

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**JACKSON COUNTY, MISSOURI
-ACQUISITION AND OPERATION EXEMPTION-
UNION PACIFIC RAILROAD COMPANY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 48 C.F.R. § 1150.31, *Et. Seq.***

**LANDOWNERS' MOTION FOR ADVERSE ABANDONMENT
AND INJUNCTIVE AND DECLARATORY RELIEF**

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Dated: August 12, 2019

I. INTRODUCTION

Jackson County filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31 to acquire and operate 17.7-miles of rail line from Union Pacific Railroad Company (“UPRR”) in Jackson County, Missouri (the “Line”). The Board granted Jackson County’s acquisition and operation exemption on February 4, 2016. *See* Jackson Cty, MO—Acquis. & Operation Exemption—Union Pac. R.R., FD 35982 (STB served Feb. 4, 2016). The Landowners jointly filed a petition asking the Board to revoke the exemption on October 22, 2018. After extensive briefing, the Board issued its Decision on July 31, 2019 and revoked the 2016 exemption for Jackson County to acquire and operate the Line.

Following the Board’s revocation of Jackson County’s exemption to acquire and operate the Line, Jackson County issued a press release on August 5, 2019 and, after initially stating that construction of the hiking and biking trail would cease immediately following the Board’s Decision, stated that “upon further evaluation of the STB’s ruling, the County, counsel and experts authorized contractors to resume work on the trail.”¹ As a result of Jackson County’s blatant and outrageous disregard for the Board’s Decision revoking their exemption to acquire and operate the Line, and because it is clear from the Board’s findings and Decision that the Board did not authorize Jackson County to construct a hiking and biking trail, Landowners file this motion for adverse abandonment (because there obviously is no public convenience and necessity for further rail operations in conjunction with the Line under these facts)² and for injunctive and declaratory relief to stop further construction on the trail.³

¹ Jackson County’s Press Release is attached hereto as Exhibit A.

² *See* discussion in Section III *infra*.

³ *See* discussion in Section IV *infra*.

II. THE PROCEDURAL HISTORY AND THE APPLICABLE FACTS ARE REALLY NOT IN DISPUTE

Both the procedural history and the applicable facts are not really in dispute because the Board summarized all of the pertinent facts in their decision revoking Jackson County's exemption to acquire and operate the Line on July 31, 2019. After Jackson County received authority through the Board's class exemption process set forth at 49 C.F.R. § 1150.31, the Landowners filed a Petition asking the Board to revoke the exemption because Jackson County had removed the rails and ties from the right-of-way contrary to prior assertions that they made to the Board and had placed the hiking and biking trail directly on the rail bed, and not adjacent to the track, contrary to the representations made by Jackson County. The Board revoked Jackson County's exemption on July 31, 2019 because Jackson County's actions were "no longer consistent with the acquisition exemption it invoked to acquire the Line"⁴ and because Jackson County's "recent activity shows that it has misused the Board's processes" and "it is necessary to revoke the acquisition exemption to ensure the integrity of the Board's processes."⁵

In revoking Jackson County's exemption, the Board summarized all of the pertinent underlying facts and addressed both the proper and required process to construct a hiking and biking trail on a right-of-way:

- (1) "As discussed below, the Board will revoke the County's acquisition and operation exemption. The Board found in the **February 2016 Decision** that the County's original plan to potentially build a trail in the right-of-way of the Line and the County's statement that it had no plans to remove track for the trail were consistent with its stated intention also to acquire and operate a line of railroad meant for freight rail service";⁶

⁴ See Decision, at 6.

⁵ *Id.* at 7.

⁶ *Id.* at 1.

- (2) “By removing the track and placing the trail directly on the railbed, where the track previously was, the County has taken a step that is contrary to the acquisition of a rail line”;⁷
- (3) “If the County intends to remove the track and place a trail on the railbed, then the County should do so by using the Board’s interim trail use/railbanking procedures under the Trails Act”;⁸
- (4) “The **February 2019 Decision** explained that, while the County had stated in its 2016 reply that it had no plans to remove the track from the right-of-way, certain affidavits and photographs submitted by the Landowners with their Notice of Additional Authority indicated otherwise”;⁹
- (5) “Moreover, several pictures included in Exhibit 18 of the Petition to Revoke and in the Affidavits filed by the Landowners’ on January 28, 2019, suggested that the County had placed its trail directly on the railbed where track had been removed, and not adjacent to the track, contrary to the representations made by the County in its 2016 reply”;¹⁰
- (6) “Although the County states that it has found it economical to place the trail directly on the 8.75-mile stretch of railbed and that it plans to do so on several sections on the northern segment, the County asserts that it would remove the trail if there were a reasonable request for freight rail service”;¹¹
- (7) “Among other things, they claim [the Landowners] that the County has now admitted that it is constructing the trail on the actual railbed and as such has contradicted both the County’s prior representation that it would not remove track and its implication that the trail would be located adjacent to the track, not on top of the railbed itself”;¹²
- (8) “Here, new evidence indicates that the County has taken actions that are inconsistent with representations it made at the time of its acquisition regarding the purpose for the acquisition. As noted previously, the County represented in 2016 that it would not remove rail for the trail and that the trail would be adjacent to the rail line”;¹³
- (9) “However, in direct contradiction to those representations, the County has removed 8.75 miles of track on the southern segment of the Line and placed the

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *Id.* at 6.

trail directly on the railbed of that segment of the Line. The County also plans to remove track in several locations on the northern segment of the Line,”¹⁴

- (10) “The County’s actions are also no longer consistent with the acquisition exemption it invoked to acquire the Line”;¹⁵
- (11) “It is another, however, to remove track from a rail line available for freight service, develop and construct a trail in place of the track, and then have to remove that trail before reconstructing the track and track bed to comply with the common carrier obligation to provide rail service upon reasonable request. The latter is the scenario that should occur under the Trails Act, as explained below”;¹⁶
- (12) “The Board has procedures available for an entity seeking to convert a line of rail into a trail under the Trails Act—specifically, 49 C.F.R. § 1152.29. Under these regulations, the appropriate path by which an entity could seek to place a trail on the railbed would be for the line to be authorized for abandonment by the Board, and for the entity then to file with the Board a request for a Notice of Interim Trail Use or abandonment and negotiate with the abandoning carrier an interim trail use/railbanking agreement that complies with the Board’s Trails Act regulations”;¹⁷
- (13) “Under these procedures, removing track and replacing it with a trail would be permissible, and indeed would be consistent with the very purpose of interim trail use/railbanking, which is to preserve for possible reactivation of rail service a rail corridor that the Board has authorized for abandonment (because the present or future public convenience and necessity require or permit the abandonment, *see* 49 U.S.C. § 10903(d), or an exemption is warranted) while also allowing it to be used in the interim as a recreational trail”;¹⁸
- (14) “Here, the County has removed track and placed a trail on the railbed of a rail line that has not been authorized for abandonment”;¹⁹
- (15) “The County’s actions—removing track and then placing the trail directly on the railbed—are inconsistent with the acquisition exemption’s purpose. The County has failed to follow the proper procedures for implementing trail use, and it would be inappropriate for the Board to allow the County to bypass those procedures”;²⁰
- (16) “While the County claims that it has taken steps to preserve the integrity of the corridor for possible future freight rail service, virtually all of these actions

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.*

benefit the use of the property as a trail. Because the County's recent activities show that it has misused the Board's processes, the Board will revoke the acquisition exemption;"²¹ and

- (17) "Based on the record as currently constituted, it is necessary to revoke the acquisition exemption to ensure the integrity of the Board's processes and therefore help ensure the continuity of a sound transportation system."²²

The Board's Decision revoked the 2016 exemption for Jackson County to acquire and operate a rail line. In doing so, the Board specifically concluded that Jackson County had bypassed the Board's proper procedures to abandon the Line and/or to properly construct a hiking and biking trail. In addition, the Board specifically revoked Jackson County's exemption because Jackson County clearly misused the Board's processes.

Jackson County, by their own admissions and as set forth in the Board's Decision, has already removed the rails and ties on the southern portion of the Line and has improperly constructed a hiking and biking trail on top of the rail bed itself. In doing so, Jackson County has blatantly ignored the Board's processes and procedures pertaining to the authorization of abandonment **and** the Board's processes and procedures to properly and legally railbank the Line so as to give them authority to construct the hiking and biking trail. Now, while admittedly not following the Board's procedures with respect to abandonment or the Trails Act, Jackson County is blatantly and improperly continuing construction on their hiking and biking trail as admitted in their current press release (Exhibit A). As a result, the Landowners are not only entitled to a finding of adverse abandonment but also to an injunction from the Board to stop further construction on the hiking and biking trail.

²¹ *Id.*

²² *Id.*

III. UNDER THESE FACTS, THE BOARD SHOULD CONCLUDE THAT THE “PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR PERMIT THE ABANDONMENT”

The Board has “exclusive” and “plenary” authority to determine the abandonment issue.²³ Under these facts, the Board should conclude that the “public convenience and necessity require or permit the abandonment” pursuant to 49 U.S.C. § 10903(a). Although a railroad typically seeks the Board’s permission to abandon, in an adverse abandonment case, instead of the railroad, a non-carrier seeks the issuance of an abandonment order from the Board. If the Board finds that the public convenience and necessity require or permit abandonment, the Board then issues its authorization or permission to abandon and that Order can then be used in any Court to establish that the Line is not required for rail service in interstate commerce. *See Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 144 (1946); *Modern Handcraft, Inc.—Abandonment in Jackson County, Missouri*, 363 I.C.C. 969, 1981 WL 22670 (1981); *Chelsea Property Owners—Abandonment*, 8 I.C.C.2d 773, 1992 WL 233599 (1992); *Consolidated Rail Corp. v. Interstate Commerce Comm’n.*, 29 F.3d 706, 708 (D.C. Cir. 1994); *CSX Corp. & CXT Transp., Inc.—Adverse Abandonment Application*, 2002 WL 127074 (2002); *New York Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177, 1180 (D.C. Cir. 2004).

The leading adverse abandonment case is *Modern Handcraft*.²⁴ *Modern Handcraft*, as a non-carrier, filed an application with the ICC for a certificate of public convenience and necessity permitting abandonment on April 17, 1980. After recognizing the rule of law that a non-carrier can pursue an adverse abandonment proceeding, the ICC considered the facts that there had been no rail service or recognizable maintenance on the right-of-way for 12 years and that the only

²³ See *Chicago & Northwestern Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 322 (1981); *Preseault v. Interstate Commerce Comm’n.*, 494 U.S. 1, 21 (1990).

²⁴ For the Board’s convenience, the *Modern Handcraft* opinion is attached hereto as Exhibit B.

revenues generated by the line were produced by billboard rentals and parking lot licenses and concluded that a *de facto* abandonment of the line had taken place:

The record leaves no doubt that a *de facto* abandonment of the Freight Operation line has taken place. No rail service or recognizable rail track maintenance has taken place since September of 1968. Nor has there been any serious effort on the part of Freight Operation to solicit traffic or reinstate rail service. Indeed, the current use of the rail line for parking lot and billboard purposes is totally unrelated to the carrier's obligation to perform rail service. **The only objection to abandonment comes from the carrier itself, whose principal interest appears to be the price and terms for the sale of the right-of-way.**

See Modern Handcraft, 1981 WL 22670 at *2 (Exhibit B) (emphasis added).

The ICC went even further in *Modern Handcraft* and discussed the standard for obtaining permission to abandon a rail line and the relationship between federal jurisdiction and state jurisdiction. The ICC specifically concluded that the railroad was misusing the federal jurisdiction over the property to improperly interfere with other legitimate uses of the right-of-way:

The function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Where as here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a State condemnation proceeding.

We find that the rail service which Freight Operation is authorized to perform is not required and that elimination of this line will not burden interstate commerce and will benefit the public. Although it is true that the grant of abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligations, a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations.

See Modern Handcraft, 1981 WL 22670 at *3 (Exhibit B) (emphasis added).

There are two obvious and fundamental principles of law set forth in *Modern Handcraft*. First, there is no need for the STB to continue to exercise its exclusive and plenary jurisdiction

over abandonments when there is no overriding federal interest in continued rail operations. Second, the railroad should not be allowed to use continuing federal jurisdiction over a rail line as a shield against abandonment when there is no overriding federal interest in continuing rail operations. These basic principles have been reaffirmed by the STB and the Courts on numerous occasions. See *Chelsea Property Owners*, 1992 WL 233599 at *1-*4 (“we grant the appeals and find that the public convenience and necessity permit abandonment of the line” and “our jurisdiction may not be used to shield a carrier from the legitimate process of state law”) (citing *Modern Handcraft*); *Consolidated Rail*, 29 F.3d at 712 (“more to the point, it is clear that the aim of section 10905 is not simply the maintenance of rail *lines* but the continuation of rail *service*”) (emphasis in original); *CSX Corp.*, 2002 WL 127074 at *4 (“where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law” and “here, we conclude that the public is best served by granting the adverse abandonment application”).

The standard for either an abandonment proceeding initiated by the railroad or an adverse abandonment proceeding advanced by a non-carrier is the same. Under 49 U.S.C. § 10903(a), the Board will grant its permission to abandon if “the present or future public convenience and necessity permit of such abandonment.” This standard was specifically referenced by the Supreme Court in *Kalo Brick*—“no carrier by railroad subject to this Chapter shall abandon all or any portion of the line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a **certificate that the present or future public convenience and necessity permit of such abandonment.**” See *Kalo Brick*, 450 U.S. at 320 (emphasis added). Under § 10903(a) and *Kalo Brick*, it must be demonstrated that there is no present or future need for railroad transportation. In other words, after the railroad files an application to abandon or discontinue in

an abandonment proceeding or a non-carrier files for adverse abandonment, the Board can “permit” the abandonment or discontinuance only if they find that there is no continuing need for railroad services.

In the context of the Trails Act, since it must be demonstrated that there is no need for continuing rail traffic, § 10903(a) is used when there is a shipper or shippers presently utilizing the line and the railroad still desires to abandon the line because the railroad determines that it is no longer economically viable. Under § 10502(a), on the other hand, the railroad can use the exemption procedure when there has been no railroad traffic for two years. Under § 10502(a), the rail carrier is exempt from the requirements of § 10903(a), and in fact the STB can even initiate the proceeding, if the STB determines that “it is not necessary to carry out the transportation policy” or either (A) the transaction or services are of a limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power. In other words, when there has been no train traffic on the line for some considerable period of time, and the Board has determined that it is at least two years, the exemption procedure can be utilized to seek an abandonment or discontinuance of a rail line without a separate determination that the rail line is not needed for future public necessity and convenience.

The Trails Act, had it been followed, operates in conjunction with these basic regulations. Under § 10903, basically in order to protect shippers, railroads are required to obtain permission to abandon and a CITU will ultimately be issued granting permission to abandon. Under § 10502(a), the exemption procedure, railroads can avoid the certification process if no train traffic has run for at least 2 years and, if that is the case, the Board will also permit the railroad to abandon the line because they deem the protection of shippers to be established and/or unnecessary. In either case, the end result is that the Board permits the railroad to abandon the line such that the

regular abandonment process or the exemption process is a permission that is ultimately granted by the Board.

The statutes and regulations contained within § 1152.29 address the alternative procedures to utilize the Trails Act to railbank a railroad line. Under § 1152.29, there is absolutely no difference in the procedure to obtain a CITU or to obtain a NITU. The end result is the same because the end result for both is that the STB permits the abandonment. Obviously, under the Trails Act, the permission to abandon is granted under either procedure because, under either procedure, the Board has determined that there is no present or future public convenience that requires the continuation of the railroad's common carrier obligations.

In this case, there should be no dispute that there is no need for continuing rail traffic. The record has already been established that there has been no train traffic on this corridor for over 35 years.²⁵ There are no current shippers to protect, shippers have not needed any protection for over 35 years, and there is no need to protect shippers in the future either. UPRR cannot object either because they obviously have no shippers to protect. In fact, UPRR transferred the right-of-way to a non-carrier, Jackson County, ostensibly to provide rail service in the future if it was needed but, since that occurred over 35 years ago, there obviously have been no shippers for 35 years, there is no current need by shippers, and there is no evidence of any future need for any shippers either. Besides, how can UPRR object when they already received \$52,000,000 in exchange for a quit claim deed. Jackson County can't object either because they are a non-carrier to begin with, they admit that there are no current shippers and no prospects for shippers in the future, and they acquired the corridor simply and solely to build a hiking and biking trail. Ultimately, the fact that

²⁵ Jackson County has repeatedly acknowledged that there has been no train traffic for at least 35 years. See sample documents attached hereto as Exhibit C.

Jackson County has now removed the rails and ties is conclusive evidence that there is no continuing need for rail transportation.

This record leaves no doubt, just like the result in *Modern Handcraft*, that a *de facto* abandonment has already taken place. As the Board pointed out in *Modern Handcraft*, the Board's exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection concerning continuing rail service and the Board should not stand by and allow that jurisdiction to be used to shield UPRR or Jackson County when there is no overriding federal interest in interstate commerce. Under these egregious facts, the Board should conclude that the present and future public convenience and necessity permit the adverse abandonment of this corridor.

IV. THE BOARD HAS THE AUTHORITY TO ISSUE AN INJUNCTION STOPPING ANY FURTHER CONSTRUCTION ON THE HIKING AND BIKING TRAIL PURSUANT TO 49 U.S.C. § 1321(b)(4)

Under 49 U.S.C. § 1321(b)(4), the Board has authority to issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm. A party seeking a preliminary injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be preliminarily enjoined; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest. *See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Union Pac. R.R. v. BNSF Ry. Co.*, FD 36197, slip op. at 3 (STB served June 29, 2018); *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42129, slip op. at 4 (STB served May 4, 2012). Since a preliminary injunction is an extraordinary remedy, the party seeking it “carries the burden of persuasion on all of the elements required for [such] extraordinary relief.” *See BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093,

slip op. at 4 (STB served June 6, 2005) (quoting *San Joaquin Valley R.R.—Aban. Exemption—In Tulare & Kern Ctys., Cal.*, AB 398 (Sub-No. 5X), slip op. at 4 (STB served Apr. 3, 1998)); *Middletown & New Jersey R.R.—Lease and Operation Exemption—Norfolk S. Ry.*, FD 35412 at 2 (STB served Oct. 6, 2010); 5 U.S.C. § 556(d).

Since the Landowners herein are seeking a preliminary injunction, they must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. *See Ferring Pharmaceuticals, Inc. v. Watson Pharmaceuticals, Inc.*, 765 F.3d 205, 210 (3d Cir. 2014). In this case, Jackson County has already admitted that they removed the rails and ties from the southern segment of the Line and constructed a hiking and biking trail without following the Board’s regulations and procedures with respect to either abandonment authority or the Trails Act. Interestingly enough, on the northern segment of the Line, Jackson County initially stated that they were going to place the hiking and biking trail on the railbed itself, just like they did on the southern segment,²⁶ but now state in their press release that they are going to construct the hiking and biking trail on the right-of-way without removing any more of the rails and ties on the northern segment.²⁷

Now, based on the Board’s decision, Jackson County had no right to remove the rails and ties on the southern segment. Jackson County also had no right to construct a hiking and biking trail on top of the rail bed in the southern segment either. Jackson County also has no right to construct a hiking and biking trail on the northern segment whether they remove any more of the

²⁶ See Decision, at 4 (“although the County states that it has found it economical to place the trail directly on the 8.7-mile stretch of railbed and that it plans to do so on several sections on the northern segment, the County asserts that it would remove the trail if there were a reasonable request for freight rail service”).

²⁷ See Exhibit A (“moving forward, no rail, ties, or other track materials will be removed from the railbed”).

rails and ties or not.²⁸ As a matter of law, Jackson County has had no right to build any portion of the hiking and biking trail on either the southern segment of the Line or the northern segment of the Line without properly following the Board's processes and procedures but, in the future, any additional construction of the hiking and biking trail will obviously result in significant irreparable harm.

As the Board has already pointed out, Jackson County has misused the Board's processes and procedures to construct a hiking and biking trail without pursuing abandonment and then utilizing the Trails Act to properly construct a hiking and biking trail. Now, as a result of the Board's decision, Jackson County actually has no right to even set foot on the right-of-way. Since Jackson County's exemption has been revoked, UPRR now may have the legal right to seek abandonment, if they were so inclined to do so, and their failure to do so requires the Landowners' pursuit of adverse abandonment. In the meantime, however, since Jackson County has no right to be on the right-of-way at all, and they did not secure any right to properly build a hiking and biking trail under the Trails Act, a preliminary injunction must be issued to stop additional construction of the hiking and biking trail.

V. JACKSON COUNTY'S DEFIANCE OF BOTH FEDERAL AND STATE LAW MUST STOP

There are two issues raised by the Landowners in this pleading, adverse abandonment and an injunction for further construction on the hiking and biking trail, because the issues are related. Obviously, Jackson County has not sought permission to abandon and, since Jackson County has not pursued railbanking under the Trails Act either, Jackson County has no right under federal law and regulations to construct a hiking and biking trail on the right-of-way. Since basic property law does not allow the placement of a new hiking and biking trail easement on top of or adjacent to a

²⁸ See discussion in Section V *infra*.

railroad purposes easement (because the new easement is an additional burden on the Landowners' fee ownership of the right-of-way), Jackson County has no right under state law to construct a hiking and biking trail on the right-of-way either. As a result, Jackson County's existing construction and continuing construction of a hiking and biking trail violates both federal law and state law and must stop.

There is no question that the Board has "exclusive and plenary authority over the abandonment of rail lines."²⁹ In this case, up to now, neither UPRR or Jackson County has sought or received permission from the Board to abandon the Line, thus necessitating the Landowners' motion for adverse abandonment. As the Board clearly stated, "[H]ere, the County has removed track and placed a trail on the rail bed of a rail line that has not been authorized for abandonment."³⁰

The fundamental problem is that Jackson County is in the process of constructing a hiking and biking trail on the Line without seeking abandonment and without following the regulations and procedures that allow for railbanking and the construction of a hiking and biking trail under the Trails Act, which would require the Board's authorization to abandon in the first place. The Board's Decision revoking Jackson County's exemption is replete with basic statements of law that Jackson County has no right to construct a hiking and biking trail under the Trails Act because they chose not to follow the Board's trail use/railbanking procedures under the Trails Act:

- 1) **"If the County intends to remove the track and place a trail on the rail bed, then the County should do so by using the Board's interim trail use/railbanking procedures under the Trails Act";**³¹
- 2) "It is another, however, to remove track from a rail line available for freight service, develop and construct a trail in place of the track, and then have to remove that trail before reconstructing the track and track bed to comply with the common carrier

²⁹ See Decision, at 7 (citing 49 U.S.C. §§ 10501(b)(2), 10502, 10903; *Kalo Brick*, 450 U.S. at 320).

³⁰ *Id.* at 7.

³¹ See Board's Decision, at 2 (citing 49 C.F.R. § 1152.29) (emphasis added).

obligation to provide rail service upon reasonable request. **The latter is the scenario that should occur under the Trails Act, as explained below**”;³²

- 3) **“The Board has procedures available for an entity seeking to convert a line of rail into a trail under the Trails Act—specifically, 49 C.F.R. § 1152.29. Under these regulations, the appropriate path by which an entity could seek to place a trail on the rail bed would be for the line to be authorized for abandonment by the Board, and for the entity then to file with the Board a request for a Notice of Interim Trail Use or abandonment and negotiate with the abandoning carrier an interim trail use/railbanking agreement that complies with the Board’s Trails Act regulations”**;³³
- 4) **“Under these procedures, removing track and replacing it with a trail would be permissible, and indeed would be consistent with the very purpose of interim trail use/railbanking, which is to preserve for possible reactivation of rail service a rail corridor that the Board has authorized for abandonment... while also allowing it to be used in the interim as a recreational trail”**;³⁴ and
- 5) **“The County’s actions—removing track and then placing the trail directly on the rail bed—are inconsistent with the acquisition exemption’s purpose. The County has failed to follow the proper procedures for implementing trail use, and it would be inappropriate for the Board to allow the County to bypass those procedures.”**³⁵

It is abundantly clear, just as the Board has already stated, that Jackson County has constructed and is in the process of further construction of a hiking and biking trail without seeking authority to abandon the Line and without properly following the Board’s procedures with respect to railbanking under the Trails Act. The Landowners’ motion for adverse abandonment and for an injunction to stop further construction on the hiking and biking trail is necessary to stop Jackson County’s unlawful construction of the hiking and biking trail without following the law and the Board’s procedures and regulations. But, the problem is that the construction of the hiking and biking trail on the Line also violates Missouri law.³⁶

³² *Id.* at 6 (emphasis added).

³³ *Id.* (emphasis added).

³⁴ *Id.* (citation omitted) (emphasis added).

³⁵ *Id.* at 7 (emphasis added).

³⁶ Under basic property law, and under well-settled law in Missouri, Jackson County cannot construct a hiking and biking trail on the Landowners’ fee interest without paying for it because a new hiking and biking trail easement is

There is indeed state court litigation pending involving these same Landowners. The case was originally filed, then removed to federal court, and then dismissed because the issue of abandonment was purportedly preempted when, in fact, the Landowners have never contested the notion of preemption and the issue of abandonment was not even relevant to the Landowners' state law claims. After the Landowners' suit was dismissed in federal court, the Landowners refiled their case in state court to pursue their state law claims without any reference to abandonment. Upon refileing, Jackson County filed motions to dismiss and a motion for summary judgment and, when the motions were denied, Jackson County sought a Writ of Prohibition from both the Missouri Court of Appeals and the Supreme Court of Missouri, and both were denied. The parties are currently in the midst of discovery and depositions and a briefing schedule is in place for summary judgment motions later this year.

Three additional Landowners filed a separate suit in state court which is also pending.³⁷ Jackson County has attempted to remove the case to federal court, the Plaintiffs filed a motion to remand to state court, and the federal court has yet to rule. Jackson County is attempting to argue that the Plaintiffs in the additional lawsuit also have no claim because the issue of abandonment is preempted when the issue of abandonment is not relevant to the Plaintiffs' claims.

From the Board's perspective, the issue is and always has been whether the hiking and biking trail is being constructed **on the rail bed itself** or whether the hiking and biking trail is constructed **adjacent** to the rails and ties such that the two can coexist together. From the Board's perspective, during the process when Jackson County acquired UPRR's common carrier

beyond the scope of the original railroad purposes easement. See *Brown v. Weare*, 152 S.W.2d 649, 652-653 (Mo. 1941); *Boyles v. Missouri Friends of the Wabash Trace Nature Trail, Inc.*, 981 S.W.2d 644, 649-650 (Mo. App. 1998); *Moore v. Missouri Friends of the Trace Nature Trail, Inc.*, 991 S.W.2d 681 (Mo. App. 1999); *Glosemeyer v. United States*, 45 Fed. Cl. 771, 779 (Fed. Cl. 2000).

³⁷ The case is *Morris v. Jackson County*, Case No. 4:19-cv-00428-FJG.

obligation, as long as the hiking and biking trail did not interfere with Jackson County's common carrier obligations that they acquired from UPRR, the Board would have no reason to take a position with respect to whether Jackson County could construct a hiking and biking trail (whether they pursued the Trails Act or not). As a result, up to now, the Board was focused on Jackson County's statements that they were going to keep the rails and ties in place, because they were purportedly maintaining the common carrier obligation that they acquired, and simply did not care if Jackson County intended to build the trail **adjacent** to the rail bed.³⁸ The evidence concerning this distinction of whether the hiking and biking trail is constructed on the rail bed itself or adjacent to the rail bed is prevalent within the Board's Decision revoking Jackson County's exemption:

- 1) "The County also stated it had 'no plans' to remove rail track for the trail and that '[n]umerous recreation trails run **adjacent** to active rail lines in the United States'";³⁹
- 2) "**Although the County states that it has found it economical to place the trail directly on the 8.75-mile stretch of rail bed and that it plans to do so on several sections on the northern segment**, the County asserts that it would remove the trail if there were a reasonable request for freight rail service";⁴⁰
- 3) "The County explains that, based on engineering studies, it intends to leave the majority of the rail and ties in place on this northern segment of the corridor and will develop its recreational trail **adjacent** to the rail bed in this segment (except for limited locations where the width of the corridor will not accommodate such **adjacent** development)";⁴¹ and
- 4) "As noted previously, the County represented in 2016 that it would not remove rail for the trail and that the trail would be **adjacent** to the rail line."⁴²

³⁸ Even under that scenario, where the Board assumed Jackson County was going to leave the rails and ties in place and construct a hiking and biking trail adjacent to the rail bed, the Board would have no reason to opine or take a position as to whether construction of a hiking and biking trail adjacent to the rail bed violated basic principles of property law or Missouri law, which it does.

³⁹ See Decision, at 2 (emphasis in original).

⁴⁰ *Id.* at 4 (emphasis added).

⁴¹ *Id.*, fn. 6 (emphasis added).

⁴² *Id.* at 6 (emphasis added).

The end result is that Jackson County has no right under federal law and the Board's regulations to construct a hiking and biking trail where they have removed the rails and ties and placed the hiking and biking trail on top of the rail bed itself, as they have admitted they have done, because their exemption has been revoked and they chose not to pursue either abandonment or the Trails Act. In addition, however, Jackson County has no right to build a hiking and biking trail adjacent to or in addition to an existing railroad purposes easement under Missouri law either without paying for it. The only way that Jackson County could obtain the legal right to construct a trail on the right-of-way, whether on the rail bed itself or adjacent to it, would be for the railroad or Jackson County to actually seek and receive authorization from the Board pursuant to 16 U.S.C. § 1247(d) to construct a trail. As a result of Jackson County's failure to receive authorization to construct the trail pursuant to the Trails Act, Jackson County has no legal right under federal law and no legal right under Missouri law and, as a result, Jackson County has clearly taken a property right from these Landowners and has been trespassing on their land under Missouri law.

Jackson County has always argued that the Board "authorized" the construction of the hiking and biking trail when, in fact, the Board merely acknowledged that Jackson County expressed their intent to build a hiking and biking trail **adjacent** to the existing railbed and not in place of or on top of the existing railbed. Now, Jackson County's argument has vanished because the Board's Decision makes it clear that Jackson County's actions in constructing a trail on this Line were not authorized by the Board. Jackson County has always attempted to utilize their exemption as both a sword and a shield. Now that Jackson County's exemption has been revoked, they can no longer utilize their exemption as either a sword or a shield. The Board must protect its processes and procedures and must issue an Order of adverse abandonment under these facts

and must issue an injunction against further construction of the hiking and biking trail because it was not authorized by the Board in any way, shape, or form.

The Landowners are more than willing to fight with Jackson County, either before the Board or the Court of Federal Claims when appropriate, and also in state court whenever that is appropriate too. The Board has clearly and repeatedly recognized that the Landowners have potential state law claims: “Although the material to which the County objects generally relates to state and local law issues, it helps illustrate the parties’ dispute and helps provide context to the filings before the Board,”⁴³ and “the Board makes no findings on the claims that the County or others defrauded taxpayers or violated other state or local law as part of the County’s acquisition of the right-of-way. Those matters do not inform this decision and are better suited for a state forum.”⁴⁴ In this case, the Landowners merely need the Board to rule on adverse abandonment and to issue an injunction to stop construction on the hiking and biking trail wherever Jackson County has or is constructing the hiking and biking trail, which are the two subjects that Jackson County must address before they could ever receive any lawful authorization to actually construct a hiking and biking trail.

VI. CONCLUSION

Jackson County is blatantly and outrageously violating this Board’s Decision revoking their exemption by continuing construction on the hiking and biking trail without authorization from the Board and without following the Trails Act. Under these facts, the Board should hold that there is no continuing public convenience and necessity for rail service, thus granting the Landowners’ motion for adverse abandonment, and should also issue an injunction to stop any further construction on the hiking and biking trail at any location where Jackson County has

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 7.

removed the rails and ties and the hiking and biking trail is being constructed in place of or on top of the former rail bed.

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CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail this 12th day of August, 2019.

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News Releases 2019

Posted on: August 5, 2019

Construction resumes on Rock Island Trail**FOR IMMEDIATE RELEASE****August 5, 2019****Contact: Marshanna Smith****(816) 881-1391****msmith@jacksongov.org**

KANSAS CITY, Mo. – Construction crews are back at work today on the northern half of Jackson County's Rock Island Shared Use Path.

Work stopped on the trail last week following the Surface Transportation Board's (STB) decision to revoke the County's 2016 exemption to acquire and operate a rail line. As a result, the County, in consultation with counsel and experts, asked contractors to pause construction on the project to ensure that any further work was in compliance with the STB's ruling.

Upon further evaluation of the STB's ruling, the County, counsel and experts authorized contractors to resume work on the trail. Moving forward, no rail, ties or other track materials will be removed from the rail bed. The 7.1-mile northern section of trail will extend the corridor from Brickyard Road in Kansas City to the Truman Sports Complex.

The southern section of trail is 6.4 miles and stretches from Jefferson Street, west of MO-291 in Lee's Summit, to Brickyard Road, south of Blue Parkway in Kansas City. Improvements included a new surface for walking and biking, as well as the rehabilitation and preservation of existing bridges at 3rd Street, Chipman Road, the Little Blue River and historic Vale Tunnel. It officially opened to the public in June 2019 and remains open for the community to enjoy.

The County will provide updates regarding the Rock Island Trail as they become available.

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363 I.C.C. 969, 1981 WL 22670

SURFACE TRANSPORTATION BOARD (S.T.B.)

MODERN HANDCRAFT, INC.—ABANDONMENT IN JACKSON COUNTY, MO

Decided August 19, 1981

****1 *969** Acting on overlapping applications for abandonment filed by noncarriers and objected to by the carrier involved, the Commission found that the public convenience and necessity permit abandonment.

FINANCE DOCKET NO. 29330¹

Philip M. Agee and Phillip S. Brown for Modern Handcraft, Inc.

James G. Lindquist and Norman O. Sanders for Kansas City Area Transportation Authority.

L. R. Magee for Kansas City Public Service Freight Operation.

Walter J. O'Toole, Jr., for city of Kansas City.

DECISION

***974** By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, and Gilliam.

BY THE COMMISSION:

INTRODUCTION

This decision deals with two related applications filed by noncarriers seeking a Commission determination that the public convenience and necessity permits or requires abandonment of a rail line despite the opposition of the rail carrier owning the line. Because the issues are related and the track overlaps, we have consolidated the two applications for disposition in this decision. For the reasons discussed below, the abandonment applications will be granted.

BACKGROUND

In September of 1968, Kansas City Public Service Freight Operation (Freight Operation) embargoed all rail freight movements over its approximately 8-mile rail line located in Kansas City, MO. Since that time no rail operations have been conducted on this line. The only revenues generated by this line are produced by billboard rentals and parking lot licenses.

***970** On April 17, 1980, Modern Handcraft, Inc. (Handcraft) filed an application, in [Finance Docket No. 29330](#), for a certificate of public convenience and necessity permitting abandonment of 422.08 feet of Freight Operation's track which is adjacent to its property. Review Board Number 5 held that although noncarriers could file abandonment applications, they had to prove that the owning carrier had the intent to abandon the line. Because Handcraft did not meet this burden, its application was dismissed. Handcraft has appealed that decision and Freight Operation has replied.²

Approximately 6 months after Handcraft filed its abandonment application, Kansas City Area Transportation Authority (Authority) filed an application, in [F. D. No. 29485](#), for a certificate permitting abandonment of Freight Operation's entire line. Authority is a bi-state agency responsible for the development and operation of a mass transit system in the Kansas City metropolitan area.

PROCEDURAL MATTERS



Certain procedural matters have been raised by Freight Operation. First, it moves to strike the verified statements and argument of Authority for failure to conform with the requirements of 49 CFR 1100.13 limiting the size of the pleadings to 8 1/2 by 11 inch submissions. Authority's pleading included certain 8 1/2 by 14 inch exhibits. These exhibits are in conformity with the size limitations specified in 49 CFR 1100.82, an exception to the specifications of 49 CFR 1100.13 clearly identified in that rule. The motion to strike is denied.

****2** Second, Freight Operation moves to strike the argument in support of Authority's application submitted by the city of Kansas City (the City) as not timely filed. The City notes that it could not comment on Authority's application until it was filed. If in fact it acted in error, the City moves that the time for filing its pleading be extended and that additional time for response to the pleading be authorized to Freight Operation.

In reply Freight Operation refers to 49 CFR 1100.46 which calls for the joint preparation of pleadings filed under modified procedure by parties having common interests. It notes that the tone of the City's argument and the points raised in its pleading are common to those presented by Authority, and urges that the City's pleading be rejected.

A review of the Commission decision setting [F. D. No. 29485](#) for modified procedure indicates that little guidance was provided to third parties. Under these circumstances and mindful of our grant of Freight ***971** Operation's request to file late a reply to the Handcraft appeal in [F. D. No. 29330](#), we will accept the City's pleading as a petition to intervene.

DISCUSSION AND CONCLUSIONS

The situation presented here—where a rail line abandonment is sought by noncarrier applicants and opposed by the rail carrier—while uncommon, is not unique. See [Baltimore and Annapolis R. Co. Abandonment](#), 348 I.C.C. 678, 704 (1976). Subject to establishing a proper interest in an abandonment proposal, any person may institute a proceeding for the issuance of a certificate of public convenience and necessity authorizing abandonment of a rail line. [Thompson v. Texas—Mexican Ry Co.](#), 328 U.S. 134 (1946). Handcraft, as an adjacent landowner with a legitimate claim under Missouri law to a reversionary interest in abandoned rail property, and Authority, as a bi-state transportation authority with firm development plans for mass transit use of the right-of-way, have established a proper interest in securing abandonment authorization for the Freight Operation line.

The board erred in dismissing Handcraft's application. It relied on several cases³ involving applications which were not filed under the abandonment provisions of the Interstate Commerce Act (now [49 U.S.C. 10903](#), formerly section 1(18)). Indeed, in one case, the Commission's jurisdiction was brought into question because there was no abandonment application. See [McGrody](#) at 254. Here, both applications are properly filed and seek authority in matters over which the Commission's jurisdiction is clearly established and exclusive. Thus, the merits of these applications will be considered.

The record leaves no doubt that a *de facto* abandonment of the Freight Operation line has taken place. No rail service or recognizable rail track maintenance has taken place since September of 1968. Nor has there been any serious effort on the part of Freight Operation to solicit traffic or reinstitute rail service. Indeed, the current use of the rail line for parking lot and billboard purposes is totally unrelated to the carrier's obligation to perform rail service. The only objection to abandonment comes from the carrier itself, whose principal interest appears to be the price and terms for the sale of the right-of-way.

****3** It is apparent that the existence of our jurisdiction has enabled Freight Operation to maintain control over the property despite repeated ***972** attempts by State agencies to have the property condemned. Authority has been trying for years to acquire the line because the line is suitable for an urban transit system. However, its negotiations with Freight Operation to acquire the line have been unsuccessful. As a result, Authority sought court relief.

In [Kansas City Area Transp., etc., v. Ashley](#), 555 S.W. 2d. 9 (1977), the Missouri Supreme Court rejected an attempt to have the right-of-way and operating equipment condemned, holding that the railroad was a common carrier and, therefore, under our

jurisdiction. The Court noted that the evidence 'strongly indicates' that there had been a *de facto* abandonment of rail service by the railroad (555 S.W. 2d at 10). Nevertheless, the Court concluded, the *legal* abandonment of the line can only be accomplished by a Commission order (*id.*). The Court went on to state (*id.* at 11):

We do not believe the ICC will allow this appellant-railroad to persist in a nonservice (embargoed) status and continue to exist under the facade of an operating railroad merely to keep a right-of-way easement in the metropolitan area out of public use in the face of the congressional intent evidenced by 49 U.S.C. sec. 1a(10), which clearly demonstrates a national policy that unused railroad right-of-ways be utilized where feasible for other public purposes.

We agree with the Court that this unused right-of-way is suitable for other public purposes and should be so used.

The function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Where as here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a State condemnation proceeding.

We find that the rail service which Freight Operation is authorized to perform is not required and that elimination of this line will not burden interstate commerce and will benefit the public. Although it is true that the grant of abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligations, a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations. AB-71 (Sub-No. 1), *Anne Arundel County and The City of Annapolis—Abandonment over the Baltimore and Annapolis Railroad Company From Glen Burnie to The City of Annapolis* (not printed), decided February 27, 1980. Should an issue involving this property arise before any Missouri court, our jurisdiction should not be seen as an impediment to the disposition of the property.

****4 *973** The environmental and energy impacts of the abandonment proposals have been examined and found not to be significant. The Environmental Assessments did recommend the imposition of an alternative public use condition pursuant to 49 U.S.C. 10906 limiting the ability of Freight Operation to transfer the right-of-way for other than a public use purpose for a period of 120 days following the effective date of this decision.

Authority, fearing the effect that abandonment of the rail line will have upon Freight Operation's title to the right-of-way, requests that the public use condition be imposed for 180 days. It believes that under section 10906, Freight Operation would be required to offer the property for sale for public purposes during those 180 days. While Authority is correct that the time period for a public use condition imposed under section 10906 is a maximum of 180 days, it misunderstands the effect of this statutory provision. A public use condition imposed pursuant to section 10906 merely prevents a carrier from disposing of the property for a nonpublic purpose during the length of the conditioned period. Imposition of this condition will not force Freight Operation to sell the right-of-way to Authority or any other party. However, in light of Authority's request and our own determination that the land is suitable for public use, we will impose the public use condition for the maximum 180 days.

Authority also made two other requests. First, it suggests that we grant it a certificate of public convenience and necessity to operate exclusively or in conjunction with Freight Operation along the right-of-way. Without any supporting application or evidence, we must deny this request. Moreover, we note that we have no jurisdiction over the mass transit operation that Authority seemingly wants to begin. See 49 U.S.C. 10504(b).

Second, Authority requests that we postpone the effective date of our decision for the 180-day period during which the public use condition is in effect. This too we are unable to do. Under the statute the issuance or effectiveness of an abandonment certificate may only be delayed if there is an offer under the financial assistance procedures set forth at 49 U.S.C. 10905. Thus, this decision will be effective 30 days after service and the certificates shall be issued on that date unless the financial assistance offer procedures are triggered.

We find that the present and future public convenience and necessity permits abandonment by Freight Operation of its entire line of railroad in Kansas City, MO. Employee protective conditions are not imposed in cases involving complete abandonment of operations. See *Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784, 785-787 (1978); *Wellsville, Addison & Galetton R. Corp.—Abandonment*, 354 I.C.C. 744, 745-746 (1978); *Tennessee Central Ry. Co. Abandonment*, 333 I.C.C. 443, 454 (1968); and *Okmulgee Northern Ry. Co. Abandonment*, 320 I.C.C. 637 (1964). Freight Operation shall keep intact all of the right-of-way underlying the track, and all bridges and culverts on the line for a period of 180 days from the effective date of this decision to permit any State or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of this line.

****5** We further find that abandonment of this line will not have a serious, adverse impact upon rural and community development in Jackson County, MO. This action will not significantly affect the quality of the human environment or conservation of energy resources.

It is ordered:

1. In *Finance Docket No. 29330*, the appeal of Modern Handcraft, Inc. is granted, and the decision of Review Board Number 5, served February 4, 1981, is reversed.

2. The findings made here are being published in the Federal Register concurrently with service of this decision. In the event any person or governmental entity is considering an offer of financial assistance or an offer to purchase the line, to enable rail service to be continued, it must tender such offer to the carrier within 10 days following publication. The offer must also be filed concurrently with the Commission and the offeror must also comply with the requirements of 49 CFR 1121.38(c) and 49 U.S.C. 10905, as amended by section 402(c) of the Staggers Rail Act of 1980. Within 10 days after receiving appropriate notification that an offer of financial assistance is being considered, the railroad shall comply with the informational requirements of 49 CFR 1121.38(e), and 49 U.S.C. 10905(c), amended by section 402(c) of the Staggers Rail Act of 1980.

3. All correspondence to the Commission with respect to offers of financial assistance for the continued operation or acquisition of the line shall contain an appropriate reference to these proceedings, and the following notations shall be typed in boldface on the lower left corner of envelopes containing such correspondence: 'Section of Finance, AB-RSCP.'

4. Subject to the conditions set forth above, an appropriate certificate of abandonment shall be issued. The railroad shall not effect abandonment prior to the effective date of the certificate of abandonment.

5. This decision shall be effective 30 days from the date it is served.

1 This decision also embraces Finance Docket No. 29485, Kansas City Public Service Freight Operation—Abandonment in Jackson County, MO.

I.C.C.

Footnotes

² Freight Operation's motion for leave to file its reply out of time is granted.

³ *Powell v. United States*, 300 U.S. 276 (1937) (Complaint by carrier to invalidate tariff filed by another carrier); *Adequacies—Passenger Service—Southern Pac. Co.*, 335 I.C.C. 415 (1969) (Investigation to determine extent of the Commission's jurisdiction over the quality of intercity rail passenger service); and *McGrody v. Baltimore & O. R. Co.*, 317 I.C.C. 253 (1962) (*McGrody*), affirmed 217 F. Supp. 252 (1963) (Complaint proceeding instituted before the Commission alleging an illegal abandonment). These cases merely recognize that the Commission has no jurisdiction to enforce or determine violations of section 1(18), matters which fall within the exclusive province of the Federal courts.

363 I.C.C. 969, 1981 WL 22670

End of Document

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Jackson County Acquires Rock Island Corridor

17.7-Mile Line To Be Redeveloped For Trail & Potentially Multi-Modal Transportation

MONDAY, MAY 2, 2016

◦ [Rock Island Corridor Joint Resolution \(PDF\)](#)

This is just the beginning.

Jackson County's acquisition of the Rock Island Corridor was a transaction seven years in the making. But after he and Union Pacific (UP) officials signed a contract during a special ceremony today transferring ownership of the 17.7-mile rail line over to Jackson County, County Executive Frank White, Jr. emphasized, "Now we've got a lot more work to do."

Transforming a portion of the Rock Island Corridor into a hiking/bicycle trail will commence immediately. Corridor planning and design will focus on preservation of the national rail network corridor's integrity, most notably the railroad corridor's unencumbered continuity, and on multi-modal transportation options as the corridor remains available for freight service.

"This project is an investment in our county, in our residents and in our businesses," said County Executive White. "This is about one generation working to provide new opportunities for the next generation."

The new trail will eventually connection Jackson County and the entire metropolitan region to the Katy Trail, creating one continuous trail across Missouri — from St. Louis to Kansas City. Trail development, alone, is expected to generate about \$1.3 million per year in economic activity.



Federal Grant To Construct Trail

A \$10 million federal Surface Transportation Program grant, allocated through Mid-American Regional Council, will cover most of the costs of the new trail — with an additional \$2.5 million match in local funding. During their April 4 meeting, Jackson County Legislators approved issuing up to \$52 million in bonds for the county, in partnership with the Kansas City Area Transportation Authority (ATA), to purchase the Rock Island corridor from Union Pacific Railroad.

The corridor stretches from the Truman Sports Complex south through Raytown and into Lee's Summit. Trains last operated in corridor in 1981.

"The corridor has been dormant the last 35 years," White said following the signing ceremony. "But it's about to come back to life in a big way."



An Investment Paying Big Dividends

Developing the Rock Island Corridor is expected to be an investment that pays big economic dividends for the Jackson County and the Kansas City region.

Trails Development:

- Trail development in corridor will bring \$1.3 million in economic activity per year
- Over 19,000 bicyclists will use the corridor
- 17.7 mile corridor connects cities of Kansas City, Raytown and Lee's Summit
- Provides for potential of a Kansas City connection to the KATY Trail
- 40% of trail users are expected to be daily work commuters

Economic Impact:

- Hundreds of millions of dollars in public and private investments planned within ½ mile of corridor through 2020
- Trail development will increase property values by about \$45 million for residents within ¼ of corridor
- A National Association of Realtors study found homes near trails sell up to 15% more than

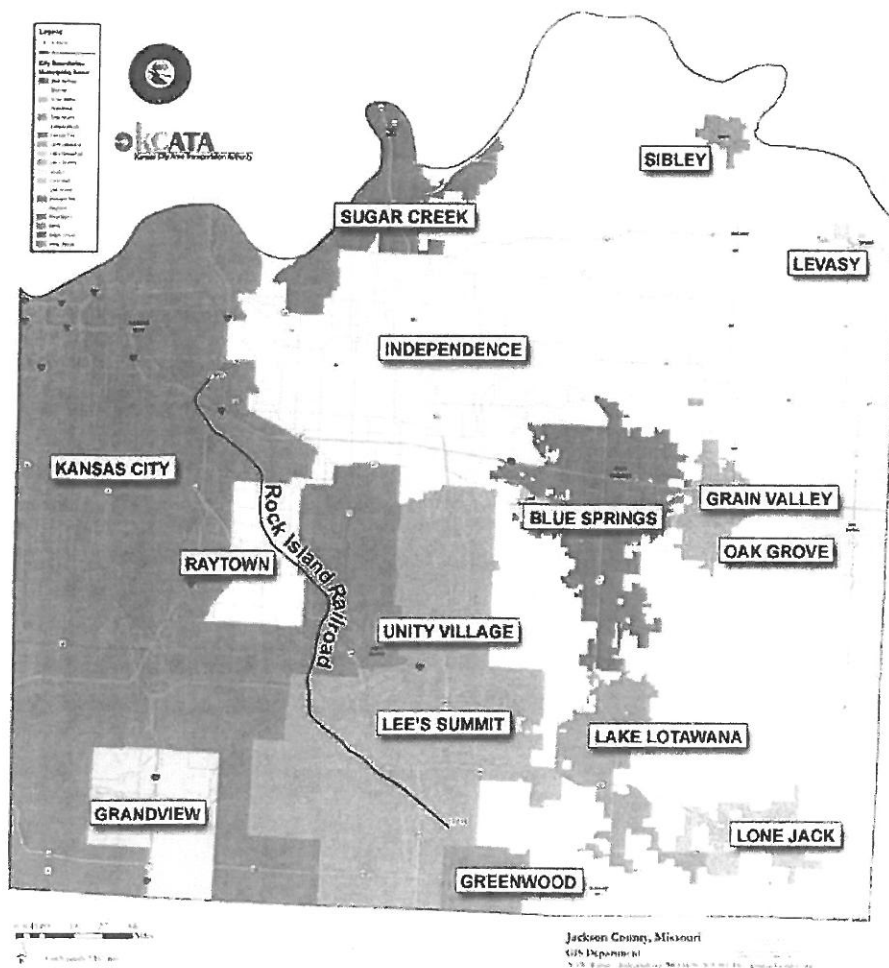
Mass Transit Development

The possibility of also utilizing the corridor for mass transit services prompted the ATA to join the county in securing financing for purchasing the property.

"This is a monumental day for our community," former Jackson County Executive Mike Sanders stated. "The potential of this project is endless. It has the potential to change the way our entire community works, the way it lives, the way we move about for generations to come."

UP Senior Vice President of Corporate Relations called the transaction a "great deal for UP, a great deal for Jackson County, a great deal for the state of Missouri."

Anticipating the full redevelopment of the Rock Island Corridor, with its potential to provide mass transit service to Arrowhead and Kauffman Stadiums, Moore added, "I'm looking forward to someday using the corridor to get to one of the Chiefs' or Royals' games."



> [Rock Island Corridor Map \(PDF\)](#)

> [Map With Activities \(Medical, Libraries, Schools, etc.\) Around The Corridor \(PDF\)](#)

- homes not near trails
- For every dollar invested significant benefits generated to the local community
- Trail and transit infrastructure projects, more labor intensive than material intensive, create more jobs per dollar spent than highway and bridge projects and are more suitable for small businesses and MBE/WBE enterprises.
- Within 1 mile of corridor
 - Over 25,000 jobs
 - Over 23,000 households
 - Over 56,000 residents

Transit Development:

- \$1 invested in transit and trail in corridor will generate approximately \$3 in economic benefit
- Transit and trails will connect regional users to Arrowhead and Kauffman Stadiums
- Provides for potential of connecting future transit to the River Market
- Transit in corridor will connect with greater KCATA bi-state network

Environmental Impact:

- Over 14 million fewer vehicle-miles will be traveled in 20-year period due to trail development
- New transportation options offered will save the region 477,000 gallons in gasoline over

20 years

- Trail development will clean up existing eyesores, safety hazards and contamination

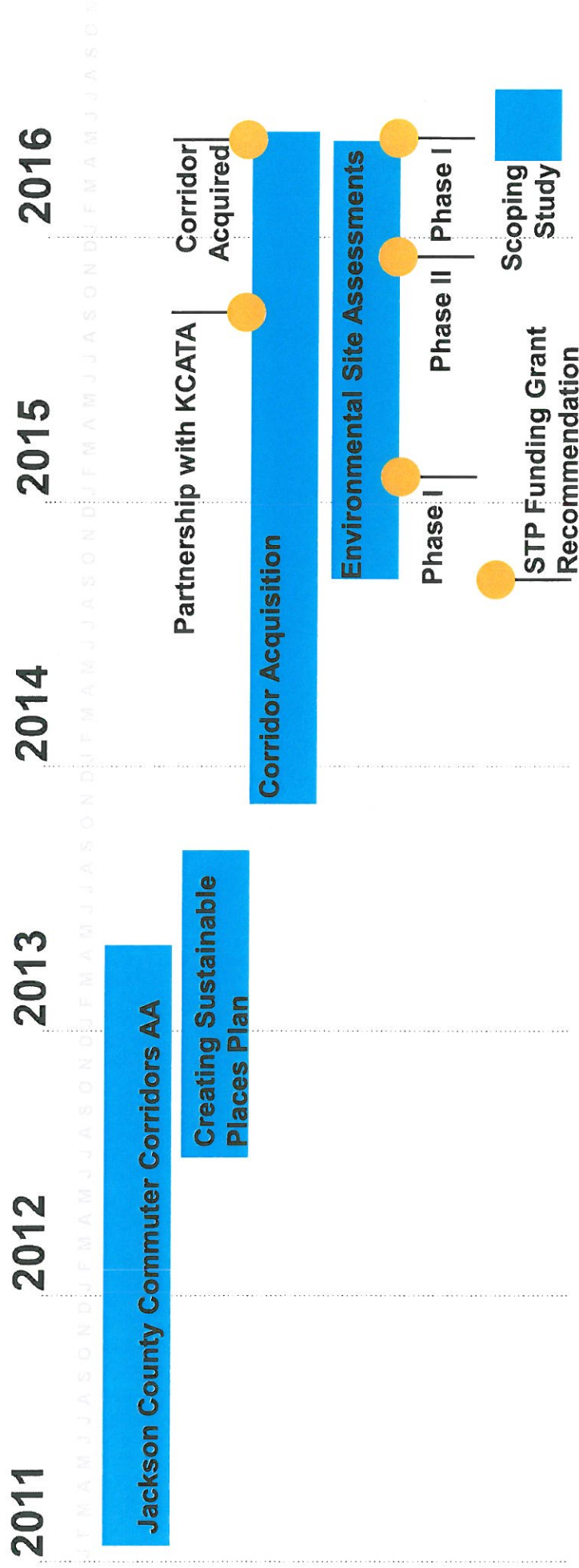
*Sources: Parsons
Brinckerhoff, Groundswell
Consulting, Jackson County
GIS Department and
University of Maryland*

Government Websites by CivicPlus®

RFQ 44-15 Design Services for the Rock Island Rail Corridor

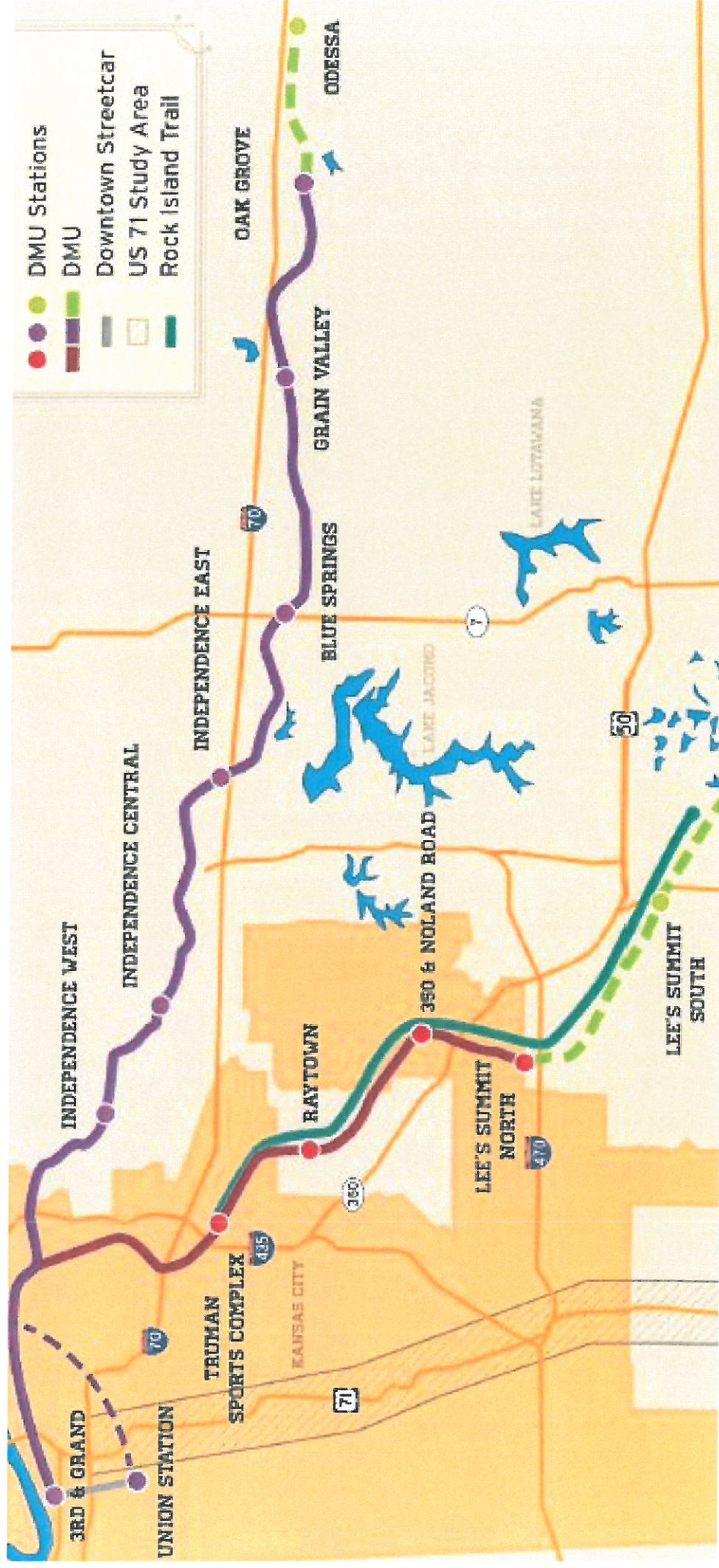
Pre-Proposal Conference – July 20, 2016





What We've Done So Far





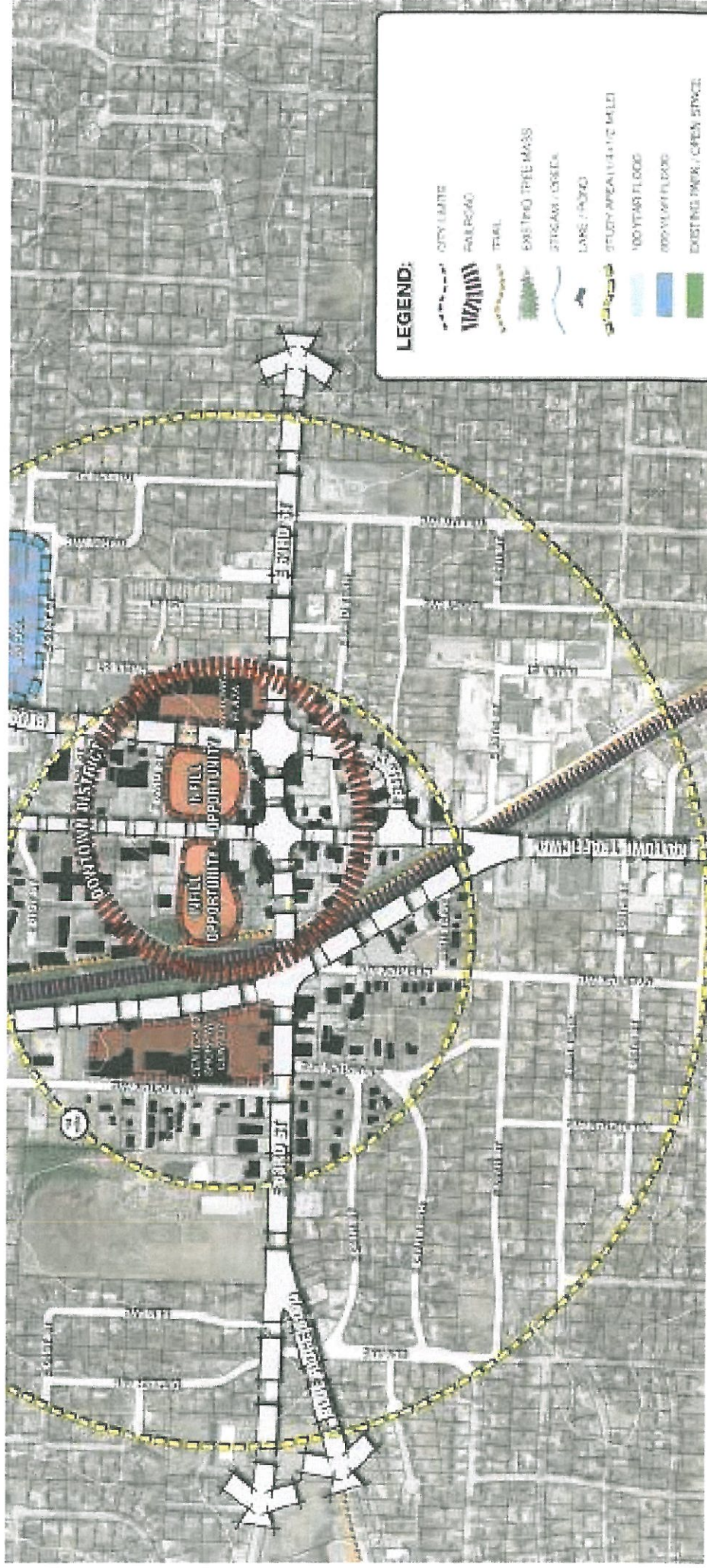
Jackson County Commuter Alternatives Analysis

Rock Island Rail
Corridor Authority



RideKC

[http://www.ksmartmoves.org/projects/
Groff v. Jackson County et al.
jacksoncounty-documents.aspx](http://www.ksmartmoves.org/projects/Groff_v._Jackson_County_et_al_jacksoncounty-documents.aspx) 012342



Creating Sustainable Places

Rock Island Rail
Corridor Authority

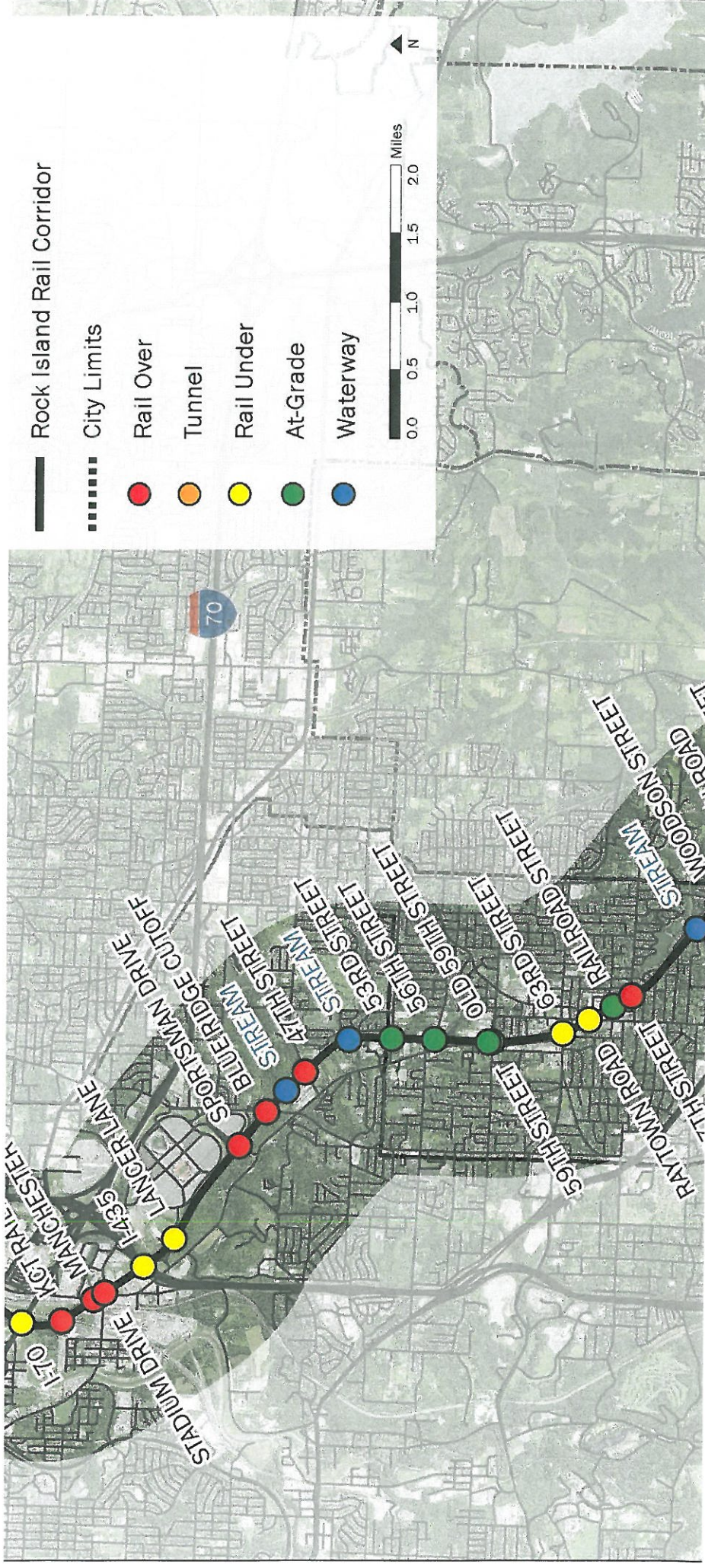


RideKC

<http://www.marc.org/Regional-Planning/Creating-Sustainable-Places/Projects/Corridors>

Demonstration-Projects/Rock-Island-Corridor

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Rock Island Shared Use Path Scoping Study

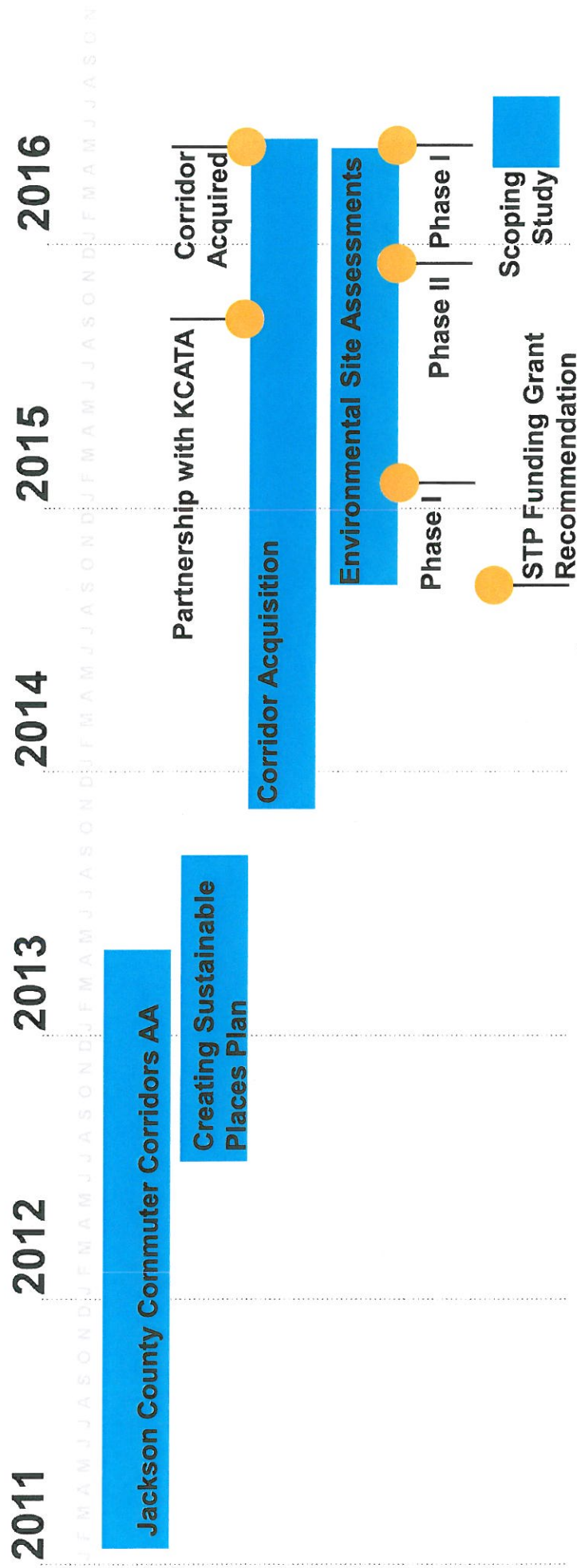
Rock Island Rail
Corridor Authority



RideKC

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Croftly - Jackson County et al
01/23/2019

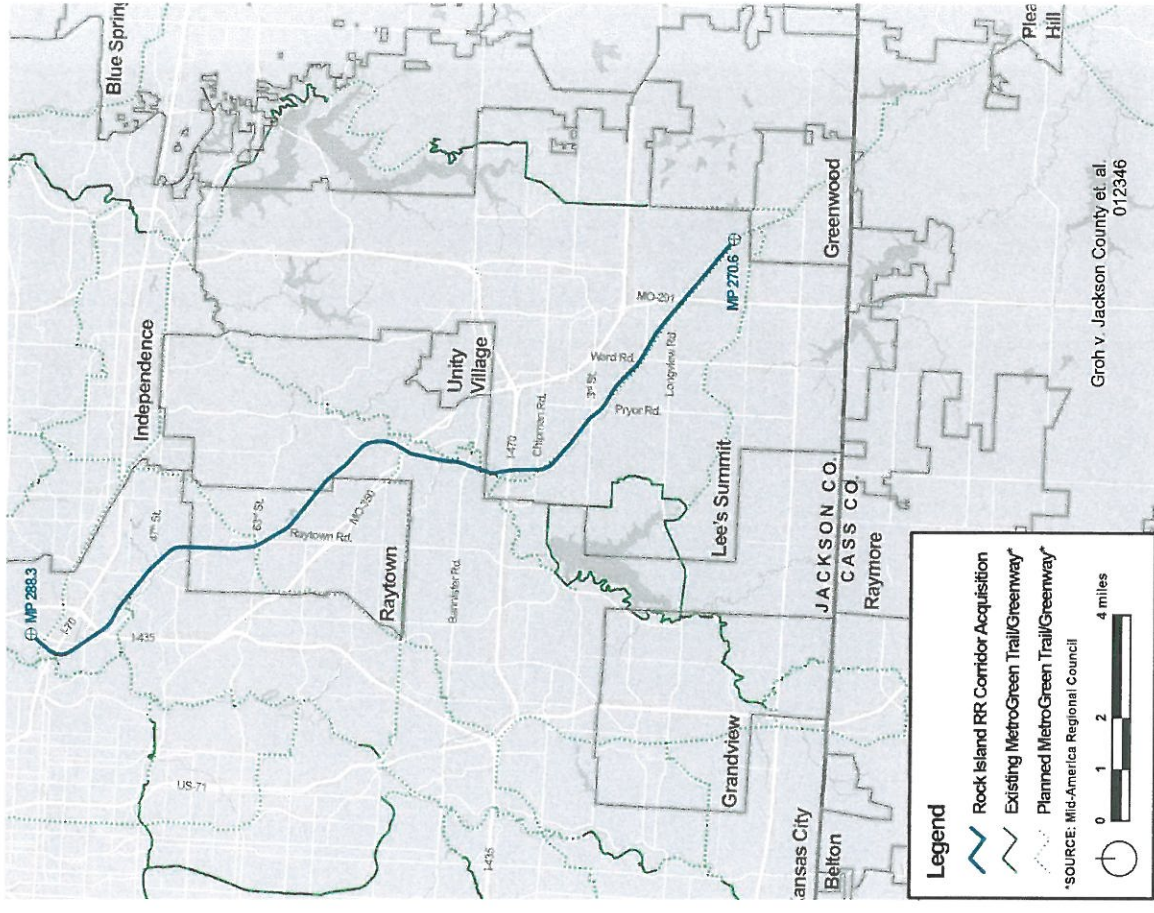


What We've Done So Far



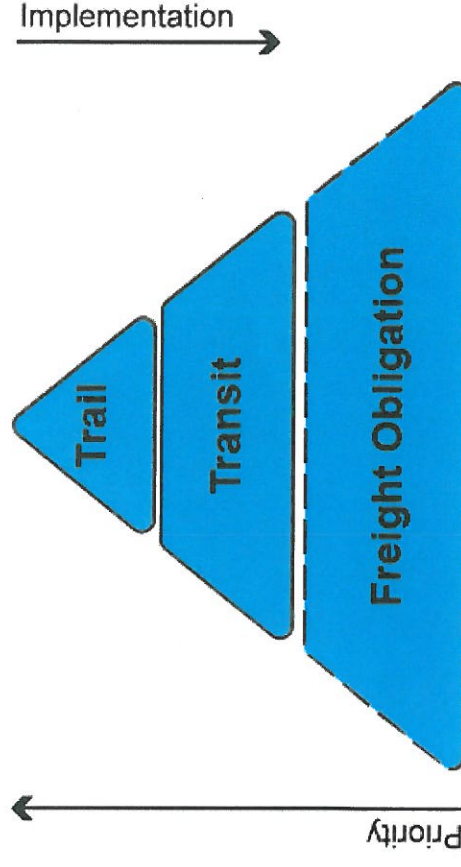
Corridor Overview

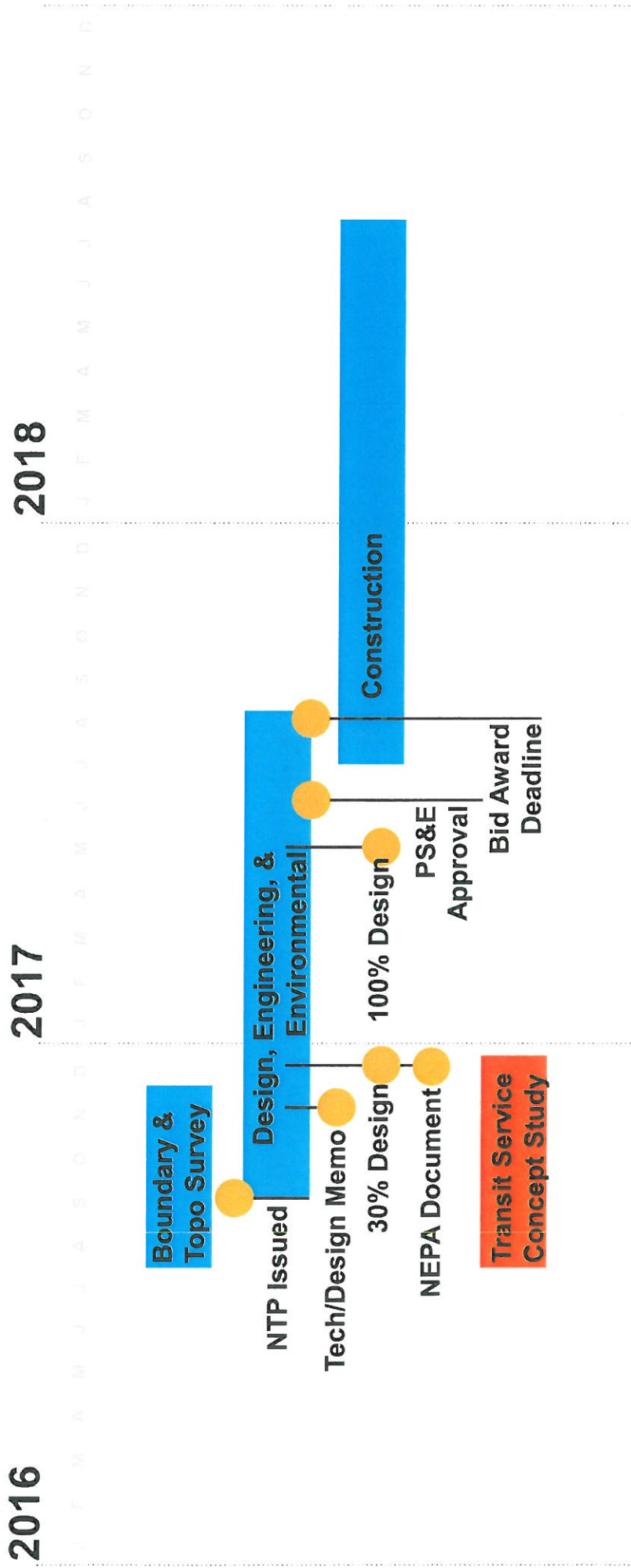
- 17.7 miles from MP 270.6 to MP 288.3
- Runs from Lee's Summit at Hamblen Road to Kansas City at the Truman Sports Complex
- 3-5 mile gap to Rock Island Trail State Park – "Greenwood Gap"
- Possible connections to Little Blue Trace, Three Trails Corridor, and Blue River Trails



Use Hierarchy

- Rock Island is still a non-abandoned rail corridor, although it has not seen a train in 40 years.
- Surface Transportation Board identifies Jackson County as a railroad, with certain protections and obligations
- Although a shared use path will be developed first, mass transit takes priority
- This use hierarchy should inform design of the shared use path.





Shared Use Path Project Schedule



Project Scope and Schedule

- Survey expected to be complete in November with interim deliverables
- Technical and Design memoranda – best practices and standards that help guide conceptual design
- Conceptual design should identify ideal trail path and any additional right-of-way
- Environmental compliance– seeking CE2 (currently requesting formal classification form MoDOT)
- 100% design no later than May for PS&E approval



Design and Technical Memos

- Environmental
- Geotechnical
- Drainage
- Utilities
- Traffic engineering
- Landscaping & irrigation
- Corridor Surface
- Structures
- Trailhead design & corridor access
- Fencing/separation
- Trail & on-street network connections
- Transit interaction
- Trail-oriented uses & design
- Mile markers & wayfinding
- O&M Costs



Environmental Permitting & Compliance

- Project Length and Termini
- Project Description
- Current and Future Traffic
- Right of Way Required
- Displacements
- Community Impacts
- Farmland Impacts
- Wetland/Stream Impacts

- Wetland Quality Impacts
- 404 Permit Identification
- Floodplain Impacts
- Air Quality Impacts
- Noise Impacts
- Cultural Resources/Section 4(f)
- Historic Sites
- Parkland Section 4(f)/6(f)
- Involvement
- Threatened and Endangered Species
- Hazardous Waste



RFQ Response Requirements

- Do not omit any required forms – ask Barbara if there are any technical questions
- Page limit (20 pages) does not include required quals package forms, resumes, cover letter, or table of contents
- Please only submit resumes of individuals that will work on the project
- DBE Participation– 5% each Minority/Women/Veteran-owned business
- RFQ response by August 2 – will notify of interviews (scheduled for August 12) by August 5