (2007), http://www.railstotrails.org/resources/documents/whatwedo/TrailLink%2007%20Program_Climate.pdf.
- ³ *Central Trust Co. of New York v. Wabash, St. L. & P. RY. Co.*, 29 F. 546, 555 (Mo. Cir. 1886).
- ⁴ *Corridor Research*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/corridor_research.html (last visited Sept. 10, 2014).
- ⁵ *America's Rails-with-Trails*, RAILS-TO-TRAILS CONSERVANCY 5 (2013), http://www.railstotrails.org/resources/flip-books/2013_rail-with-trail-report/index.html#/5/zoomed; see also, *Jim's Trail Glossary: 2,283 Trail, Greenway, and Recreation Terms*, NAT'L TRAILS TRAINING P'SHIP (2010), <http://www.americantrails.org/resources/info/glossary.html>.
- ⁶ *Plan, Design, Build: Rail-with-Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/rails-with-trails.html> (last visited Sept. 10, 2014).
- ⁷ *Plan, Design, Build: Rail-with-Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/rails-with-trails.html> (last visited Sept. 10, 2014).
- ⁸ 49 C.F.R. § 266.1 (2014); see also, *Railbanking*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/railbanking_whatandwhy.html (last visited Sept. 10, 2014).
- ⁹ *Railbanking: How to Railbank — Abandonment Timeline and Procedure*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/how_to_railbank.html (last visited Sept. 10, 2014).
- ¹⁰ *Railbanking: How to Railbank — Abandonment Timeline and Procedure*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/how_to_railbank.html (last visited Sept. 10, 2014).
- ¹¹ *Glossary of Terms*, RAILS-TO-TRAILS CONSERVANCY, <http://www.railstotrails.org/ourWork/trailBasics/glossary.html#> (last visited Sept. 10, 2014).
- ¹² KAN. STAT. ANN. § 66-525 (2013).
- ¹³ *Who Actually Owns the Right-of-Way*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/resources/documents/resource_docs/RTC_FactSheet_RightofWay.pdf (last visited Sept. 10, 2014).
- ¹⁴ KAN. STAT. ANN. § 58-3213(a) (2013).
- ¹⁵ KAN. STAT. ANN. § 58-3211 (2013). (Recreational trails referenced in this definition include trails developed on railroad property used by bicycles and pedestrians for both transportation and recreation.)
- ¹⁶ KAN. STAT. ANN. § 58-3213(b)(3-4) (2013).

- ¹⁷ *Acquisition*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourwork/trailbuilding/toolbox/informationsummaries/acquisition_methods.html (last visited Sept. 11, 2014).
- ¹⁸ *Acquisition: Financing/ Funding*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourwork/trailbuilding/toolbox/informationsummaries/funding_financing.html (last visited Sept. 11, 2014).
- ¹⁹ *Flint Hills Nature Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.trailink.com/trail/flint-hills-nature-trail.aspx> (last visited Sept. 10, 2014); *see also*, *Flint Hills Nature Trail*, KAN. CYCLIST (2013), <http://www.kansascyclist.com/trails/FlintHillsNatureTrail.html>.
- ²⁰ *Flint Hills Nature Trail*, KANZA RAIL-TRAILS CONSERVANCY, <http://kantzatrails.org/flint-hills-nature-trail> (last visited Sept. 10, 2014).
- ²¹ *Gary L. Haller National Recreation Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.trailink.com/trail/gary-l-hallernational-recreation-trail-%28mill-creek-streamway-park%29.aspx> (last visited Sept. 10, 2014).
- ²² *Parks & Facilities*, JOHNSON CNTY PARK & RECREATION DIST., http://jcprd.com/parks_facilities/mill_creek.cfm (last visited Sept. 10, 2014).
- ²³ *Prairie Spirit Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.trailink.com/trail/prairie-spirit-trail.aspx> (last visited Sept. 10, 2014); *see also*, *Trail of the Month: Kansas' Prairie Spirit Trail*, RAILS-TO-TRAILS CONSERVANCY, <http://www.railstotrails.org/news/recurringFeatures/trailMonth/archives/1108.html> (last visited Sept. 11, 2014).
- ²⁴ *Prairie Spirit Trail State Park*, KAN. DEPT. OF WILDLIFE, PARKS, AND TOURISM, <http://kdwpt.state.ks.us/news/State-Parks/Locations/Prairie-Spirit-Trail> (last visited Sept. 5, 2014).
- ²⁵ *See*, Andrea C. Ferster, *Rails-to-Trails Conversions: A Review of Legal Issues*, 58 PLANNING & ENVTL. LAW 9 (2006), http://www.railstotrails.org/resources/documents/resource_docs/RailstoTrailsConversionCommentary.pdf.
- ²⁶ *See*, Andrea C. Ferster, *Rails-to-Trails Conversions: A Review of Legal Issues*, 58 PLANNING & ENVTL. LAW 9 (2006), http://www.railstotrails.org/resources/documents/resource_docs/RailstoTrailsConversionCommentary.pdf.
- ²⁷ *See* KAN. STAT. ANN. § 60-503 (1964) (defining “adverse possession” as “No action shall be maintained against any person for the recovery of real property who has been in open, exclusive and continuous possession of such real property, either under a claim knowingly adverse or under a belief of ownership, for a period of fifteen (15) years. This section shall not apply to any action commenced within one (1) year after the effective date of this act.”).
- ²⁸ *Marvin M. Brandt Revocable Trust v. United States*, 134 S.Ct. 1257 (Mar. 10, 2014); *see also*, *Railbanking: What and Why*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/information-Summaries/railbanking_whatandwhy.html (last visited Sept. 11, 2014).
- ²⁹ *Marvin M. Brandt Revocable Trust v. United States*, 134 S.Ct. 1257 (Mar. 10, 2014).
- ³⁰ *What the Marvin M. Brandt Case Means for America's Rail-Trails*, RAILS-TO-TRAILS CONSERVANCY (2014), <http://community.railstotrails.org/blogs/trailblog/archive/2014/03/17/what-the-marvin-m-brandt-case-means-for-america-s-rail-trails.aspx>.
- ³¹ KAN. STAT. ANN. § 58-3212 (2013); *see Generally*, *Rails-with-Trails: Lessons Learned*, U.S. DEP'T OF TRANSP. (last updated Feb. 2014), http://www.fhwa.dot.gov/environment/recreational_trails/publications/rwt/page00.cfm. (This resource provides an overview of issues impacting rails-with-trails specifically. Railbanked trails and rail-trails may present similar types of considerations.)
- ³² KAN. STAT. ANN. § 58-3212(b) (2013).
- ³³ *Activity #3: Conversion of Abandoned Railway Corridors to Trails*, NAT'L TRANSP. ALTERNATIVES CLEARINGHOUSE, <http://trade.railstotrails.org/activity03> (last visited Sept. 8, 2014).
- ³⁴ *For more information, contact:* The Kan. Dept. of Transp. — Transp. Enhancement Program, Eisenhower State Office Building, 700 SW Harrison Street, Topeka, KS 66603-3754, Tel: 785-296-4209, <http://www.ksdot.org>.
- ³⁵ *Recreational Trails Program*, U.S. DEP'T OF TRANSP. (last updated March, 2014), http://www.fhwa.dot.gov/environment/recreational_trails.
- ³⁶ *For more information, contact:* Kansas State Parks, 512 SE 25th Ave, Pratt KS 67124-8174, Tel: 316-672-5911, <http://kdwpt.state.ks.us/news/State-Parks>.
- ³⁷ *Recreational Trails Program*, U.S. DEP'T OF TRANSP. (last updated March, 2014), http://www.fhwa.dot.gov/environment/recreational_trails.
- ³⁸ *Acquisition: Financing/ Funding*, RAILS-TO-TRAILS CONSERVANCY, http://www.railstotrails.org/ourWork/trailBuilding/toolbox/informationSummaries/funding_financing.html#nontrans (last visited Sept. 10, 2014).