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2009

**COMMITTEE ON NATURAL RESOURCES**

NEBRASKA LEGISLATURE

*LR 124*

**Interim Study Report**

**Interim Study to Examine the Use of Eminent Domain  
by Natural Resources Districts for the Taking of  
Private Land for Development or Management of  
Recreational Trails**

***ONE HUNDRED-FIRST LEGISLATURE***

FIRST SESSION

**NATURAL RESOURCES COMMITTEE MEMBERS**

Senator Chris Langemeier, Chairman  
Senator Annette Dubas, Vice-Chairwoman  
Senator Tom Carlson  
Senator Tanya Cook  
Senator Deb Fischer  
Senator Ken Haar  
Senator Beau McCoy  
Senator Ken Schilz

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## **LR 124**

### NATURAL RESOURCES COMMITTEE DECEMBER, 2009

- I. LEGISLATIVE RESOLUTION 124
- II. MEMORANDUM, SENATOR CHRIS LANGEMEIER,  
CHAIRMAN
- III. SEPTEMBER 21, 2009, HEARING TRANSCRIPT
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- VI. LOCAL GOVERNMENT RESPONSES

## ONE HUNDRED FIRST LEGISLATURE

## FIRST SESSION

## LEGISLATIVE RESOLUTION 124

Introduced by Pankonin, 2.

PURPOSE: The purpose of this interim study is to examine the use of eminent domain by natural resources districts for the taking of private land for the development or management of recreational trails or corridors. The topics to be studied shall include, but not be limited to, the following:

- (1) The process and criteria used by natural resources districts for consideration of recreational trail or corridor development;
- (2) The role or authority of affected local governing bodies in the recreational trail or corridor development process;
- (3) An examination of the state trails plan, A Network of Discovery: A Comprehensive Trails Plan for the State of Nebraska, prepared by the Game and Parks Commission;
- (4) The possible enactment of a procedure for dispute resolution to resolve disagreements between affected property owners and natural resources districts about recreational trail or corridor placement; and

(5) Practices used by other states for recreational trail or corridor placement.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Natural Resources Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

## MEMORANDUM

TO: NATURAL RESOURCES COMMITTEE MEMBERS  
FROM: SEN. CHRIS LANGEMEIER, CHAIRMAN  
DATE: DECEMBER, 2009  
SUBJECT: LR 124

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The Natural Resources Committee held a public hearing on LR 124 on September 21, 2009, in Weeping Water, Nebraska. The resolution was introduced in response to LB 134, a bill that was indefinitely postponed in the 2009 session.

Sen. Pankonin introduced LB 134 on behalf of some constituent landowners who oppose a proposal to extend the MoPac East Trail to the Lied Platte River Bridge near South Bend. The Lower Platte South Natural Resources District, which owns the 25-mile long trail, had planned to acquire easements on a nine-mile long corridor where the constituents live. Though the NRD has stated that the easements are needed for the trail project to meet federal safety guidelines, the landowners have resisted. They are concerned that such a trail would hurt their property values and worried that the additional traffic will lead to litter and waste for them to deal with.

At this time, the interested parties have not been able to resolve the dispute. It is my understanding, however, that discussions and meetings are continuing. The issues addressed in this study are directly related to this ongoing dispute, and findings are intended to assist the committee with the development of a policy and procedure to be used when an agreement cannot be reached.

Although the dispute may end if the natural resources district decides to exercise its power of eminent domain and take the private property regardless of the owners' opposition, some believe that in certain situations a taking is not acceptable. In this case, the affected property owners do not believe eminent domain should be used to take any portion of their land for the purpose of a recreational trail.

The ability of a governmental entity to use eminent domain is often controversial, but when such power is used for building recreational trails, questions of fairness and necessity come into play.

Whether eminent domain may be used for recreational purposes is mixed among states, but there are some that specifically forbid it. Research conducted by Sen. Pankonin's office and the Legislative Research Office is attached that shows detailed information for other states.

In Nebraska, bills to limit the natural resources districts' power of eminent domain have been introduced in the past. Generally, these bills are indefinitely postponed in committee. The reason, according to the Nebraska Association of Resources Districts, is that the eminent domain process provides for a fair procedure to ensure that the landowner is not underpaid and the taxpayer does not overpay for the acquired land. The eminent domain process statutes are §76-704 to 724.

Sen. Pankonin's office also researched eminent domain and trails in Nebraska. Attached you will find the results of a survey, conducted with the help of the Legislature's Research Office, telling the history and procedures of the natural resources districts' use of eminent domain. You will find that very few districts have ever used eminent domain for any project, recreational or not.

The findings in this interim study, and the continuation of the unresolved matter that prompted its introduction, have resulted in an interest in finding a method of dispute resolution that would acknowledge and equalize the needs of disputing parties when the question of eminent domain use for recreational trails is at hand. Expect at least one bill to be introduced in the 2010 session to address the issue.

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Natural Resources Committee  
September 21, 2009

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[LR124]

The Committee on Natural Resources met at 1:30 p.m. on Monday, September 21, 2009, at the Exposition Center, Cass County Fairgrounds, Weeping Water, Nebraska, for the purpose of conducting a public hearing on LR124. Senators present: Chris Langemeier, Chairperson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: Tom Carlson and Annette Dubas. [LR124]

SENATOR LANGEMEIER: Good afternoon and welcome. It is 1:30, a little after, don't like to be late, we'll get going. First of all, I'd like to welcome everyone here today to the Natural Resources Committee first interim study. My name is Senator Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to introduce those that are here with us today starting on my far left or your far right, Senator Beau McCoy from Elkhorn, Nebraska; Senator Ken Haar from Malcolm, his district has north Lincoln and southern Saunders County; Senator Ken Schilz from Ogallala, Nebraska; committee clerk, Laurie Lage; myself, Senator Chris Langemeier. We're just going to keep going, Senator Deb Fischer from Valentine. She gets the award for the farthest distance today, always, always. Senator Tanya Cook from Omaha, Nebraska. We have...I'm going to jump over to my committee counsel which is Barb, or excuse me, committee clerk, which is Barb Koehlmoos; and then we're going to come back to Barb DeRiese. Barb DeRiese works for Senator Tom Carlson who is on this committee. She is also the committee clerk for the Ag Committee and so she's getting a little training in an interim study setting here. So we'd like to welcome them. I'd also like to welcome former state Senator Roger Wehrbein who joined us. Welcome back to the legislative process. We always like to see you. For those of you planning to testify today you saw when you came in there's these green sheets. We ask that you fill those out and then when you come up to testify we'd like you to put it in this little brown basket on the table. And that helps us keep an accurate record as we do record these hearings, it allows us to keep an accurate record. There's also, if you saw on that table, there's also a sheet that looks like this and you can...if you're here today and you want us to know your

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opinion but you don't want to testify, we ask that you sign in on this sheet and then you can tell us if your supporting or opposition here today. Yeah, there's really no support or opposition, it's just your feelings towards the interim study. If you...as you come to testify, we're going to ask that you state your first and last name and spell them both so we can make sure we get our record correctly recorded. If you have handouts, we hope you have ten copies, one for everybody. If you just raise them up, Barb will come and grab them from you. She will distribute them for you so you don't have to do that as you come forward. At this time we'd ask everyone to turn your cell phone off so we can have full focus on the hearing here today. And we are here to have a hearing on LR124. Senator Pankonin will start with his opening remarks as far as LR124. And then we have a number of people that he has asked to put in a line up. We have five individuals. I'll call them forward after Senator Pankonin has completed. We will ask them to testify and then we will open the floor up to anybody that wants to testify and give us your thoughts today on LR124. You will see in front of you some...on the table, some lights. You'll get a green light. You get five minutes to testify. You get a green light for the first four, the yellow light will come on, give you a one minute warning, and then the red light will come on and then we'll ask you to conclude, and then open yourself up to questions if there are questions of you from the committee. And with that, Senator Pankonin are you ready? We'll...first of all, are there any questions, something I need to make clear? And there is, yeah, good point. When you come up to testify, if you have seen a lot of familiar faces, you've come and testified before, when we go to open testimony we don't take supporters, then opposition, then neutral like we do in a normal legislative session. We're just...just come up orderly and we'll take you one at a time as you feel ready to testify. So with that, we'll get started. Senator Pankonin, welcome. Go ahead. []

SENATOR PANKONIN: Welcome and thank you to the Natural Resources Committee for coming to Cass County today. We really appreciate it. Also want to welcome the residents of Cass County and other interested persons who are attending this important hearing. I'm Dave Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LR124, a study of the use of eminent domain by Natural



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Resources Districts to obtain private land to be used to develop or manage recreational trails. In January most of the members of the Natural Resources Committee heard testimony about this subject at the public hearing for LB134. Today members will hear some information that is similar to the previous testimony. However, you will also receive additional information about the focus of LR124 through testimony and the written materials that are in your committee notebooks. As you know, the introduction of LB134 was prompted by local issue, a trail project proposed by the Lower Platte South NRD and the potential effects of the project for Cass County and for a significant number of local landowners who own private land along the proposed route. Some of the farm ground in question has been owned by the same families for several generations. That sounds better. (Laughter) The introduction of LR124 resulted in part from a growing realization that a local issue in one county could, quite easily, occur again and again in other parts of our state. Simply put, there appears to be an understandable desire to expand the current network of trails in Nebraska, but there is currently no state policy that clearly defines how the expansion should be accomplished. The Nebraska Natural Resources Districts' own publication from 2007 says, and I quote, Many NRD projects are developed for multiple purposes. Recreational trails are built atop of flood-control levees or along abandoned railroad lines. Dams, may be built for flood-control, often develop into recreational areas. End quote. Please note that there is no mention of NRD trails outside of flood control projects or abandoned railroad lines. The Natural Resources Committee is considering several important public policy issues during the 2009 interim. I submit to you that the policy question that is raised by LR124 should be on the committee's list of priority issues. To this point most trail development in Nebraska has been accomplished within communities as part of flood control projects and along abandoned railroad lines. Abandoned railroads have been the backbone of trail development in this state and across the nation. However, Nebraska has already exhausted many of its rail abandonment opportunities. This fact is stated in the 2004 revised edition of A Network of Discovery, which was a comprehensive trails plan for the State of Nebraska. And I've got a copy here that we've...our staff has looked at and I think some of you have as well.

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A Network of Discovery was prepared for the Nebraska Game and Parks Commission. If the number of trails in this state is going to increase in the future, it is safe to assume that the need to place some of the trails on private land will also increase. Nebraska's comprehensive trails plan was first published in 1994. Trail development that has occurred since then fits into three distinct categories. They include community or urban trails, trails in parks or other recreational facilities, and regional trails that may connect small communities and travel through rural areas. When trails in rural areas are developed along or across prime Nebraska farmland, many factors must be considered. One of the most critical of these factors is the possible use of eminent domain. One of the most critical, as I've stated. And the possible use of eminent domain for the taking of private land for the development of a recreational project. In 1994 and again in 2004, our state's trails plan has been silent on the use of eminent domain for the creation of trails in Nebraska. Although natural resources districts often take the lead with primary responsibility for trail development in Nebraska, they must work with individual citizens, and other offices and subdivisions of our local, state and federal government. The state trail plan repeatedly mentions that collaboration and cooperation among these entities is essential to the creation of a successful project. Although the plan emphasizes the importance of working together, it, once again, is silent, as is state policy, on procedures to ensure communication and cooperation, and to resolve disputes that may occur during such a complex undertaking. The stakes are also important for recreational trail advocates. Through discussions with some of the advocates earlier this year, I learned that even the most ardent trail supporters do not endorse the wholesale use of eminent domain in trail placement. In the Cass County situation, I think the Lower Platte South NRD would have had to use eminent domain on most of the properties along the proposed trail corridor. This could have resulted in 15 to 20 eminent domain cases. In my opinion, if eminent domain had been used that extensively in Cass County, the negative public relations and media coverage might have caused a backlash against trail development and the NRDs themselves. The Legislative Research Office studied how other states develop and manage recreational trails. The staff collected information from 17 states, but I want to mention four of the states that touch Nebraska's borders.

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I'm going to read from a few of these comments. I think they're also in your notebook. First of all, this was from Kate Gaul, research analyst at the Legislative Research Office. This memorandum responds to your request for information on what entity is given responsibility and authority to plan, site, develop, and request and manage funding for recreational trails in other Midwestern states. Onward it says it doesn't appear that any of Nebraska's surrounding states have a statewide, overarching authority for recreational trails exactly as you have envisioned. The actual siting and building of trails is a local jurisdictional matter. Talking about specific states as far as that neighbor Nebraska, you go to Colorado. The Recreational Trails System Act of 1971 provides a framework for a statewide system of recreational trails and creates the advisory Colorado recreational trails committee. The state Division of Parks and Outdoor Recreation is given authority to acquire reasonable trail rights-of-way or easements. There is a prohibition on acquiring land for trails by eminent domain, although the statutory annotations state that the subsection does not prohibit the use of eminent domain where it exists independently of this act. The recreational trails committee has among its duties coordination of trail development among local governments and assistance with their trail plans. Then you go to Iowa. Iowa law prohibits the use of eminent domain for conservation easements for, among other things, outdoor recreation. That's Iowa Code 457A-1 attached. The state passed a statewide trails developments program in 1987, allowing the Department of Transportation to enter into agreements with other state agencies, political subdivisions, and private organizations for planning, acquisition, development, promotion, management, operation, and maintenance of recreational trails. However, even when the state has identified a proposed statewide recreational trail, it is up to the local political bodies to actually site and acquire the land for the trails that are eventually joined to form larger trails. If you move on to some of the later research in this fall, you go to Kansas, there's no one specific agency or entity. Each city, county, township, ward, has their own government and authority to decide where trails would be built. When the question came up about the power of eminent domain the answer was, some do and some don't, these local governments. Each entity is specified in law as to what they may or may not condemn

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for public use. And finally, if you look at the state of Missouri they have no overall trail placement agency and their answer to the question of power of eminent domain was, N/A, nonapplicable. It is interesting to note that although the other states do not have natural resources districts, they have been able to successfully coordinate and develop recreational trails. Many of the states from which the Research Office collected information have not allowed eminent domain to be used for this activity. Somehow they have made trail development work without its use. LR124 suggests the need to answer the following questions. Should our state policy continue to be silent on the use of a tool as powerful as eminent domain in the development of recreational trail projects? And if allowed, who wields it, the NRD or local government? If a policy is needed, what criteria should be included? Should the policy require communication, collaboration and a dispute resolution mechanism among overlapping political subdivisions? Should the policy define a method for resolving disputes between trail developers and affected private landowners? And should our state trail plan be revised again with a more clearly stated expectation that it will serve as a guide for future trail development? Finally, should our state have an entity, either new or existing, to provide statewide oversight for trail development? After listening to the testimony today, and considering information from other states and our own state trails plan, I respectfully request that the Natural Resources Committee develop legislation to create a statewide policy to guide future trail development and management. It is time for our state to address the issues raised in LR124. Thank you for your attention and your work on the study. [LR124]

SENATOR LANGEMEIER: Thank you. I knew I'd have to address that. Thank you, Senator Pankonin. Does the committee have any questions from Senator Pankonin at this time? Seeing none, they're going to let you off the hook easy. Now I have a list of individuals. You've heard the opening on LR124. I have some individuals we'll call forward and then after that we'll go to open discussion. I'd ask Ron Nolte to come forward and testify. Good afternoon and welcome to the committee. [LR124]

RON NOLTE: Good afternoon members of the Legislature's Natural Resources

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Committee. I would like to welcome you to Cass County and to our recently expanded county fairground facility. I am Ron Nolte, that is spelled N-o-l-t-e. I am the chairman of the Cass County Board of Commissioners. I was elected to the county board in 2004 and reelected in 2008. I am currently serving my third consecutive year as the board's chairman. The Lower Platte South NRD's proposed trail extension in Cass County has been a work in progress for some time. The development of this project came to a head last year when the landowners along the route were told of the NRD's plan to potentially use its power of eminent domain to take private land for the trail bed and the Cass County board learned that the proposed trail route would criss-cross a county road several times and possibly interfere with the maintenance of the road and public safety for both trail users and our Cass County citizens who live along the route. The state trail plan mentioned by Senator Pankonin strongly recommends the involvement of local landowners throughout the trail planning process. In the early planning stages the NRD did, in fact, seek input from Cass County residents by establishing a citizen advisory committee. However, when the advisory committee offered several recommendations about desirable and undesirable placement options, the committee's desirable options were eliminated and some of the undesirable options were incorporated in the proposed trail plan. Disregarding solicited citizen input, coupled with the revelation that eminent domain could be used to take private land, created frustration, mistrust, and eventually anger among the citizens from whom the NRD, according to the state trail plan, should have been seeking support. The Cass County board reviewed the NRD's trail plan and carefully considered the negative impact that it would have on the county's ability to ensure safe travel for residents and visitors to Cass County. The board voted not once but twice to disallow the NRD's trail plan. County vote records dated March 3 and March 17, 2009, are in the committee's notebooks. The state trail plan recommends that the NRDs communicate and collaborate with the entire spectrum of entities that will be affected by trail developments. The recommendations refer specifically to political subdivisions such as villages, towns, and cities and the counties that lie within the NRD's jurisdictional boundaries. In my opinion, the problems associated with the proposed trail extension would have been fewer or even nonexistent if the NRD had

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heeded the state trail plan's recommendation to work with affected political subdivisions. The state trail plan points repeatedly to the need to consider the economic development potential. That exists when a recreational trail is planned. I honestly do not know if the NRD discussed this potential when it planned the proposed route. I can only look at the end result and observe that the potential is simply not there. Once again, if communication and collaboration had drawn together leaders from the business, town, and county, the proposed trail might well have been coupled with new and interesting economic development ideas. As you know, the introduction in January of LB134 and the discussions that followed temporarily slowed the process of the MoPac trail extension. I am pleased to report that talks to consider an alternate path for the trail extension started in May. The most recent meeting of the Lower Platte South NRD, the Cass County Board, and the Nebraska Department of Roads was held on September 10. It is encouraging to sense that all involved are now committed to creating a good project for the benefit of eastern Nebraska. While I am now more optimistic about a good outcome from the talks that are now under way, I can't help but think about how much better the results might have been and how much more quickly they might have been completed if the time, energy, and monies that were spent had been used differently. With this experience fresh in your minds, it may be a good time for our state policymakers to look closely at what is currently in place to guide good decision making about trail planning in our state and what policies or law might need to be changed to ensure that everyone involved in our...or effected by the building of trails is treated fairly. Thank you, Senators. And again, welcome to Cass County. [LR124]

SENATOR LANGEMEIER: Thank you. It's been a pleasant trip to Cass County so far. Are there any questions? Hold on. You might not get off the hook here. (Laughter) Are there any questions? I need a question at some point from that side so we can test that mike, you know. Senator Haar. [LR124]

SENATOR HAAR: Yes. Okay. Is up on or down? Up is on. (Laugh) Okay. I'm not sure I'm coming across at all. Am I now? Okay. Good. Thank you very much. You did

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indicate that you think there is a prospect for developing a trail now to connect the two fronts. [LR124]

RON NOLTE: Most definitely. [LR124]

SENATOR HAAR: Yeah. And what's good about...what's making you feel the possibility now? [LR124]

RON NOLTE: Well, we're looking at an alternative route, but we're also talking to the State Roads Department of using Highway 1, the wide right-of-way north of Elmwood to go up to Murdock, and then the state spur into Murdock, and then again county road north of Murdock for three miles and then cross 310th Street one time north of Church Road and go down the east side, which there's only one driveway, a long driveway, where the farmstead sits off the road. Continue up to Highway 66 west of South Bend and then use state right-of-way again to go into South Bend and then eventually across the Platte River trestle that goes into Sarpy County. With this proposed routing I believe we can use economic development to a greatest advantage for the communities of Elmwood, Murdock, and South Bend. There's so much potential in Cass County for economic development because of I-80, economic development. Our access to Lincoln and Omaha, because we are an agricultural county, but we are also an urbanized county. We're the second fastest growing county in the state of Nebraska. [LR124]

SENATOR HAAR: Good. Thank you very much. [LR124]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you. [LR124]

RON NOLTE: Thank you. [LR124]

SENATOR LANGEMEIER: Okay, our next testifier today will be a landowner, Jim

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Panska. Did I say that right? Welcome. Come on up and welcome to the hearing. We're ready when you are. [LR124]

JIM PANSKA: (Exhibit 2) Thank you. My name is Jim Panska, and it's J-i-m P-a-n-s-k-a, and as was mentioned before I am a resident and one of the landowners that was going to be effected by the initial proposed trail. And with the passage of LB1357 in 1969, the Legislature gave the NRDs two of the most powerful tools that a government agency can have. And that is, the power of taxation and the power of eminent domain. And with these powers should come responsibilities and oversights, I feel, and I think if the Legislature thinks back to their last session, how many bills did you think about putting in or talking about or discussing that never even got to committee because someone thought, well, maybe the Governor would veto that bill. So even the Legislature has some oversight, I would say, in that respect. I have a lot of handouts there and since my time is going to be limited I'm going to try and get through them as fast as I can. Number one, with the page is a...gives the enabling the legislation for the NRDs and I'd just like to point out that they have the powers and the programs they like the NRD to participate with listed there and number 11 out of 12 is the development and management of recreational and park facilities. So I think by looking at that, I would conclude that that was not one of their high priorities on the list of what the programs they wanted the NRD to do. I realize that times have changed and a lot of things have changed in our communities, and so, you know, trails have become more important than they had been in the past. If you look at page two and three, I've just put that in there to give you a little description of what the American Discovery Trail is. And Senator Pankonin talked about what some of the other states are doing so I wanted to bring it forward a little bit of what some of the other trail organizations are doing. So that's the purpose of these handouts. If you look at two and three, you'll notice that the American Discovery Trail goes from one end of the United States to the other, and on the bottom of page two in yellow you'll see that the MoPac East is part of that trail. The American Discovery Trail started a bill called the National Discovery Trails Act. They wanted to become a part of a larger trail organization known as the federal trail, the National Trails System. And if you look on



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the page...at the top of page 4 there, you'll see that this act, it says right under, why support the National Discovery Trail. It says that it was twice put in...has passed the Senate unanimously three times and the House of Representatives twice, so the ADT is trying to become part of the National Trails System. And I'll tell you in a minute why I think that's important. So if we look at the American Discovery Trail we see it at 6,800 miles long, goes across 15 states. Okay. And if we look on the...like I said, I'm going to have to hurry to get through this. On page 5 in yellow it says: Be ready for property rights questions! Some people have opposed the ADT because of property rights concerns but there is no way that the ADT threatens anyone's property rights. Then it goes on to talk about the fact that eminent domain is not used in any of the 6,800 miles that they have created so far. Even though they have used private trails, it always has been by the consent of the landowner. Okay. In a phone call that we've made to the American Discovery Trail office we asked how they were able to do this and they said that if they were not able to obtain rights-of-way from individuals of their own free will, that they used road right-of-ways and roadways instead. Okay. The next couple of pages are 6 and 7, and this is the National Trails System Act, and the reason I put this in here is we talk about the National Trails System on that first page 6 in yellow there, and if you go over to page 8 then, you'll see that trails on privately owned lands may be designated National Recreation Trails by the appropriate Secretary. And then down below it says: When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, local governmental agencies with their consent, or, where the appropriate the secretary deems necessary or desirable, on privately owned land with the consent of the landowners. So nowhere on either one of these three large trails do you see the use of eminent domain. And I think, you know, this is a good indication that... [LR124]

SENATOR LANGEMEIER: Go ahead. You only have two left. Go ahead and finish these. [LR124]

JIM PANSKA: Well, I just put these in there. These are supporting documentations for

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the National Trails Act and how it affects legislation in Nebraska. It talks about where you can get funds for recreational trails. [LR124]

SENATOR LANGEMEIER: Did you want to tell us a little bit...I'll ask a question. You have in your supporting documentation here you have a budget or a...do you want to tell us a little bit about that and the numbers that you highlighted and what you were...? [LR124]

JIM PANSKA: Right. Okay. The reason I thought this was important, this is the, as you can see, the budget for 2009 and 2010 from our local NRD and on the first page there, which was page 12, it shows that land best management practices, which is soil conservation. If we look back to the number 1 page, that's the primary goal of the NRDs. And they're spending \$1.14 million for land conservation. And if you look on the next page, which is page 13, they budgeted \$1.489 million for trails and corridors. So we're actually spending more money on trails and corridors than we are on what I think was the main priority of the Natural Resources District. In a small comparison, if I may, I went back just picked out 1986 to see what 1986's budget looked like. I have it with me but I didn't put it in the packet, but the budget included \$875,000 for soil conservation in 1985. And there was no mention, of course, at the time about trails. So the soil conservation spending was about the same as it is now and yet the budget in 1985 and 1986 was \$3.6 million and today it's \$28 million. So soil conservation spending is about the same and yet the budget is, what would I say, four or seven times greater. You know, I've got a lot of other stuff but my clock is out. [LR124]

SENATOR LANGEMEIER: Very good. That's what I took from that sheet. Are there any questions? We'll start with Senator Haar. [LR124]

SENATOR HAAR: Yes, thank you. The \$1.5 million that you're showing here for trails and conservation. Do you know is that all from tax levy or does that include grants and things like that? [LR124]

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JIM PANSKA: Well, it says over here, if you look to the right that it comes from other funds, on page 14. [LR124]

SENATOR HAAR: Okay. [LR124]

JIM PANSKA: So I would assume that comes from other...I'm not... [LR124]

SENATOR HAAR: I guess we'll ask that later maybe when some NRD people come but... [LR124]

JIM PANSKA: Right. But it looks like it comes from other funds. [LR124]

SENATOR HAAR: Commissioner Nolte said he felt better about how the process is going now. Do you share that? [LR124]

JIM PANSKA: Yes, I do. You know from the very beginning it seemed like we had a tunnel vision. We had a point A and we wanted to get point B. And we didn't have anybody to really stand back and say, is this the right way to get there. It was this way or the, you know, whatever it takes, we're going to get there. And I know he mentioned the economic opportunities. Right now the trail goes out to Elmwood which has a fairly famous museum, the Bess Streeter Aldrich Museum. I would like to see the trail start putting stuff on the side and recommend to the travelers that, you know, in this town is this museum. And in Murdock they have a one-room school house, a recreation of a one-room school house with a very...quite extensive museum. Another item that could attract trail people. And farther down 310, I'm not sure if you're familiar with the Round the Bend Steakhouse, but that is also located on that trail. [LR124]

SENATOR HAAR: Should be, maybe. (Laugh) [LR124]

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JIM PANSKA: Well, we hear a lot of information about the trails in Iowa. There's a big trail that goes out of Council Bluffs and goes east to a steak house and comes back, and so, you know, there are opportunities there. [LR124]

SENATOR HAAR: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator McCoy. [LR124]

SENATOR McCOY: Thank you, Mr. Panska for being here this afternoon. More of a point of clarification than anything, probably more than a question, did I hear correctly a few minutes ago when you said to your knowledge and what you had studied that eminent domain has not been used anywhere along the American Discovery Trail up to this point? Did I hear correctly? [LR124]

JIM PANSKA: That was the information that I was led to believe from the lady I talked to on the phone from their main office, yes. [LR124]

JIM PANSKA: Okay. Thank you. [LR124]

JIM PANSKA: I mean, it actually says there that...well, see, we don't have their home page. We have what they put out as far as the American Discovery Trail but they say don't worry about property rights because we're not going to be using it, we're not going to be using eminent domain. [LR124]

SENATOR McCOY: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you. Senator Fischer. [LR124]

SENATOR FISCHER: Thank you, Mr. Chairman. Thank you, Mr. Panska for being here today. I'm hoping to hear at this interim study hearing ways that we either need to

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address this issue in state policy or the policies that we currently have are fine. I heard from your chairman of the board of commissioners that, what I took from it, was that no action had taken place with the NRDs in truly trying to work with and listen to local governments and local people until after Senator Pankonin introduced his bill and then we discussed it in committee. Do you think we need a state policy that would have it in statute that the NRDs not only have to form an advisory committee with either a locally elected group such as a county board or with local citizens or with the landowners involved? Do we need to take that step? [LR124]

JIM PANSKA: Well, I guess I would consider that the least, the lowest step that we should take. The...I mean, the way it would work would be if the county commissioners had been on board at the very beginning they could have gone out to the landowners and they would have been the ones contacting the landowners if land was needed to be purchased. They could have made that contact. You know, if the road right-of-way had to be enlarged or had to be upgraded, that could have been done by the local officials so you wouldn't have had this outside influence coming in. I mean they're the ones that know what's required on their roads and what could be done in that manner. [LR124]

SENATOR FISCHER: You said that was the least that we should do. So what's your number one that we should do? [LR124]

JIM PANSKA: Well, obviously I supported LB134. But I am, I guess I'm flexible. I feel that, you know, at the very least this committee, if there was a problem with use of eminent domain, could at least look at and advise the NRD if what they thought...you know, if you concur what they were doing was a good idea. There's, I mean, there's always...there's all kinds of things you could do. The state Department of Roads could build trails. I'm sure they have the expertise to build trails. [LR124]

SENATOR FISCHER: Not the money. (Laughter) [LR124]

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JIM PANSKA: Well, that's...I don't deal in that. (Laughter) [LR124]

SENATOR FISCHER: Do you view trails as economic development? [LR124]

JIM PANSKA: Yes, I do. That's why I'm on board with the proposed alternate route, I guess, because it is going to involve...the initial trail was 2.5 miles from the closest town. Nobody was going to load up their children and their stroller and go out to that trail, you know, just go on a totally...without trees, without any development. If it comes through the town, they're more likely to at least get on the start of the trail. And like I said, there are opportunities to visit things in those towns. [LR124]

SENATOR FISCHER: Do you know that here in Nebraska we have a current statute that eminent domain cannot be used to take ag land for economic development? [LR124]

JIM PANSKA: No. [LR124]

SENATOR FISCHER: So maybe we should expand that, do you think? [LR124]

JIM PANSKA: I guess I'm not prepared to answer that right now. (Laugh) [LR124]

SENATOR FISCHER: Okay. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Are there any other questions? Senator Haar. [LR124]

SENATOR HAAR: Yes, thank you. First of all I should have commented after Senator Pankonin was at the table that I worked with him a great deal and I really appreciate his willingness to talk. And at one point we're loggerheads and then we started to talk and I think that was very useful. I have suggested a process that would require mediation to

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occur if the NRD and the county board don't agree on something. Does that sort of process appeal in any way or...? [LR124]

JIM PANSKA: Well, I guess the way it is right now, one side has the hammer, the other side has nothing. So I mean, if the NRD has the eminent domain hammer, I'd not sure that the other side has an equal footing in that discussion, but that's my opinion, so. [LR124]

SENATOR HAAR: Okay. Sure. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Haar. Are there any other questions? Seeing none, thank you very much for your testimony. [LR124]

JIM PANSKA: Thank you. [LR124]

SENATOR LANGEMEIER: The next speaker is Roger Gaebel. Welcome to the hearing and we're ready when you are. [LR124]

ROGER GAEBEL: Thank you. I recognize faces from last winter or early spring. My name is Roger Gaebel, R-o-g-e-r G-a-e-b-e-l. After listening to the previous speakers it sounds like maybe this is all hammered out and things are going to work. I'm not convinced of that yet. It's a long ways from being done. So most of mine were...comments were going to be on the, basically the frustration that we went through when this first started to take place. I've always associated eminent domain with highways and power lines and big projects like that, all of which there were studies typically done and their use was justified. And then when there was a problem, it seemed like there was one or two parcels maybe that they couldn't negotiate on so eminent domain was something that was needed. This particular route, there was, I would say, 100 percent or right at it of the landowners who didn't agree with this at all and weren't about to begin negotiations because it was so poorly planned. And they

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was so intrusive that it was nothing that anybody could deal with. So when it got to that point that's when we enlisted the help of Senator Pankonin to halt this project before it looked like condemnation proceedings were probably going to happen. We're referring to the MoPac Trail today simply because that's the one that brought us here. But the way it stands, this could happen anywhere in Nebraska if there's some group that can convince the NRD that they need to take property on their behalf. During the LB134 hearing it was made clear then that the landowner could be held responsible in case of an accident caused by debris coming from the rear of a combine, or chemical drift from a sprayer, or an ammonia leak from an anhydrous ammonia applicator. Unfortunately last year I picked up a piece of steel with my combine that had been in the field for years. It was thrown with such force that it penetrated the steel barrier in the back of my combine, punctured the fuel tank, and then was launched out of the rear of the combine. Now granted this is rare and it doesn't happen very often but does demonstrate the force that something that leaves the rear of the combine. Given the proximity the way this trail was designed to our fields, there's no way that we're not going to litter this trail with corn cobs and chaff. A farm field is not the place to put sightseers. Large machines, limited visibility, and the urgency to get a crop in or out of the field are all points that are stressed when you have a farm safety presentation. And even the youngest child, if you've grown up on a farm, you're taught two things. One, you stay away from power take off shafts and you stay away from machinery. And you skip either one of those and you're liable to be headed for the woodshed. That's your first stop. This isn't an abandoned railway. These are active farming operations that were talking about. Now during the LB134 hearing I heard arguments that, well, our railways that were using bike trails now they already go through fields and we haven't had any incidents. Well, if you look, most of these abandoned railways are lined with trees and they're lined with brush and they're typically 100 feet wide, not 26. Now I'm not saying maybe we should make this 100 feet in our field now, but my point is that you can't compare a right-of-way for a railroad with an open field that they wanted to put this trail into. My other concern that I had when this was going on was the representation that the ag people had with our local NRD board. The majority of the board is from the metro area and I understand



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demographics, and that's where most of the people are, that's where most of our representatives are going to be from. But we also have board members on the NRD that are also board members on...or a board member on the trails group. They are members of the trails group and I doubt the objectivity that these people have when it comes to making decisions on trails. Now I don't want to be misunderstood. I know everybody can belong to a lot of trails and they're to be commended for their support and to promote their things that they do. But I don't think that your position on one organization should be used in another organization to promote that, especially if you have the power of eminent domain at your discretion and there will be the question what you do. There was three reasons that bothered me that they had for completion of these trails and some were silly, but regardless. Trail provides relief of parking issues due to commuting to work by school or bicycle. Well that might be a valid point in Lincoln but I don't know of anybody in our area that commutes to Lincoln or Omaha for school or work. And then, something like \$9 million is already spent on this project so we can't stop here. I'm not sure I'd admit to spending \$9 million and not having a plan in place already. But nevertheless, why should the burden of that be put on local landowners. So looks like I will close. [LR124]

SENATOR LANGEMEIER: Give me your third one. [LR124]

ROGER GAEBEL: Okay. This was my favorite, thank you. [LR124]

SENATOR LANGEMEIER: That's why I wanted it. (Laughter) That's why I want to hear it. [LR124]

ROGER GAEBEL: This trail is all about safety and getting children and families away from traffic. And so we're going to design a trail that criss-crosses a county road several times, include the two blind intersections and a state highway, and then we're going to put them in a field with large farm machinery. And this is the safest route we could come up with. That just baffled me. I couldn't believe that. But thank you for asking. In closing,

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Senator, power of eminent domain is a tool that should be used judiciously and reserved for projects that improve the state's infrastructure, not for a crushed rock path that goes through our fields. And it will also serve just a very small handful of people. I haven't seen any document that says the NRD can use the power of eminent domain specifically for a recreational trail. And this particular use of eminent domain that we've seen here today permits one person's hobby or pastime to take precedence over another person's livelihood and rights as a landowner. I cannot believe that this is what the Legislature originally intended when it gave the resources district this power. And I thank you for your time. [LR124]

SENATOR LANGEMEIER: Thank you, Mr. Gaebel. Are there any questions? Seeing none. Very good. They're going to let you off the hook. Thank you very much for your testimony. [LR124]

ROGER GAEBEL: Thank you. Our next testifier will be Steve Althouse. Steve, welcome to the committee and we're ready when you are. [LR124]

STEVE ALTHOUSE: (Exhibit 3) Good afternoon, Senator Langemeier and members of the Natural Resources Committee. For the record, my name is Steve Althouse. It's S-t-e-v-e A-l-t-h-o-u-s-e. I live here in Cass County and farm in both Cass and Lancaster County near Waverly. I'm here today to testify on LR124 on behalf of Nebraska Farm Bureau Federation, and also represent myself as a producer. Nebraska Farm Bureau has long been a champion of private property rights. Property rights are among our most basic rights, and it is the government's role to protect them. The taking of property through eminent domain should only be permitted when there is a clear public use for the betterment of the public good. Regardless of the kind of real property we may own, a home, a vacant lot or farm land, government should never be able to force us to sell it, just so it can be turned over to someone else for their recreational benefit. Farm Bureau was supportive of LB134 last session and we believed it would enhance private property rights by limiting the Natural Resources District's power of

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eminent domain as it relates to the development and management of recreation areas. Nebraska Farm Bureau Federation opposes the use of eminent domain for the development of recreation areas. We believe land acquisitions for trails and other projects should be done on a willing buyer, willing seller basis. Stating this, I would point out that the NRD is at a distinct advantage in the price negotiations since as Nebraska law currently stands, condemnation can be used as a fallback measure. Although agreeable sales account for the majority of land acquisitions by NRDs, eminent domain has been used in the past by NRDs to acquire recreational lands. Near Norfolk, the Lower Elkhorn NRD has used the power of eminent domain to acquire more than 12 acres along a three-quarter mile stretch on the north bank of the Elkhorn River. The land which was held by the same family for more than 100 years was used for a Cowboy Trail Extension Project. Condemnation was also used by the Pappio-Missouri River NRD on parcels of land for the Boyer Chute Project near Fort Calhoun. It is our opinion that condemnation by a NRD for recreational lands raises serious concerns as to whether the power is being used for the betterment of a public good or for a public necessity. We believe that flood control and similar projects are instrumental in meeting the structural needs of society. However, we would question whether a bike trail or recreational park should be treated in the same manner for acquisition purposes. Furthermore, the use of eminent domain serves to create a two-fold problem for the existing and surrounding landowners. Not only do landowners lose their rights to the land, surrounding landowners watch their taxes rise as the acquired lands are taken off of the local tax base. Many will argue the benefit of developing recreation areas. We would argue that this benefit should not come at the expense of private landowners, who in many instances have held ownership of the properties for several generations and will be the ones responsible for making up the lost tax dollars for schools, roads, and other local services. As a landowner, my family has personal experience with the acquisition of private property by the Department of Roads and several different public utilities that needed to gain access across private property. While these are necessary public uses that provide for the common good of all citizens, it is my experience that there will always be some damage to the remaining private property. The taking of

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private property by NRDs for recreational purposes does not fit with these other uses. When property is acquired for recreational use, the additional burdens of increased traffic, potential restrictions on agricultural practices nearby, and additional tax load on the remainder, are issues that should be negotiated with a willing seller, not forced on a property owner through condemnation. Thank you for your consideration of these comments. I'd be happy to answer any questions that you might have. [LR124]

SENATOR LANGEMEIER: Very good. He made the lights. A reward for that. Are there any questions for Mr. Althouse? Senator Fischer. [LR124]

SENATOR FISCHER: Thank you, Mr. Chairman. Thank you, Mr. Althouse for being here today. You brought forward, I thought, some very valid points. When you speak of land being taken off the tax roles by NRDs, do you know a percentage of any county that has been taken off the tax roles or within an NRD district how much land has been taken off the tax role? [LR124]

STEVE ALTHOUSE: I do not know that offhand. It's possible that information could be obtained for you though. [LR124]

SENATOR FISCHER: Yeah, I know communities such as Lincoln that have a lot of state land whether it's from state government or from the university, I hear from my colleagues in Lincoln their concerns with that and how that affects the remaining property owners in what they have to pay. So I would be interested if Farm Bureau could get me that information on what the NRDs have done in that regard. You said that you have personal experience... [LR124]

STEVE ALTHOUSE: Yes. [LR124]

SENATOR FISCHER: ..with government using eminent domain and that it does cause damage to the remaining private property. How so? How does it cause damage? Can

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you give me an example? [LR124]

STEVE ALTHOUSE: There's times where based on the location of the property, based on what the need is that is going to be taken, the property may be divided into small parcels. You end up with a parcel that has much less value because of its location or its size or it's cut off from the remainder. There's also, depending on what the use is going to be, limitations and restrictions on what future uses could be. Those are all things that really aren't taken into account when you go through a condemnation process, in my opinion. [LR124]

SENATOR FISCHER: Does your county assessor take that into account when considering the value of your property? Does it lose some of its valuation? [LR124]

STEVE ALTHOUSE: I have not experienced that. [LR124]

SENATOR FISCHER: So even though the market value has gone down, you would say, or at least it has caused inconvenience to you as a property owner, you're still paying taxes on it at the value it was before government stepped in? [LR124]

STEVE ALTHOUSE: That's generally the case that I've experienced, yes. [LR124]

SENATOR FISCHER: Do you think there's...why I believe you said so, but do you think there are cases when eminent domain is a proper use? And if you could specifically address if NRDs have a proper need for that power. [LR124]

STEVE ALTHOUSE: Well, as I had expressed in my comments, I think in instances of flood control, conservation uses where there are no other alternatives many times for the location of some of these facilities where it is protecting the public...for the public good in protecting the public as a whole, I think those are the times I think maybe they need to have the ability to move forward on a project if that's necessary, but as certainly

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as the last resort. [LR124]

SENATOR FISCHER: Would you have suggestions for this committee on what state policies should be with regards to the eminent domain power that NRDs have? Should they have any? First of all, should they have any in your opinion when it comes to trails? [LR124]

STEVE ALTHOUSE: When it comes to trails, strictly for recreational purposes? Well, I think to start off, we need to remember the first thing that needs to be done is protect the private property owner's rights. And I think, as I stated earlier, that the NRDs have an unfair advantage in that situation if they have the ability to do that strictly for recreational purposes. So then being supportive of LB134, I think we were...would like to, I think, restricting that use only for conservation uses would be a possible policy direction. [LR124]

SENATOR FISCHER: And last question. You gave the example that the NRDs in one case have used eminent domain to acquire recreational land. Do you have any other? [LR124]

STEVE ALTHOUSE: I don't have any information on any other ones right now, no. [LR124]

SENATOR FISCHER: Okay. Thank you. [LR124]

SENATOR LANGEMEIER: Are there other questions? Seeing none, thank you very much for your testimony. The next testifier will be Mary Lee Brock. Welcome to the hearing and go ahead when you're ready. [LR124]

MARY LEE BROCK: (Exhibit 4) All right. Hello, I'm Mary Lee Brock, M-a-r-y L-e-e B-r-o-c-k. And I'm here as a member of the faculty of the Werner Institute for

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Negotiation and Dispute Resolution at Creighton University in Omaha, Nebraska. The mission of the Werner Institute is to build a bridge between the field of conflict resolution and the issues faced by people in an increasingly complex world. I have been a professional mediator and mediation instructor for over ten years. I'm here today to discuss the powers of and limits to mediation as you explore possible enactment of a procedure for dispute resolution to resolve disagreements between affected property owners and the natural resources districts about recreational trail placement. The Nebraska Legislature has been very supportive of the use of mediation as evidenced by such legislation as Dispute Resolution Act, Uniform Mediation Act, Nebraska Parenting Act and the Farm Mediation Act. There are many benefits to mediation including: Disputes can be resolved more quickly, there is more buy-in to solutions created by the parties rather than a decision imposed upon the parties, relationships can be improved, it is an affordable use of the resources of time and money, and the courts are left to hear cases they really should be hearing. However, mediation is not a perfect world and there are conditions which must be put in place for mediation to serve as an effective dispute resolution system. The voluntary nature of mediation. Mediation is a voluntary process in the sense that no agreement can be imposed upon a party. Even in the event of court ordered mediation such as in a parenting act, the voluntary nature remains. What happens when there is no agreement? Effective mediation occurs when the mediator is true to his or her role and does not impose a solution upon the parties. There are times when parties cannot or will not agree. In any dispute resolution system the parties need to know what their next steps are after mediation. The balance of power. When one party has all or a large balance of the power it is unlikely that mediation will succeed. Power is a component in all mediation cases. And with that power comes different incentives to negotiate. A business owner may choose mediation with an employee to resolve something privately. Or a family member may mediate parts of an estate to preserve family relationships. A school district may choose mediation with a parent to avoid a court hearing. There's little incentive for a party with substantial power to mediate. I can illustrate this with a family example of a case I mediated between two parents, one of whom had legal and biological standing as

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parent and the other parent had no legal standing. In this example the legal parent had very little incentive to come to mediation and during the mediation process, the legal parent stated that she didn't have to agree to anything that was on the table and decided to end the mediation. The other parent had no recourse in this matter and was consequently cut out of the child's life. Compare this to a different kind of parenting case where both parents, even though they spend different time with the children, both have a legal standing. They come to the table ready to negotiate in good faith. Should they not agree on any or all of the terms of the parenting plan, they can ask the court for help in resolving the issues of their family. Mediation can be an effective way to resolve disputes between citizens and a government entity and for this study, the NRD, if the following conditions are in place. Requesting mediation by either citizens or the NRD is easy to do. Mediators, while in no way needing to be experts on land use issues, do have appropriate training to facilitate the negotiation between citizens and an NRD. The major tenants of mediation are in place especially disclosure of potential conflicts of interest by the mediator and confidentiality in the process. There was no penalty to a citizen for declining the opportunity to mediate. Neither the citizens nor the NRD hold exclusive decision making power. Should the citizens and the NRD attempt mediation and there is no agreement, the matter can be resolved in a different forum such as in the Legislature or in the courts. An attention to timeliness for both a mediation process and if needed the next step in resolution will set both the NRDs and citizens up for success. And as mentioned in previous testimony, conflict can be prevented by engaging the decision makers early on in the process and involving them in meaningful discussions in crafting a solution. The Public Issues Collaborative Program at the Werner Institute is committed to supporting the issues and efforts around collaborative government and also supporting mediation in a dispute resolution system when it's appropriate. I thank you for your time and attention today and I'm open to hearing your questions. [LR124]

SENATOR LANGEMEIER: Very good. Thank you. Are there any questions? Senator Haar. [LR124]



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SENATOR HAAR: Yes, thank you. I was unaware of your Institute when I talked to Senator Pankonin about mediation. In my own experience, I was trained as a mediator and I worked Small Claims Court in Lancaster County for a while. How do you see mediation fitting into this process we're talking about right here? [LR124]

MARY LEE BROCK: For this process? Well, when you think about your experience as a mediator at Small Claims Court, both parties have a stake in the outcome and there's a judge sitting right outside the door ready to answer the question if they couldn't come to agreement. So mediation would be best if there's some semblance of balance of power. I wouldn't suggest your leaving all the power with the NRD nor would I suggest you leaving all the power with the citizens, but yet having some sense of balance so the interested and concerned parties can come together in good faith. [LR124]

SENATOR LANGEMEIER: (Sound system feedback) It doesn't like mediation, I guess. (Laughter) [LR124]

SENATOR HAAR: Yes, when I did mediation the first thing you said to people is you can either work something out together or the judge will tell you what to do. And so in this case, we'd have to come up with a judge, probably literally the courts, as some final arbitrator if things weren't worked out. [LR124]

MARY LEE BROCK: Right. There has to...the dispute has to go somewhere and have a way to answer it. And as I mentioned in my testimony, timeliness is so important. In the Farm Mediation Act I think it calls for 60 days and just to try to get these questions to the table to let the negotiation get going and give it your best shot. But if there isn't a chance for an agreement, a timely manner so everyone can be able to move on. [LR124]

SENATOR HAAR: Thank you. [LR124]

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SENATOR LANGEMEIER: Thank you, Senator Haar. Senator McCoy has a question.  
[LR124]

SENATOR McCOY: Thank you for being here this afternoon. I'm curious to kind of flush out a little more of what you just described as the balance of power. As you're familiar with this situation what's been discussed, I'm curious to know your opinion and your thoughts on the balance of power as it rests. I particularly note in your written testimony when you say when one party has all or a large amounts of the powers, it's unlikely mediation will succeed. Can you talk a little bit about that in the context of what we're...I presume this is generally in a more general perspective, but in context of what we're discussing here. [LR124]

MARY LEE BROCK: Right. Right. Yeah, in general terms, yes. Specifically to this matter with the NRDs having eminent...power of eminent domain that is, that is exclusive power held by government. And so to enter into negotiation with citizens when they've already been granted power, it's very difficult to set up a situation where good negotiation and decision making good happen. The flip side of that, if you remove the power of eminent domain then you prevent a government entity from being able to make any decisions because it could be stopped by one individual landowner. So I'm advocating for a balanced approach where there's a share in power and then also a kind of surrounding system for that dispute to be resolved, if the negotiation at the table cannot answer the question at hand. [LR124]

SENATOR McCOY: And not to steal Senator Haar's thunder, but I think the microphone started to act up as you were starting to describe...I think you had started down the thread of, I would not advocate something to do with leaving the balance of power to...did you have another thought as you were describing that when the microphone started to go on the...? [LR124]

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MARY LEE BROCK: Well, I, as a committee you have your work cut out for you to figure out what is that sweet spot of balancing that power so that the interested stakeholders can indeed look at the situation with their history and wisdom and interest and desires and expertise, and then also in a way that those decisions can be made in a timely efficient way. So that's...it's a nonanswer to your very direct question. [LR124]

SENATOR McCOY: Well, I just...I guess I'm curious as you see it as it is now with no changes to recreation trails, the use of eminent domain for those purposes. Would you believe that the situation as it currently sits would fit into your statement that when one party has all or a large balance of the powers it's unlikely mediation will succeed. Would you, as it currently is now, would you find that to be an accurate fit with that statement in your testimony? [LR124]

MARY LEE BROCK: Right. I don't...you've given the NRD a lot of responsibility with eminent domain and with that to negotiate....to ask them then to, without changing any systems or any policies to negotiate that away, it doesn't set people up for success. [LR124]

SENATOR McCOY: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you. Are there any other questions? Senator Cook. [LR124]

SENATOR COOK: Thank you, Mr. Chairman and thank you Mrs. Brock for coming out this afternoon. As we examine this particular situation, you've already identified some challenges in really coming to a mutually satisfactory conclusion, and as we look forward to developing different economic development opportunities across the state, being mindful of our agricultural heritage, where would you see the ideal point at which mediation should begin? Let's say we start all over, we've made some sort of decision, up or down or sideways about the use of eminent domain, another idea comes along,

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where would you see that role of mediation being best placed to maximize it? [LR124]

MARY LEE BROCK: Before you would get to mediation I would concurrently advocate for a public participation process involved as well. Just as Senator Fischer had asked earlier about forming a citizen advisory group or...it's more than forming it. It's about forming it, engaging it, and really supporting that group with some decision making opportunities and authorities to some extent. Then also depending on what other systems are in place, legal aspects and land use and such, making every attempt to resolve, to manage disputes as they come along. If that hasn't happened, then mediation would fit well but also knowing...it's kind of on a continuum, then knowing if there's no agreement through mediation because again mediation...an agreement cannot be imposed upon the parties, then where does that go? Who is going to be the hearing? It's all on a continuum from public participation through the courts. It's more time efficient and effective. The earlier the more front end you can load it, would make a big difference. And thinking that framework of, you know, setting everybody up for success. [LR124]

SENATOR COOK: Thank you. [LR124]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LR124]

MARY LEE BROCK: Thank you for your time. [LR124]

SENATOR LANGEMEIER: Continuing down on our list, we're switching over to the other side. Glenn Johnson, would you please come forward. Welcome to the hearing and we're ready when you are. [LR124]

GLENN JOHNSON: (Exhibit 5) Good afternoon Senator Langemeier and members of the Natural Resources Committee. My name is Glenn Johnson, that's G-I-e-n-n

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J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District, which has offices in Lincoln, and I'm presenting testimony on behalf of the Board of Directors, many of whom are here today. The district first became involved in trails and recreation corridors and conservation corridors in the early 1990's at the request of local constituents within the district. Why did they come to the Natural Resources District for that assistance? Couple reasons. One, the NRD statutes do list 12 different statutory authorities, among them is management and development of recreational and park facilities. It was suggested that 1 through 12 might be a ranking order but I'm not sure that Senator Fischer would agree that number 12, which is management and development of range and facilities, is necessarily a good priority for districts in the Sandhills. That's not in priority order, never has been. But those are a list of 12 statutory authorities. The second reason they came to the district besides having the authority, districts are regional in nature. We connect communities. We cross over boundaries of counties. Trails and many of our other projects, watershed projects, ground water management are regional in nature. And so the districts are use to...over...going across county and community boundaries and working with those. So the district had both the authority and the general aerial coverage for working with that particular corridor. Similarly, we've done two other trails, the Homestead Trail south from Lincoln and the Oak Creek Trail from Valparaiso to Brainard. That one also crosses between two communities and it includes two counties. There is no other entity with that authority. There is no other entity at state level or at city or county level that could connect these trails and make a regional trail. The state would require a specific legislative act. Development and trails have generally been funded by Federal Transportation Enhancement funds or Recreation Trails Program Funds along with significant private funds. Few NRD or local government funds have actually been required in those projects. The...to be eligible for those federal funds, which generally pay 80 percent of the development costs, there are very specific guidelines and requirements for planning, public involvement, design, right-of-way acquisition, construction, which must be followed. Those are in addition to the state specific requirements for right-of-way acquisition on private property, public meetings laws.

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Previous testifiers characterized the NRD collaborative and public involvement on this proposed trail connection, which also has a comprehensive corridor study as being essentially nonexistent. Dan Schulz is going to follow me and talk about this specific process and the extensive public involvement and coordination with agencies that did take place during that...the planning. As part of the agreement that we made with Senator Pankonin and Senator Haar and the committee in discussing LB134 at the end of the session, we agreed to: One, suspend work on the trail corridor we're working on. We did that. We did that immediately. We notified all the landowners. The second thing was to work with the Cass County board and we have done that. You heard the chair of the Cass County board describe a couple of the recent meetings that we've had and we, too, are very optimistic that together we can find a way to make this connection between the current MoPac Trail and the Lied Platte River bridge. Districts, we agree, have a very powerful tool in eminent domain. The other thing that was mentioned, the districts also have is taxing authority. The one thing that wasn't mentioned is districts have elected boards of directors. Those are local government officials, local units of government, just like cities and counties have elected boards of taxing authority, have eminent domain authority, and they make decisions, they make locally led decisions. And that seems to be getting lost a little bit in here is that NRDs don't have an elected board that is capable of making decisions. I think they do. I think that's been proven. With that, I will conclude my testimony. [LR124]

SENATOR LANGEMEIER: Thank you for your testimony. Glenn, Lower Platte South NRD board, are they on the one-to-one ratio for your board members? Or, I know some of our NRDs are not. [LR124]

GLENN JOHNSON: Yes. The Natural Resource District at Lower Platte South is on the one-to-one, yes. [LR124]

SENATOR LANGEMEIER: You are one-to-one, okay. Are there any questions? We'll start at the end. Senator McCoy. [LR124]

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SENATOR McCOY: Thank you Mr. Johnson for being here today and for your testimony. As we heard from earlier testifiers, kind of looking back in hindsight it's always 20-20, I would guess, and seems to be and has been in my lifetime. I'd like you to comment if you could on, what would have you done differently or would have you done anything differently in this particular situation knowing that we've heard testimony about there being 6,800 miles of trails in the American Discovery Trails. Sounds, if that's correct, that eminent hasn't been used in that, many, many thousands of miles and hundreds of miles of trails. Knowing that and knowing that you potentially were facing 15 to 20 eminent domain cases, had this gone forward, what would have been done differently knowing the county board was going to vote twice against it? [LR124]

GLENN JOHNSON: Okay. First the...both the American Discovery Trail and the American National Trail System, American Discovery Trail is a trail on paper. American Discovery Trail is not an entity that owns or has developed one single mile of trail. So it's a concept. It has an organized board, and you'll hear more about the American Discovery Trail. And, you know, certainly that is their position and their hope is that none of that acquisition would need to be acquired through eminent domain. Experience has been that that's a challenge when you are not being able to find a ready-made corridor. And that's the circumstance we find ourselves here. We're trying to connect a very identifiable railroad corridor that stops here with a...the Platte River bridge across to connect in with the Omaha trail system. From point A to point B there is not a publicly owned or readily identifiable abandoned railroad. There's a segment of an abandoned railroad corridor but that's all privately owned also, because that was abandoned. So, you know, there really isn't a good way to get there. And as the previous testifier testified, if you can negotiate with 14 out of 15 and if the 15th one is not even willing to come to the table, or disagrees with the price, or in some cases will ask you to go to condemnation because they need to settle an estate or there may be some reason why they would request to go to condemnation. But for various reasons there may be a reason to go to condemnation. And if you are successful and honestly negotiate and

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treat fairly 14 landowners, is it fair to them that if you don't have the power of eminent domain that you wait and maybe have to pay something, an unfair amount, to the other 14 comparatively to the 15th to get that connection made. That's the kind of issue that you face with. That's not necessarily fair to even the taxpayers in the district, if the only way remaining to acquire that last gap is to pay whatever it would take to pay it, and that's part of the issue. [LR124]

SENATOR McCOY: I guess that's a...not quite what I was looking for in my answer. [LR124]

GLENN JOHNSON: Okay. [LR124]

SENATOR McCOY: My answer...my question, I guess, would be, what would have been done differently had you known, or would there have been done anything different? [LR124]

GLENN JOHNSON: Okay. When Dan gets up he'll talk about the process but we met immediately and worked with the local county elected board member on the county board and the county road superintendent, neither of which are on the board now, neither of which were on the board when the county board voted no. You had a change in county board members during the time we were planning this. That happens. And the county board member that we were working with was very interested and worked with us to try and identify different corridors, looked at different corridors, and we were in good faith working with that representative as we assumed representing the full county board. That may not have been the case. [LR124]

SENATOR McCOY: Well, I presume that wasn't the case based on the votes that were taken in March when the county board, and there may have been a change. [LR124]

GLENN JOHNSON: There's none of that county board that was on then, I don't believe,



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was on in 2003 or 2004. Maybe there were, but very...you know, there's five and it was just a different set of circumstances at that point. [LR124]

SENATOR McCOY: So I guess to conclude my questions, you're saying that there really wouldn't have been anything done differently? [LR124]

GLENN JOHNSON: I think we would have tried even more public involvement than we did but we held numerous public meetings. We provided information, direct mail. Our consultants worked and contacted directly individually the landowners and met with them individually if they would be willing to meet. And we had worked with this group of citizens committee, and their recommendations included two things: One, a corridor, and then the second was basically the alignment within that corridor. The alignment within the corridor was not even going to be acceptable to the funding agencies that provide the funding to develop a project. So if we had gone with their alternatives, it would have had to been constructed at the 100 percent expense of the Natural Resource District. And we feel safety would have been comprised also. So the board did retain their recommendation on which of the multiple corridors that we looked at, but were not able to because of the funding requirements, safety requirements, to follow their recommendation. [LR124]

SENATOR McCOY: That leads me to my last question. I think you've kind of dovetailed into it. What, when you talk about funding requirements and you would have to shoulder the burden 100 percent, the NRD, what are the funding sources? When you said then you would have had to support 100 percent, would you describe, if you could, to us and to the audience what the...who else would have shared part of that burden? [LR124]

GLENN JOHNSON: There are two major federal funding sources under the Transportation Enhancement Program, which is administered by the Nebraska Department of Roads. It's federal funds that are used for trails and basically that have both some recreation but also a primary...their primary purpose is transportation. And

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Department of Roads considers bicycles as transportation. It's part of a multimodal network of transportation. It is part of the infrastructure for transportation. They provide essentially 80 percent, up to 80 percent of the funds for the cost of developing and constructing a project. The other also is federal funds but it's called the Recreation Trails Program, and it's administered through the Nebraska Game and Parks Commission. It also provides up to 80 percent of the funds but has a much smaller pool of funds overall than does the Transportation Enhancement Funds. There is one other state fund, which is the Nebraska Trails Development Assistance Act, which is administered by the Game and Parks Commission and receives direct appropriations from the General Fund off and on. And those are the primary sources of outside federal and state funds. We in Lower Platte South have been very successful in working with the private sector, some of the trails groups, to provide a significant source of additional funds on projects. The Lied Platte River Bridge is a good example where close to half a million dollars of private funds...there was a significant chunk of private funds that was raised for that particular project, similarly on the MoPac Trail construction and on the Homestead, Oak Creek. Private funds bought that right of way in the first place from the railroads. [LR124]

SENATOR McCOY: I'm curious to know, and you mentioned, Mr. Johnson, the Recreational Trails Program Funds. An earlier testifier had turned in, as part of his testimony, some information that Recreational Trails Program Funds may not be used for eminent domain. [LR124]

GLENN JOHNSON: Right. [LR124]

SENATOR McCOY: Can you explain the relationship of how that would have interacted with what you just described as you would have had to shoulder 100 percent of the burden versus some of these other funds that you had resources, when clearly those funds couldn't have been used for eminent domain? [LR124]

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GLENN JOHNSON: Okay. It was not our intent to apply for Recreation Trails Program Fund on this particular project because they have a very small...first off, they have a limit of \$100,000, I think it is, per project and the Nebraska...the Transportation Enhancement Funds have a half a million dollars limit per project, and so it's a very limited amount. You would not receive or be able to do very much project with the Recreation Trails Program. The Transportation Enhancement Funds do not have the same restriction on use of eminent domain. The other projects where we've used Recreation Trails Program or where we have was where the property was already acquired. Either they were trail...a rail corridor or...I guess that's probably...or a stream corridor where we already had an easement. [LR124]

SENATOR McCOY: So by not using eminent domain, you would have been able to potentially access that \$100,000 of those funds through the Recreational Trails Program Funds. [LR124]

GLENN JOHNSON: Potentially, yes. Again there, all the funds are very competitive but, yes, we could have. [LR124]

SENATOR McCOY: Which would lessen the overall cost to the NRD of the project. [LR124]

GLENN JOHNSON: You could still apply for up to 80 percent, but the 80...and I guess you would have had to broke it into five separate projects and apply five different times to be able to complete that project, with the largest share of it being federal funds. [LR124]

SENATOR McCOY: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Haar, did you still have a question? [LR124]

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SENATOR HAAR: Yes. Thank you very much. Earlier, we were handed a budget, I believe it's NRD budget, showing land best management practices were \$1.14 million and trails and conservation corridors are \$1.5 million. The \$1.5 million, is that tax money or was that...does that include the grants and so on? [LR124]

GLENN JOHNSON: That would be a combination of grants and NRD funds and I don't know if this year we had any private funds, private sector funds in that or not. I don't believe so. The one point...the conservation treatment funds is essentially all NRD funds except for...yeah, that's all NRD funds. There is a part of a state fund in there, too, but that's not included in that total. [LR124]

SENATOR HAAR: Okay. And then it says trails/conservation corridor. Are those the same thing? Is that... [LR124]

GLENN JOHNSON: Yes. [LR124]

SENATOR HAAR: Okay. [LR124]

GLENN JOHNSON: Yeah, basically what we have done is identified the corridor with the trail in it as a conservation corridor because that's generally...we manage that for wildlife habitat, for water quality, for multiple purposes, and it's a conservation corridor that has a trail in it. [LR124]

SENATOR HAAR: Uh-huh. Okay. [LR124]

GLENN JOHNSON: And that's the way our rules and regulations recognize those. [LR124]

SENATOR HAAR: And then finally, generally do trails like between Lincoln and Omaha,

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is it feasible to plan the whole trail before you begin building or...it seems it's done piecemeal. [LR124]

GLENN JOHNSON: Obviously, before we started building the...after we started on the MoPac but before we really got very far, the Nebraska Trails Plan had been developed. And if you look closely at that Nebraska Trails Plan, that identifies a route and a corridor all the way from Omaha to Lincoln. It includes all the features that we've done so far. It includes the MoPac all the way out to Wabash and a mile beyond. It includes the Lied Platte River Bridge. [LR124]

SENATOR HAAR: Uh-huh. [LR124]

GLENN JOHNSON: It includes, and I won't describe, the Papio, basically their trail system along Highway 31 and then up along Highway 50 up and to connect in with Omaha. So, yeah, there is a plan and the plan was what's in the state, you know, trails act or state Trails Plan and that's what we've been implemented essentially. [LR124]

SENATOR HAAR: Okay. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Schilz. [LR124]

SENATOR SCHILZ: Excuse me. Been sitting here quiet for so long. Thank you, Mr. Chairman. Mr. Johnson, thank you so much for coming in and sitting down today. As you had stated before, in looking at some of the alternative corridors or alternative placement of this trail, you said that...you said that those didn't fit within the guidelines of the funding mechanisms that you were looking at. [LR124]

GLENN JOHNSON: Right. [LR124]

SENATOR SCHILZ: As we've heard here earlier today, the alternatives that are being

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proposed now, do those fit within the funding guidelines or... [LR124]

GLENN JOHNSON: Okay, let me...all of the...all of the corridor alternatives that we looked at certainly fit within the funding guidelines. The guidelines relate basically to the design criteria on the trail itself. The width, the slopes, the separation from a roadway, from a traveled roadway, the grades, those are all part of the design criteria. One of the criteria, you know, that was in the recommendation from the citizens advisory committee was that the trail...there be five foot added to each side of the gravel road, a five-foot shoulder, additional shoulder, and then that be used as a one-way trail in either direction; did not have any separation from traffic; it just becomes a wider road is what it essentially does. From a safety standpoint, you're required to have a minimum setback from the edge of the travel lane or, if you don't have that minimum physical setback, you have barricades or barriers. And so that's part of, you know, what is the design requirement that that recommendation couldn't meet. [LR124]

SENATOR SCHILZ: Sure. Can you tell me, this citizens advisory group that you had to have, was that...when was that formed and how does that...or maybe that's for somebody else. [LR124]

GLENN JOHNSON: Dan can tell you a little bit better about that, yeah, when he comes up following me. [LR124]

SENATOR SCHILZ: Okay. I'll wait tell then. [LR124]

GLENN JOHNSON: He'll follow me. [LR124]

SENATOR SCHILZ: Okay. And then back to it seems somewhat troubling to me that you were dealing with an individual on the Cass County Board who then was not there. Was there any other communications between the NRD board and the Cass County Board before this happened, or did you just go by... [LR124]

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GLENN JOHNSON: No, all the way through... [LR124]

SENATOR SCHILZ: ...the liaison from the county board? [LR124]

GLENN JOHNSON: No. All the way through the process we had a number of public meetings and in each of those there were representatives of the county board present at those meetings. They were all invited and so were the representatives from villages and the communities. So they were...they were invited and they were represented there at the public meetings when we explained the alternatives, when we started talking about narrowing down to...the corridors to one alternative. So representatives were there from the county board, weren't sitting up at the table as a partner with us. And probably there's one thing that we could have done. We could have engaged them much more probably throughout that process directly, but we didn't. They were...they were participants but not maybe as active as probably we could have made them. [LR124]

SENATOR SCHILZ: Okay. Thank you very much. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Schilz. Senator Fischer has a question. [LR124]

SENATOR FISCHER: Thank you, Mr. Chairman. Thank you, Mr. Johnson, for being here. Are you going to come up and see me in Valentine in October? [LR124]

GLENN JOHNSON: I certainly am. [LR124]

SENATOR FISCHER: Okay. Great. [LR124]

GLENN JOHNSON: And November. Twice. [LR124]

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SENATOR FISCHER: What are we doing in November? [LR124]

GLENN JOHNSON: The natural resources district managers are meeting there in Valentine, so. [LR124]

SENATOR FISCHER: Oh great! [LR124]

GLENN JOHNSON: Yeah. [LR124]

SENATOR FISCHER: You'll have a good time. You'll have a good time. I have a few questions here. Going back to Senator McCoy and Senator Schilz, their questions, when did this process start for the trails? When did you first get the idea? When did it start? You mentioned in your testimony or in answer to a question, in 2003 you were working with a county board member. Is that about when it started? [LR124]

GLENN JOHNSON: That's when we started working on the specific connection, making the specific connection. Dan will have those dates. I know that he's got those specifically. Dan is going to follow me in testifying so he'll have some of those answers. [LR124]

SENATOR FISCHER: Okay. I'll save the rest of those questions for him then. [LR124]

GLENN JOHNSON: Okay. [LR124]

SENATOR FISCHER: In this planning process for trails, is the Department of Roads involved in planning at all? [LR124]

GLENN JOHNSON: Up till now, and I'll explain that a little bit, the Department of Roads has not been involved until such time as you make an application for funding through



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the Trails Enhancement Act. So it used to be that you went all the way, you identified the corridor, you went all the way through the process, you developed your application for funding for a specific trail segment, you didn't have it designed yet but you...that was when you engaged the Department of Roads. Under the changed regime with Federal Highway Administration and Department of Roads, that they're undergoing now, this local program, local project agency responsibility, any time you...from the day you think that you're going to maybe use federal funds, you engage Department of Roads and Federal Highway Administration at that point and they will be engaged at every single step of the process. That's...all of the process was there but the oversight wasn't there that followed you all the way through the process. That will be the change from this point on. [LR124]

SENATOR FISCHER: Do you hire a public manager then for the project, as required by federal law, or does that come through the Department of Roads when you engage them at the beginning of the process? [LR124]

GLENN JOHNSON: Not sure I know what you mean by a public manager. Of the application, design process? [LR124]

SENATOR FISCHER: No, of the entire process. You have to have a public official involved. [LR124]

GLENN JOHNSON: Yes. We have...we have two individuals on my staff who have gone through the training... [LR124]

SENATOR FISCHER: Okay. [LR124]

GLENN JOHNSON: ...and are responsible charges, is what the terminology is. [LR124]

SENATOR FISCHER: Okay. You said that you had easements to manage land for

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wildlife, did I hear you correctly on that, where you develop corridors, easements,...  
[LR124]

GLENN JOHNSON: Right. Uh-huh. [LR124]

SENATOR FISCHER: ...and it's wildlife management? What else did you say? [LR124]

GLENN JOHNSON: Well, along the...I guess what we were talking about was is the conservation corridor synonymous with the trail, and they're both...the trail is 12-foot wide. The corridor is...the conservation corridor is 100 to 100-plus feet wide, and the trail is 12 foot within that. Now there may be an equestrian trail, which is another 8 foot within that corridor, but the whole 100-foot wide is...it's not a wildlife management. You know, Game Commission may call it a wildlife management area or a state wayside area or state...in our case, we call them a conservation corridor. That's a designation we've made for it. [LR124]

SENATOR FISCHER: And how do you manage that? [LR124]

GLENN JOHNSON: Well, we've planted trees. We've removed dangerous trees or weed trees. We plant it back to native grasses. The railroads took a pretty good job of controlled burns before we took hold of it or uncontrolled burns, so we don't do or we try not and really haven't done any of that. But there are other ways that we have to manage. Obviously, we've got weed control. We've done...you know, we've got citizens that want to put up bluebird boxes all the way along. [LR124]

SENATOR FISCHER: Were these...were these lands chosen because of what they already had on them or where they chosen for the potential that your board saw?  
[LR124]

GLENN JOHNSON: In these cases, they were what the railroad owned. They were the

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land that the railroad owned, so. [LR124]

SENATOR FISCHER: Okay. Last question: In your written statement, you ended that by saying recreation trails are projects that provide for the public good, just like roads, flood control, dams, and power transmission lines, and eminent domain is a necessary tool to ensure completion of construction and to protect the financial interest of the taxpayers. Is that the view of your board of directors? [LR124]

GLENN JOHNSON: Yes. They don't like to use eminent domain, but they see it as an essential tool to be able to... [LR124]

SENATOR FISCHER: For recreation trails. [LR124]

GLENN JOHNSON: ...to complete projects, whether it's 1 through 12. [LR124]

SENATOR FISCHER: Okay. When you say 1 through 12, you're referring to the statute. [LR124]

GLENN JOHNSON: Yeah, statutory authorities. [LR124]

SENATOR FISCHER: Okay. But in your testimony, your written testimony, it says, you know, recreation trails are projects that provide for the public good. So my question is that is the view of your board of directors. [LR124]

GLENN JOHNSON: If it's not for the public good, my board is not going to undertake a project. That's the whole purpose, you know, there. [LR124]

SENATOR FISCHER: Let me try this one more time. [LR124]

GLENN JOHNSON: Okay. [LR124]

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SENATOR FISCHER: Does your board believe that recreation trails are projects that provide for the public good? [LR124]

SENATOR FISCHER: Is that the stand of other NRDs, do you know? [LR124]

GLENN JOHNSON: I don't know the position on all the NRDs. No, I don't know. [LR124]

SENATOR FISCHER: Okay. [LR124]

GLENN JOHNSON: I know... [LR124]

SENATOR FISCHER: But that is the stand of the Lower Platte South Natural Resources District. [LR124]

GLENN JOHNSON: Right. Right. Correct. [LR124]

SENATOR FISCHER: Okay. Thank you. [LR124]

GLENN JOHNSON: Uh-huh. [LR124]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Our next testifier will be Dan Schulz. Welcome to the committee. And for those of you that aren't aware of this facility, there are rest rooms to my right through these double doors, where that individual just went, if you need it. (Laughter) And at this time, while Dan is getting ready here, I'd like to welcome Senator Bill Avery from Lincoln, who has joined us a few minutes ago. Welcome to the hearing. Dan, we're ready when you are. [LR124]

DAN SCHULZ: (Exhibit 6) My name is Dan Schulz. I'm the resources coordinator for the

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Lower Platte South Natural Resources District, spell my name D-a-n S-c-h-u-l-z. Good afternoon. The testimony is being submitted on behalf of the board of directors of the Lower Platte South Natural Resources District in response to LR124. It is an overview of the process and coordination the district has followed with the Cass County Commissioners, local residents, stakeholders, and the district's consultants. After the completion and dedication of the Lied Platte River Bridge at South Bend in 2002, the Lower Platte South and the Papio-Missouri River NRDs both began to work at completing the trail connection between Lincoln and Omaha, Nebraska. The MoPac East Trail extended at that time to Wabash, which is a couple of miles northeast of Elmwood, with nine miles of connection. From Wabash to the Lied Platte River Bridge was another nine miles. The district worked with the Cass County Commissioner from Elmwood and the highway superintendent to look at interim routes to the bridge using a county road. A route was designated, signed, and the district agreed to pay for a roadway amendment that was used to help keep down the dust on the graveled portions of the route. In 2004, the district hired the Big Muddy Workshop from Omaha to do a corridor study which encompassed approximately a 75-square-mile corridor between Highway 50 and Highway 1, from Elmwood north to Highway 66. Two public meetings were held for stakeholders on the corridor study and a recommendation for the board of directors on a final corridor was developed. Before the NRD board of directors took action to designate a connection corridor in 2006, they agreed to allow two directors from Cass County to form a Cass County Citizens Task Force to explore options for completing the trail from Wabash to the Lied Platte River Bridge. The Cass County Citizens Task Force report was completed in 2007 and a meeting was held in Elmwood for the NRD subcommittee working on the project. The board of directors then took action to designate 334 Street as the trail connection corridor. In 2008, the district hired Schemmer Associates to develop trail alignment alternatives and to do preliminary engineering along a half-mile-wide corridor along 334 Street. Four trail alignment alternatives were developed and presented to the landowners at a public open house in Murdock and at the Cass County Commissioners meeting. Schemmer also gathered information from questionnaires filled out for the consideration in the final...filled out by

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landowners for consideration in the final trail route section. The district selected a final trail alignment and Schemmer presented the alignment to the Cass County Commissioners. Schemmer Associates then contacted the landowners and offered to sit down with them individually to discuss the impacts to their property. During this process, the district sent out notices to the landowners for the need to do property surveys in order to do preliminary trail design. By the time the district agreed to suspend work on the project at the end of this past legislative session, Schemmer Associates had completed the property survey on all but one landowner's property. The district contacted all the property owners, informing them the district has suspended work on the project. That's all I have. [LR124]

SENATOR LANGEMEIER: Thank you very much. Are there questions? Senator Fischer. We'll start on this side first. [LR124]

SENATOR FISCHER: Good afternoon. Senator Langemeier never starts on this side so I usually get a little more time to prepare. (Laughter) I'm trying to digest your time line that you presented here. But the first question that really popped out at me when you gave your testimony, you talked about the Cass County Citizens Task Force. How many citizens were on that? How were they chosen? Was this an invitation only by the NRDs? You know, how did that happen? [LR124]

DAN SCHULZ: The two directors from Cass County that sit on the board, David Nielsen and Marsha Babcock, requested this at a board meeting when the board was scheduled to take action. They indicated that it was going to be by their invitation only; that unless they asked the NRD staff to participate, they didn't want us, you know, to be involved; that they were going to go through this process themselves. [LR124]

SENATOR FISCHER: So the two directors, who I don't know if they're here or not, but the two directors chose the people to... [LR124]

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DAN SCHULZ: They developed... [LR124]

SENATOR FISCHER: ...sit on this task force and try and come up with plans? [LR124]

DAN SCHULZ: They developed their own process for selecting them. [LR124]

SENATOR FISCHER: Okay. Okay. What did their report say? [LR124]

DAN SCHULZ: Glenn will... [LR124]

SENATOR FISCHER: Did their report jive with what the trail ended up to be? [LR124]

DAN SCHULZ: The final alternative selection...selected? No. Glenn had alluded to that earlier. [LR124]

SENATOR FISCHER: You never form a group unless you're going to listen to them. [LR124]

DAN SCHULZ: I believe that they felt...I haven't reviewed that for awhile. I believe they felt the 334 Street corridor was a...they felt a route that would make sense, but their trail design didn't make sense from the standpoint they just wanted to widen the county road, like Glenn said, five foot on either side of that and make that work. [LR124]

SENATOR FISCHER: On the final trail route that was selected,... [LR124]

DAN SCHULZ: Uh-huh. [LR124]

SENATOR FISCHER: ...what percentage of the landowners wanted that? You said that you sent out a questionnaire for their consideration on it. What percentage said, yes, this is the route we want? [LR124]

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DAN SCHULZ: None of them probably said that, yes, they want...that this is the route they wanted. When our...Schemmer Associates offered to sit down with them individually and meet with them at their homes to talk about what gives and takes might be able to be done on the design, I don't have the numbers in front of me on how many of those landowners did meet, but there were several of them that met with her. And she told me that those meetings went surprisingly well, as the meetings had gone with the Cass County Commissioners when we reported to them. But we can certainly provide the committee with those statistics if you'd like to see that. [LR124]

SENATOR FISCHER: I guess I'm leading up to why, again, I think we're here. We're looking at policy. [LR124]

DAN SCHULZ: Uh-huh. [LR124]

SENATOR FISCHER: Do you believe that there would need to be any changes made in current statute with regard to NRDs' power of eminent domain when it comes to recreation trails? [LR124]

DAN SCHULZ: I'm a staff person on the district. I don't make policy decisions. I implement their policies and programs. That's not for me to say. [LR124]

SENATOR FISCHER: I respect that. Thank you. [LR124]

SENATOR LANGEMEIER: Are there any other questions? Senator Schilz. [LR124]

SENATOR SCHILZ: Thank you. Thanks for being here this afternoon. Thank you, Senator Langemeier. I guess...and I guess it just keeps coming back, you know claim that the meetings go well but then when you...when you see how the votes go, I mean obviously there was a disconnect at some point of what was actually happening and



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what you thought...and what the NRD thought was happening. And I think that maybe...and I don't want to put words in Senator Fischer's mouth, but doesn't there seem...wouldn't it seem to you that if they had gone well, those meetings, that it probably would have worked a little better and you wouldn't have had so many landowners that were so visibly upset about it in the end? [LR124]

DAN SCHULZ: I guess I need some clarification as far as the votes. Are you talking about the two votes from the...on the Cass County Board's, those two votes? [LR124]

SENATOR SCHILZ: On the board, yeah. Well, there was probably...and I don't know, I don't know how that all went, I'm sure there was a recommendation from the task force as well, wasn't there? [LR124]

DAN SCHULZ: The recommendation from the task force was to the NRD subcommittee,... [LR124]

SENATOR SCHILZ: Right. Okay. [LR124]

DAN SCHULZ: ...from the Citizens Task Force that the two directors put together. [LR124]

SENATOR SCHILZ: Okay. [LR124]

DAN SCHULZ: That was a recommendation to the... [LR124]

SENATOR SCHILZ: Right, and was that...and was that favorable, in your words, or supportive? [LR124]

DAN SCHULZ: My recollection is it was favorable only from the standpoint that it was on the same corridor,... [LR124]

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SENATOR SCHILZ: Uh-huh. [LR124]

DAN SCHULZ: ...334 Street, that it was eventually...when we eventually hired Schemmer to look at four alternative routes. [LR124]

SENATOR SCHILZ: But then after that, that's where the wheels, quote unquote, fell off. [LR124]

DAN SCHULZ: Well, the wheels fell off because the design criteria that they wanted, like one had said, is not going to be fundable by Federal Highway Administration and some very serious safety concerns for trail users to be that close to the... [LR124]

SENATOR SCHILZ: And not to get too far into the minutia of the whole deal, but what was done then to try to rectify that? [LR124]

DAN SCHULZ: We tried to explain the criteria for why a trail such as this had to be designed the way it needs to be designed and why it would not work as a county road shoulder. As far as the Cass County Board goes, there wasn't, I don't recall, a lot of interaction from them at the board meeting. We essentially kind of came in; made our presentation; you know, answered a few questions; you know, and that was it. [LR124]

SENATOR SCHILZ: Right. [LR124]

DAN SCHULZ: I don't believe...I don't remember if they voted the day we were there or if that was another time that they voted on our second report. But I don't know, I think the wheels fell off when the one landowner told us that we would have to get an injunction to do any survey work on his property. [LR124]

SENATOR SCHILZ: Yeah, that would be a problem, wouldn't it? Okay. Thank you very

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much. [LR124]

SENATOR LANGEMEIER: Senator McCoy. [LR124]

SENATOR McCOY: Thank you, Senator Langemeier. And thank you for being here, Mr. Schulz. A couple of (inaudible) this in my mind as far as the time line goes. The second paragraph of your testimony you talk about in 2002 kind of this process being started. Is that correct? [LR124]

DAN SCHULZ: Yeah. Once the Lied Platte River Bridge was done, you know, obviously there was a goal to connect Lincoln and Omaha. [LR124]

SENATOR McCOY: Uh-huh. [LR124]

DAN SCHULZ: And it was always recognized that the major link had to be a way to get over the Platte River. [LR124]

SENATOR McCOY: Uh-huh. And then in maybe the...well, let's see, in the start of the fifth paragraph you talk about in 2008 when you hired Schemmer Associates. Is that a correct time line there? [LR124]

DAN SCHULZ: Yes. [LR124]

SENATOR McCOY: Okay. Now you talk about in a little bit in between those two sections when the two directors from the Cass County...from Cass County on the board and the Citizen Task Force, and it appears in 2008 you had a presentation at the Cass County Commissioners meeting. Talk about in there, if you would, what contact there was between 2002 and 2008 between the NRD and the Cass County Board. I'm trying to understand your time line correctly. It appears that you had a meeting with the Cass County Board in 2008. What transpired in between? What was the communication?

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[LR124]

DAN SCHULZ: Okay. Like I had mentioned, the initial communication in 2002 was to work with the local commissioner at that time from Elmwood about this interim route. They were also invited to participate in the two public open...or two public open house meetings that we held as part of the Big Muddy Workshop's corridor study that looked at that whole big area. The next time that we engaged them formally was when we first hired Schemmer Associates and they had come up with four alternative routes. We met with them at their county commissioners meetings and explained those different routes, what they meant and what some of the issues were with each one of those alignments in conjunction with how we were going to...which side of the county road we were going to go on, where we were needing to cross driveways, why we needed to cross back and forth, looking at...looking at crossings of highways, paved roads, driveways, creek crossings and some of those, some of those things as far as design criteria. Then after...so we kind of laid out what the four alternatives. When Schemmer had gotten to the point where (A) one of those four alternatives...and it was actually a combination, the final alignment was actually a combination of those four alternatives based on the input that we had gotten, and at that point then we went back to the county commissioners meeting again and presented that, that final alignment that the board had decided on. So there, in 2000...in that process with Schemmer, we went to the county board meeting twice. [LR124]

SENATOR McCOY: And I appreciate that information, it's very helpful, but back to the original question. Between 2002 and 2008, am I to understand that there was no formal contact between the NRD and the Cass County Board? [LR124]

DAN SCHULZ: That's not right. [LR124]

SENATOR McCOY: Okay. [LR124]

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DAN SCHULZ: They were...they were invited to those, to two public open houses and they were also made presentations to two more times. So there were four... [LR124]

SENATOR McCOY: So between 2002 and 2008, there were two other times that you made presentations to the Cass County Board? [LR124]

DAN SCHULZ: Okay. They were invited to two public open house meetings between 2008 and when we first engaged Schemmer. That's your...that's your question, is it? [LR124]

SENATOR McCOY: Okay. So the subsequent other visits to the Cass County Board were in 2008. Correct? [LR124]

DAN SCHULZ: Well, not specifically in...but, yeah, they were in 2008 and later, yeah. [LR124]

SENATOR McCOY: Okay. So going back to what I originally asked for, between 2002 and 2008 there weren't any presentations made to the Cass County Board by the NRD. [LR124]

DAN SCHULZ: Not directly to the board. They were invited to the open house meetings and I don't know who or how many of those commissioners came to those open house meetings, but they were invited. [LR124]

SENATOR McCOY: Okay. And I'd also like to flush out, if we could for a little bit, the...you had mentioned earlier in your testimony that you had worked with the Cass County Commissioner from Elmwood. Can you explain to me how that came about that you were working with the...I understand now obviously that commissioner is no longer on the board. Can you describe how that came about that you were working with one commissioner? And obviously, that commissioner is not there any longer. Can you kind

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of give us a few more details on that? [LR124]

DAN SCHULZ: I'm not sure completely how it came about. I suspect that the district was contacted, probably some communications that Glenn had with the commissioner. When I first became involved was there was a meeting set up in Elmwood with the highway superintendent, that county commissioner, Glenn, myself, and there might have been another person, and we went out and drove those different street corridors looking at power lines, looking at different things, the...how the road was laid out to look at an interim route. That's when I became involved with it. [LR124]

SENATOR McCOY: So it's your understanding this county commissioner from Elmwood at the time wasn't elected by the board to represent officially the board or there wasn't an official capacity, it was more of a self-appointed, maybe more of an interest in the issue? Is that...would I be...would I understand that correctly to understand what you mean by that? [LR124]

DAN SCHULZ: I don't know if he was officially appointed or if he was doing it on his own, on his own there. [LR124]

SENATOR McCOY: So he wasn't necessarily speaking on behalf of the Cass County Board as a whole, more of on behalf of himself and... [LR124]

DAN SCHULZ: I don't know if he was...if he was speaking on behalf of the board or not. Typically, when we work on projects, you talk with the local representatives, but I don't know what his capacity was. I don't know if he was...he was representing the entire board at that time or if he was just representing his local part of the county, since that's where the connection project was involved. I don't know that. [LR124]

SENATOR McCOY: Thank you. [LR124]

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SENATOR LANGEMEIER: Senator Cook has a question. [LR124]

SENATOR COOK: Thank you, Mr. Chair, and thank you, Mr. Schulz, for being here this afternoon. I have a question to clarify in my own mind. We've talked about the time line but we've also had several references to the Citizens Advisory Group and, from my understanding, which is a Citizens Advisory Group to an NRD subcommittee. And then we had several references to current and past members of the elected Cass County Board of Supervisors. And in my listening, it sounds as though the presupposition is that the recommendations from the Citizens Advisory Group to the NRD subcommittee were to be communicated to the Cass County...elected Cass County Board of Supervisors? Can you tell me whether or not that is a true statement? Or was it more the idea that there would be certain elected members of the Cass County Board of Supervisors that also happen to be members of the Citizens Advisory Group to the subcommittee of the NRD and that the communication would go to the elected board members in that fashion? [LR124]

DAN SCHULZ: The way that the Citizens Advisory Group functioned, they were essentially autonomous from the NRD. They wanted to go out, form their own committee, look at the corridor study that had been completed, and come back with their own recommendations. They met with the NRD subcommittee in Elmwood and made their presentation. As far as what they did in communicating their task force recommendations to the county board I'm not...I don't know what they did there. David Nielsen, I believe, is here today. He's also a Cass County Commissioner who was part of that Citizens Task Force so, you know, you could ask him. I don't know how else they disseminated their recommendation. [LR124]

SENATOR COOK: All right. Thank you. [LR124]

SENATOR LANGEMEIER: Senator Fischer. [LR124]

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SENATOR FISCHER: Thank you, Mr. Chairman. Hopefully a short question. You mentioned, I believe, that the Citizens...see, you should never give us this information, this Citizens Task Force Group, were they the ones that came up with the idea to build the trail in right of ways? Is that... [LR124]

DAN SCHULZ: Yeah, essentially. [LR124]

SENATOR FISCHER: Is that what they wanted? [LR124]

DAN SCHULZ: Yeah. We, the district, had always strived to put the trail in the existing county road right of way if it was possible and we could meet design criteria. But we realize, because of the narrow nature of that, that there was going to need to be some land acquired. Their recommendation was to put it in the right of way but put it as a shoulder on the county road, if I remember right. [LR124]

SENATOR FISCHER: I believe Mr. Johnson, in his...in his written testimony, made a comment that there have been meetings with DOR to explore options within the state highway right of ways. Now previously were they, "they," this Citizens Group, just looking at county right of ways and were you looking at county right of ways, or were you looking at state right of ways from the very beginning? [LR124]

DAN SCHULZ: We were looking...we were looking from state right of ways at the point where we engaged Schemmer when a corridor was determined. That's why we met with the Department of Roads at that time to look at the use of Highway 66 or East Park Highway. So this is...this...the meeting that was alluded to after the last legislative session was the second time we've met with the Department of Roads on the possibility of using their right of way. [LR124]

SENATOR FISCHER: And have those meetings been beneficial? [LR124]



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DAN SCHULZ: Yeah, they certainly have been beneficial. The Department of Roads has told us that if there is a way to fit that into the existing corridor without any conflicts of the highway use, they'd be...they'd be glad to take a look at it. [LR124]

SENATOR FISCHER: Okay. Thank you. [LR124]

DAN SCHULZ: Uh-huh. [LR124]

SENATOR LANGEMEIER: Any other questions? Mr. Schulz, I have one. As you've given this great time line and you've been asked about it a number of times, at what point did you become involved in this project, what year? [LR124]

DAN SCHULZ: I've been with the district 27 years, so I've been involved with the MoPac East ever since it started. [LR124]

SENATOR LANGEMEIER: Okay. [LR124]

DAN SCHULZ: So I've been from day one. [LR124]

SENATOR LANGEMEIER: That's what I wanted. [LR124]

DAN SCHULZ: With the connection project? [LR124]

SENATOR LANGEMEIER: Yeah, as we talked about this starting in 2002, there's some gap of what happened from 2002 to 2008, Seems pretty vague. [LR124]

DAN SCHULZ: Okay. [LR124]

SENATOR LANGEMEIER: You were responsible for this during that same gap... [LR124]

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DAN SCHULZ: I...I...my general... [LR124]

SENATOR LANGEMEIER: ...that we seem to have lost the data for. [LR124]

DAN SCHULZ: I guess I...well, from 2002 to 2004, the district wasn't...was using and designated this interim route before we got into the corridor study by Big Muddy Workshop. So it was out there. It was signed. We were saying if you do want to get from Wabash to the Lied Platte River Bridge, here's the county road you can go along to get there. I don't understand what you mean, that there's a gap in... [LR124]

SENATOR LANGEMEIER: In some of the questions Senator McCoy was asking was the communication between your agency that you work for,... [LR124]

DAN SCHULZ: Uh-huh. [LR124]

SENATOR LANGEMEIER: ...that board and the Cass County Board from 2002 to 2008. [LR124]

DAN SCHULZ: Uh-huh. [LR124]

SENATOR LANGEMEIER: You've mentioned on a number of times they were invited to hearings but you also said that those hearings were in 2008. So there obviously should have been some communications between 2002 to 2008 that seems to be neglected. [LR124]

DAN SCHULZ: In 2004, they were invited to two public meetings as part of the Big Muddy Workshop contracted, paragraph number three. [LR124]

SENATOR LANGEMEIER: But were they...here's where my problem is, is you invite

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someone to attend versus having a meeting to discuss. [LR124]

DAN SCHULZ: No, we didn't have any meetings to discuss the Big Muddy Work...  
[LR124]

SENATOR LANGEMEIER: Exactly, gap in communications from 2002 to 2008, and that's where I have a problem. So with that, I thank you for your testimony. You did a great job. Thank you. Our next testifier here today will be Dean Edson. Welcome. We're ready when you are, Dean. [LR124]

DEAN EDSON: (Exhibit 7) Okay. Senator Langemeier and members of the Natural Resources Committee, I'm Dean Edson, D-e-a-n E-d-s-o-n, the executive director of the Nebraska Association of Resources Districts, presenting testimony today on LR124 regarding the use of eminent domain for recreational trails. I'd like to preface my remarks by thanking Senator Pankonin for being open and willing to work toward a solution on this controversial issue. His patience and honesty to resolve this issue has been very welcome. I have attached a copy to my testimony of a summary of questionnaire results on this issue. Our office worked with Kate Gaul, Legislative Research Office, this summer to make sure all districts provided the information that she requested. I want to read you the questions that she asked of all the NRDs, which is on the attachment. What criteria does your NRD use when identifying land for recreational trails and corridors? What process does your NRD use in obtaining land you identify for recreational trails? Has your NRD ever used eminent domain in order to acquire land for the sole purpose of establishing a recreational trail? And finally, do you have any written policies or procedure pertinent to these questions? I'm going to quickly go over just a summary of the results. This is a nine-page survey results. I'm not going to go over that whole thing, but I'm going to give you some...the highlights. Two NRDs have used eminent domain in two separate instances, total, to acquire land for the sole purposes of establishing a recreational trail. That's the Papio-Missouri River NRD and the Lower Elkhorn NRD, one instance each. Both of those districts are here today and

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they're going to follow me and explain what they...why they had to use that. Most districts have never initiated or been responsible for the development of land for the sole purpose of trail construction. In fact, 16 of the 23 NRDs never initiated or been responsible for trail development of any kind. NRDs' involvement in trail development, if any, is most often comprised of one or two of the following: utilization of existing corridors and/or public land; cost-sharing and/or assisting incorporated cities and villages to develop trails that are authorized, owned, and maintained by those communities; developing trails located within the boundaries of an NRD-owned flood control project serving the priority purpose of watershed management. NRDs sometimes decline to participate in trail development projects that are deemed inappropriate or unfeasible relative to the core missions of those districts. When NRDs develop trail projects, if applicable, legal statutes for uniform acquisition of private property are followed closely. Going on, and you can read through the rest of those at your leisure, but that kind of summarizes things for you. Since the creation of the districts in 1972, eminent domain for recreational use again has only occurred twice. Although districts don't want to have to use this authority, it would be impossible to complete a project if one landowner refuses to sell. A project should not be blocked just because the sponsor can't get 100 percent of the needed right of way on a willing seller, willing buyer basis. In several areas of the state, citizens have requested assistance with trails. They are very popular and used by the residents of these districts. And trail use continues to grow. Most of these trails have been acquired by using abandoned rail lines, and there has been and continues to be federal funds available to build recreational trails. One issue regarding a trail in Cass County is the result of allowing an old rail line to be abandoned and reverted to private land rather than keeping the corridor intact for trail use. Portions of the old line have been developed into trails, but several segments were reverted, leaving gaps to connect existing trails. To connect these trails, the safest way to do it, to get the bikes off the road and away from the traffic, which requires the purchase of private land. Local NRDs want to work with the citizens to develop the best solutions for the communities involved and avoid use of eminent domain. With the issues before us today, the Lower Platte South NRD has

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followed the agreement reached last spring to try to reach agreement with Cass County on alternative routes that would be amenable to the local communities and citizens. I firmly believe that continued discussions will resolve the issue. Now last session there was some discussion of a procedure to follow for use of eminent domain for recreational trails, but interested parties could not find acceptable language on a compromise. The Nebraska Association of Resources Districts is willing to look at this procedure again and will work with interested parties toward a realistic solution. Thank you for your time and I'll attempt to answer any questions you might have. [LR124]

SENATOR LANGEMEIER: Mr. Edson, very good. Thank you. Are there any questions? Senator Haar. [LR124]

SENATOR HAAR: Thanks for coming. Communication is hard and, at times, frustrating--and you could just ask my wife to confirm that I guess--but can always been improved. And it seems to me that instead of...I'm trying to unravel because it's a little bit unclear in my mind still what's gone on. This probably went on way too long. I think that's one of the things here. This process went on way too long without being resolved. And as I mentioned earlier, I'd like to see some kind of formal escalation process so that when things aren't resolved within a certain time frame, that then we go to the next step. We recognize things aren't agreed upon and we go to the next step. Does that fit at all into what NRDs are interested in? [LR124]

DEAN EDSON: Yes. I mean last year I think we worked on some procedures for us to follow and then go to some kind of mediation or something along that line. And we've discussed that with all the NRDs. [LR124]

SENATOR HAAR: And what was their response to that? [LR124]

DEAN EDSON: They were willing to take a look at something like that. But the problem was we could never come up with the appropriate person to mediate or resolve the

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dispute. [LR124]

SENATOR HAAR: The final... [LR124]

DEAN EDSON: Yeah, the final arbitration. [LR124]

SENATOR HAAR: ...the final...the judge, the judge of that. [LR124]

DEAN EDSON: But if there's a procedure outlined, the districts would be very willing to do that and part of that's, you know, working with local communities up front. A lot of districts do that. We've got a district in York right now that has been requested by the communities of Bradshaw and one other community to look at putting a trail in on an abandoned line, and they've gone back and asked the citizens of Bradshaw to put together a Citizens Advisory Committee first. [LR124]

SENATOR HAAR: Uh-huh. It sort of sounded to me, from the testimony so far, that the process that's required, the public input process and so on, it maybe somewhat unclear. Would you agree with that or do you think it's very straight forward and...? [LR124]

DEAN EDSON: Well, that process, each district has the ability to design their own processes for whatever project that they want to do. Probably more familiar with a lot of irrigation management issues and the decisions made on that. They get stakeholder groups put together to try to assist with those decisions, which again gets down to a property issue: How much water can you use? But you have to find a balance because there's a lot of different...there's a lot of people that maybe want water for other purposes so you got to make sure you get everybody included. The same thing with the process with...I mean that can be applied to a trails project. You need to make sure you got everybody included in it; can't be just one party. [LR124]

SENATOR HAAR: Now when you work with irrigation and so on, is there...again, sort of

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going back, this probably went on too long, is one of the big impressions I'm coming off with. Do you have any time lines associated with those kinds of negotiations with irrigation or is that also up to each NRD? [LR124]

DEAN EDSON: That's basically up to each NRD but there are some requirements in statute for different things as far as integrated management plans. After things have been declared fully appropriated, you have a time line assigned to it when you got to have things done. With a trails project, there isn't a drop dead date on that. But, I mean, again, we'd be willing to look at some type of process, if that's what would make this more workable, so we'd avoid situations like we have today. [LR124]

SENATOR HAAR: But to me it seems that one of the things that needs to be built into this, maybe in terms of law, I'm not sure yet, but is some kind of time line so that if things aren't resolved then they go to another level of resolution and, I suppose, finally wind up in the court system, which we hope wouldn't happen, but to sort of just give some benchmarks here if things are working or not working. [LR124]

DEAN EDSON: Yes. [LR124]

SENATOR HAAR: And so not pointing fingers at the past, but I think that might be very useful in the future. [LR124]

DEAN EDSON: Yes. We all learn from experience... [LR124]

SENATOR HAAR: Yeah. [LR124]

DEAN EDSON: ...about everything we do. [LR124]

SENATOR HAAR: Exactly. [LR124]

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DEAN EDSON: We learn by experience. [LR124]

SENATOR HAAR: Exactly. Thank you very much. [LR124]

DEAN EDSON: Yep. [LR124]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Fischer. [LR124]

SENATOR FISCHER: Thank you, Mr. Chairman. Thank you, Mr. Edson, for being here. You know, we've heard about mediation, we've heard about the process, we've heard about levels of resolution and, you know, that just all sounds lovely, but we had a previous testifier who's with Creighton University who said that none of that is going to work unless you have a balance of power. So what would be your solution to having a balance of power? [LR124]

DEAN EDSON: Well, as I said, last year we worked on some processes and that included some checks and balances in that. I'd be willing to take a look at those again this year. [LR124]

SENATOR FISCHER: Are those just within each NRD, individually has those processes now in place in case a situation comes up where the board would be asking for input from the stakeholders? You know, school boards have different committees too. There's a lot of boards that have a lot of committees. You want to involve stakeholders. But when you're talking about the power of eminent domain, that is crucial. [LR124]

DEAN EDSON: Uh-huh. [LR124]

SENATOR FISCHER: So I'd be interested in seeing some of the...some of the plans that your NRDs have come up with and the processes and maybe visiting with you if...about a policy shift that Nebraska may determine it needs to make with regard to



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statute. [LR124]

DEAN EDSON: Yeah, I have a graph here that was...that we talked about last year, but it never went anywhere, that was taken to the committee. [LR124]

SENATOR FISCHER: That's the problem--it doesn't go anywhere. [LR124]

DEAN EDSON: It was taken back to the committee. I'd be more than happy to share that with you. [LR124]

SENATOR FISCHER: That would be great. Thank you very much. [LR124]

DEAN EDSON: But, I mean, to address your question, too, on the stakeholders, and this becomes a complicated issue, we're talking about recreational trails here, but let's apply it to everything we do. And if you try to apply it to everything we do on resource management, you got a lot of people that we got to bring in for a lot of different things. And if we want to do it on water and water management, you know, there's been discussions last week about shutting down irrigation, okay? And how many of those stakeholders do we bring in for that discussion? [LR124]

SENATOR FISCHER: No, I realize that, and that's why I gave the examples of school boards. [LR124]

DEAN EDSON: Yes. [LR124]

SENATOR FISCHER: School boards don't form committees on every single decision that they make and I am certainly not suggesting that NRDs do that either. You have a locally elected board and those people are chosen by the voters, by the people they represent, to make decisions, and I'm a firm believer that that is the process to follow. However, when it comes to the use of eminent domain over an issue that not everyone

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may agree is for the public good, as in recreational trails, that raises a policy question in my mind. [LR124]

DEAN EDSON: Uh-huh. I can tell you from experience, Senator Fischer, on my family farm we have had the threat of eminent domain five times, and I could tell you that my dad would say that maybe only one of those was for the public good. But not once did we ever go to eminent domain, although the threat was there. It was because the other parties that wanted this project wanted to see it through, and we were not going to be the family that stood in the way. Now the other...and there was...the last parcel that that occurred to in our family happened about four years ago and it was the only parcel left of the homestead. And that...we were looking at eminent domain for that and I was not going to stand in the way of progress; however, I was going to try to make sure that we got fair market value for that for the...my two sisters and my father that was still alive at the time, got fair market value for it. But I'm not...you know, and that's where eminent domain comes into play. Where eminent domain is a tool that can be used, let's make sure that the taxpayer is not paying more than fair market value and let's make sure that the landowner is not getting less than fair market value. [LR124]

SENATOR FISCHER: And I would agree with you there. I think when it comes to a policy discussion on eminent domain, you have to take those issues into consideration. I think you also need to take into consideration...and when I say "those issues" I mean private property rights. But you also need to take into consideration what a project, again, we can have the discussion on if it's for the public good or not, but what a project does to land values and what it does to a tax base in a community when that land is taken off the tax rolls, how it affects the value of other land near it. Those are all very difficult and challenging points that we need to consider here because it affects every property taxpayer in the district, not just those neighboring a project. Schools still have to be funded. Counties and cities still have to be funded. And if we allow more land to be taken off the tax base for whatever purpose, we've just increased the next person's property taxes. [LR124]

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DEAN EDSON: Yes. [LR124]

SENATOR FISCHER: And that hasn't been brought up, except by the Farm Bureau representative who came forward earlier on the question of what this does to the property tax base, what it does to the valuation of the county or a city or a natural resources district when you're removing property from the tax rolls and how that affects every other property taxpayer. [LR124]

DEAN EDSON: Yeah, I can assure you that I've had that discussion with some residents of Cass County and some officials out here, and I'm not trying to minimize that amount, and I've had the discussion with the NRD and I can assure you that the NRD is looking at trying to minimize the amount of acres that this would impact. [LR124]

SENATOR FISCHER: And I would like to thank you and all of your NRDs, because you are locally elected boards and, in my dealings with you personally and with the NRDs, you have been reasonable. But when it comes to eminent domain, that takes it to a new level, so. [LR124]

DEAN EDSON: Yeah, thank you. [LR124]

SENATOR FISCHER: Thank you. [LR124]

DEAN EDSON: We'll have a nice discussion in October and November when we come up to see you. [LR124]

SENATOR FISCHER: I still...I still invite all the NRDs to Valentine in October and I guess November, too, and, yes, I will look forward to further discussions. [LR124]

DEAN EDSON: That was supposed to be...that was supposed to be a surprise but...

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[LR124]

SENATOR FISCHER: A surprise? (Laughter) [LR124]

DEAN EDSON: Yeah, but Glenn let it out of the bag. [LR124]

SENATOR FISCHER: That you guys were invading my town or what? [LR124]

DEAN EDSON: Yeah. [LR124]

SENATOR FISCHER: Okay. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you. Senator McCoy. [LR124]

SENATOR McCOY: Thank you, Mr. Chairman. Thank you, Mr. Edson, for your testimony this afternoon. Want to go back for a little bit of clarification to kind of a little back and forth with Senator Fischer a moment ago that you had, and you talked about your family as it relates to eminent domain. And you also talked about, in your testimony, beginning on page 2 of your testimony, that eminent domain for recreational use by NRDs only occurred twice. And I would assume that those two times were the Papiro NRD's related to the Boyer Chute and the Lower Elkhorn as it related to the extension of the Cowboy Trail. Would that be correct? [LR124]

DEAN EDSON: I'm going to let those...they're both following me. I'm going to let those two answer those questions for you. [LR124]

SENATOR McCOY: Okay. All right. I'll ask those questions, but I assume from... [LR124]

DEAN EDSON: I'm not down to that level of detail on those. [LR124]

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SENATOR McCOY: Okay. You had talked about you didn't want to be the family standing in the way of progress and where I'm going, I guess, with this is it's only been used twice, eminent domain for recreational use. But yet we were looking at potentially 15 to 20 eminent domain cases in this particular instance. Do you believe those landowners were standing in the way of progress? [LR124]

DEAN EDSON: No. [LR124]

SENATOR McCOY: What would be the difference between what you said in your mind your family, you didn't want to be the one standing in the way of progress, and the difference between your particular family situation and these particular landowners' situation? What would be different in those two situations where you just said you don't believe they would have been standing in the way of progress? What's the difference there? [LR124]

DEAN EDSON: Well, you know, it's the right to use your land. In my situation...I'll go through each one of those with you, if you'd like, and I'll do them rather quickly. [LR124]

SENATOR McCOY: Well, I'm not sure we necessarily need to go to that detail. I'm just...I'm just trying to understand how you had talked about you didn't want your family to be standing in the way of progress, and we're talking about 15 to 20 landowners here in Cass County that had an issue with this and it potentially would have gone to eminent domain with condemnation proceedings, and you're saying you don't believe they would have been standing in the way of progress. What's the difference? I'm trying to understand what the difference would be? [LR124]

DEAN EDSON: Our situation was with power lines. It went across our property and it limited our ability to use center pivots. Can't use them now because power lines are in the way, okay? We have limited use of our property. now as compared to everybody

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else. We could have argued that if that power line would have went on adjoining property and harmed that other landowner, our land would be okay now. But the power lines brought progress. We've got a transmission...power transmission station on our property now. It's four acres. Wouldn't have been on our property, it probably would have been on somebody else, but it's progress. It brought electricity to somebody else. What's progress here when we're talking...and you go back to the first testifier and talking about economic opportunities and maybe economic development and looking at this in a different fashion, and maybe they can create some synergies with their communities with the trail and with doing some other things that create win-win situations for their...for everybody involved. Is that progress? I think that's what Nebraska is about. If there's a way that you can create win-win situations for everybody involved and you've got economic development and you got progress, that's a positive thing, in my mind. Where we were at a year ago with this, it was probably a real negative thing. But I think discussions that have occurred between open-minded Nebraskans has turned this situation around where it isn't quite as caustic as it was a year ago. [LR124]

SENATOR McCOY: Talk a little bit more about the economic development aspect of this, if you would. Or when you talked about the...and you were going back to the first testifier, believe there was another line of questioning with Senator Fischer as to statute as it regards the taking of ag lands for...through eminent domain for economic development purposes. [LR124]

DEAN EDSON: Uh-huh. [LR124]

SENATOR McCOY: So talk to me a little bit more about what you just said with progress as it relates to economic development, if you would. [LR124]

DEAN EDSON: Well, if...I think what...and I don't want to...and please don't take this that I'm speaking on behalf of any Cass County resident. I'm not. I'm just talking about

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discussions that I've had with some Cass County residents about this issue and they've all related to me, you know, if it connected our communities a little bit better than what the original trail proposal did, you know, we might be more open to it and might provide some economic opportunity. And I think here there was a gentleman that mentioned about a museum in Murdock and maybe if the trail went through there, instead of going around Murdock or whatever, that you'd have some people coming in to Murdock, more people coming into town. [LR124]

SENATOR McCOY: I guess I'm struggling to see how if we would have gone to eminent domain with the 15 to 20 landowners and then we're also, at the same time, talking about economic development opportunities, how those two would have been able to coalesce. [LR124]

DEAN EDSON: Well, maybe...maybe I'm not separating the two issues far enough for you. When we were talking about eminent domain a year ago, you were talking about a route that was going different than where...that are being discussed today. Now by now means are they done picking out a route or looking at different things, because they're looking at different options as compared to what you were looking at a year ago. A year ago you had a lot of opposition to this and six months ago you had a lot of opposition to this. But if you find a different route that creates a better situation for the local residents here and they want to provide some economic development opportunities, you got a whole different ball game. Now you may still end up with one landowner or two landowners in that whole situation that don't want to sell or, because of one particular situation, don't have any choice other than to go to eminent domain. You still have to have that ability. [LR124]

SENATOR McCOY: Another question that I would have, in the exchange that I had with Mr. Johnson earlier, when I asked what could have been done differently I think Mr. Johnson ultimately came to some conclusions that perhaps they could have, and I'm paraphrasing, involved the local political subdivision, probably the Cass County Board a

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little more. I'm still struggling, and Senator Langemeier touched on it a little bit with Mr. Schulz a few moments ago, I'm still struggling to understand the time line, and I'm not necessarily asking you to flesh out the time line and the specifics of that. I'm still struggling to understand how the core mission and goals of our NRD structure in our state, how that would interface with what appears to be a pretty marked lack of involvement with a political subdivision, like the county board here in Cass County, between 2002 and 2008. It appears that there was a troubling length of time that existed in between 2002-2008 with very little formal or even, as it sounds, informal contact. And if you could comment on that and what your feelings would be on that and what you feel could have been done differently, as you kind of see it from a perspective of all 23 NRDs, not just the Lower Platte South in this particular case. [LR124]

DEAN EDSON: Well, my job as executive director is probably more to fly at 30,000 feet, make sure that they've got the tools. [LR124]

SENATOR McCOY: And that's what I'm asking for, is a...from a 30,000-foot perspective,... [LR124]

DEAN EDSON: You know, I... [LR124]

SENATOR McCOY: ...what could have been done differently. [LR124]

DEAN EDSON: I can't tell you what all the discussions are between the districts and the county and the residents from 2002 to 2008 because that's not my job to go to all of those meetings. I can't tell you the answer to your question of what could have been done differently because I wasn't there. I don't know how to answer your question. I think those individuals came up and talked to you about it and gave you some suggestions but...and maybe that's the right thing to do, is what was suggested with committees. I don't know. [LR124]



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SENATOR McCOY: Thank you. [LR124]

SENATOR LANGEMEIER: Seeing no other questions,... [LR124]

DEAN EDSON: Thank you. [LR124]

SENATOR LANGEMEIER: ...Mr. Edson, thank you very much. We have two more on our list here. We're going to take Stan Staab and then John Winkler, and then we're going to open this up because there's a lot of other people that want to testify. If I could get a quick show of hands of those that want to testify. Great. Great. Actually, we have Stan Staab. [LR124]

KEN BERNEY: I'm Ken Berney. I'm the assistant general manager there. [LR124]

SENATOR LANGEMEIER: You're going to do that? [LR124]

KEN BERNEY: I'm going to instead of him. Yeah. [LR124]

SENATOR LANGEMEIER: Okay. I saw Stan here so I was like, wait a minute. I knew who you were so. [LR124]

KEN BERNEY: (Laugh) Yeah. I should have told you that. [LR124]

SENATOR LANGEMEIER: No, that's great. [LR124]

SENATOR FISCHER: I think he's scared. I think he's scared to come... [LR124]

SENATOR LANGEMEIER: The questions scared Stan off, so you got the job, huh? That's kind of a cheap shot towards Glenn, as he gets ready here. Stan, excuse me. We're ready when you are. [LR124]

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KEN BERNEY: (Exhibits 8, 9, and 10) Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Ken Berney, spelled K-e-n B-e-r-n-e-y. I'm the assistant general manager of the Lower Elkhorn NRD in Norfolk, Nebraska. Lower Elkhorn NRD has been involved in recreational trail development since 1998 and has completed two projects: The Cowboy Trail connector to Norfolk and the Willow Creek Trail on the Willow Creek State Recreation Area. We have also contributed to ten community trail projects within our NRD. Lower Elkhorn NRD utilized eminent domain to obtain one parcel of land for the Cowboy Trail. It was not something that our board of directors wanted to do, and it was not a matter of disagreement on a price. The owner of the parcel refused to even discuss our efforts to acquire the necessary property or to respond to our attempts to negotiate. The rest of the land rights were acquired from willing sellers and donated from local industries. There were no feasible alternatives to obtaining this property because of the need to cross a railroad line and Highway 81 expressway. We had been approved for both federal and state grants, which have deadlines. The project was delayed over a year while we attempted to work with the landowner. The board of directors made a decision to begin the eminent domain process rather than risk failure of the project. The county court award was lower than our appraised value had been, and we then reached agreement with the landowner on a payment amount. The Cowboy Trail connector provides good public access to the longest rail-to-trail project in the country, as well as being heavily used by local people. Without the eminent domain authority, it probably wouldn't have become reality. NRDs have been authorized to utilize the power of eminent domain since their inception in 1972 and have used it very sparingly. Our locally elected directors are unwilling to use this authority except as a last resort. In some instances, eminent domain is the only way that a valuable public project can be completed, and for that reason NRDs should retain this authority. Thank you for listening and I'd be glad to answer questions. [LR124]

SENATOR LANGEMEIER: You did very good. Thank you. Are there any questions for

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Mr. Berney? Seeing none, we'll let you off the hook. Thank you very much for your testimony. Now I have John Winkler and he is coming forward so I might be right here. Welcome, Mr. Winkler. Now after John, we're going to go to anyone that wants to testify. So if you want to move up, there's some empty chairs in the front. Come on up, get yourself ready. We are ready when you are. Go ahead. [LR124]

JOHN WINKLER: (Exhibit 11) Okay. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I'm the general manager of the Papio-Missouri River Natural Resources District. First of all, I want to thank the committee for letting me testify today in regards to LR124. Many of the districts before me spoke of our involvement with trail projects. The Papio has been involved with trail projects for over ten years now. One of the couple of things I would like to touch on I think that were addressed briefly in some of the other managers' testimony is the NRD is in a unique position as a regional governmental entity to collaborate and cooperate with many of the SIDs, counties, cities, villages, and all the other entities that we work with to fund and construct trails. The Papio NRD not only helps assist with the funding; we also provide technical assistance to specifically smaller communities to gain access to other types of funding, for example, transportation enhancement funding, private foundation funding, or other private funding. Eminent domain is obviously a powerful tool for public agencies, including the natural resources district. This is a power tool that we need to effectively carry out our projects for public safety and for public good. Now there is a debate on...there's always questions on the public good and that's a perception of what is, and two or three people may disagree on what is the benefit or what is for the public good. A trail, in our view, is a transportation corridor. It is similar to a highway or rail line and is utilized not only by recreational users but commuters as well, especially in the urban environment, for example, the city of Omaha and the greater metro area. The Papio NRD's elected board of directors goes to great lengths to avoid the use of eminent domain, and utilizes this tool only as a last resort. Where negotiations were unsuccessful, the landowner requested the use of eminent domain to secure necessary

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rights of way for a project. Similar to other districts, the Papio NRD used this very sparingly. A couple of examples that I could give is, for example, any time you deal with the public land trust for schools, it is a requirement by statute that you use eminent domain to acquire any type of property for a public use, the same if we were to acquire a piece of property from an NRD director, which was the case several years ago on a levee project. Those are two. One particular example, and it as brought up with the Boyer Chute example, the district was required to use eminent domain for a particular piece of property, about 600 linear feet. The issue was the landowner agreed to the appraised value of the acquisition; however, he thought that the district should use public money to bring three-phase power from OPPD to his property. And the board of directors obviously disagreed with that and then so we had to go ahead and proceed to eminent domain because he refused to sign the purchase agreement, and that was that one specific instance that was brought up in the survey and was brought up by Mr. Edson. We are very sensitive to the issue of eminent domain, specifically in the Papio NRD, and I've been before this committee on several other issues where it's been brought up. Therefore, the district wants to be a part of the solution of this and we are very willing, as Mr. Edson said, to sit down with this committee, Senator Pankonin, private landowners, any other stakeholders, and work on a process or solution to answer this question. No one likes to use it and our board of directors, again, is very, very sensitive to this. And I'd be happy to entertain any questions and I wanted to thank the committee for your service to the state and to, specifically, the Papio NRD. [LR124]

SENATOR LANGEMEIER: Thank you, Mr. Winkler. Are there any questions? Starting with Senator McCoy. [LR124]

SENATOR McCOY: Thank you, Mr. Chairman. And thank you, Mr. Winkler, for being here this afternoon and for your written testimony, which is very thorough. And I appreciate the explanation of the Boyer Chute example as it relates to your NRD. So I would take that to mean that eminent domain for a recreational trail has not been ever done by the Papio-Missouri NRD, correct? [LR124]

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JOHN WINKLER: No, that was for a recreational trail. [LR124]

SENATOR McCOY: Okay. I'm clarifying that. [LR124]

JOHN WINKLER: Yes, that's correct. [LR124]

SENATOR McCOY: So that was what that was for. [LR124]

JOHN WINKLER: Correct. [LR124]

SENATOR McCOY: Okay. I guess a further question that I would have for you, and I'm asking you to speculate on what might be done differently as it relates to the NRD that you represent, as general manager, versus any other NRD in the state. But as another NRD that does work with trails and does build trails and I hear you're very excellently put together radio commercials on a daily basis, as I make my way around the Omaha metro area, outlining and providing the general public information about the excellent trail system that we have, can you go through with me, in your mind, what might be the process if you were to have a similar situation? Again, I'm not asking you to speculate. [LR124]

JOHN WINKLER: Uh-huh. [LR124]

SENATOR McCOY: I'm just asking, in my experience with you and the thorough communication that I personally have had with you and your office and the NRD, can you go through in your mind what you might do had you to encounter a similar type of a situation as what's been encountered in Cass County? [LR124]

JOHN WINKLER: It's always easy to play armchair quarterback, so I've got hindsight in my favor here. But no matter what we do, we can always do better. And there are

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situations, obviously, where I've looked back in our experiences and said, you know, I wish I would have done that different or I wish I would have said something differently, so. But just to speculate on what we would possibly...I think communication obviously is very important and it's easy to have that breakdown in communications. And typically when we deal with a local public entity, for example, a county commissioner or, for example, the smaller councils or village boards, you do make that contact with perhaps the local representative of a specific district that project may be in. Now should we do a better job of saying who are you representing, just your district or your entire board? You know, maybe that's a possibility we should do that. I would hope our processes have enough citizen involvement, and again, that's up to interpretation. Some people say you have too much and some people say you don't have enough, so where do you draw that line? You have to make that determination somewhere. Personally, I believe citizen involvement is very important and that you need, you know, obviously to listen to the constituents that you serve. But also there comes a time and place where you have to...you have to work with your local entities, obviously, but then a situation needs to be...or a decision needs to be made jointly at some point in time. And again, it's so difficult to say, yeah, we would have handled this situation this way, because I've got the benefit of looking at what didn't work. And I'm sure my other 23 or 22 peers could look at me and say, yeah, well, we could have solved your problem in about three months if we would have known what you went through. So I, again, I think communication is important, I think collaboration is important, and we try to do those things to the best of our ability. Now at the end of the day did we do that correctly? That's up to opinion. I think we do. I hope we do. But again, I'm not going to entirely speculate on what...specific to the situation here or if I'm faced with a similar situation what I may have done differently. It's just not fair. [LR124]

SENATOR McCOY: And I appreciate that and understand that and appreciate your candor as it relates to that. I think what you just outlined, Mr. Winkler, is a hallmark of a successful interaction between a government entity, in this case the NRD, and local citizens and local Nebraskans. You mentioned communication, citizen involvement,

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local political subdivision shared decision making as some things that could be done differently. Perhaps some additional quantities of those items might have been beneficial in this particular case. I also think those are the hallmarks of a shared power structure that the earlier testifier from the Werner Institute at Creighton University talked about. In your mind, I guess, would it be difficult...or, well, I won't ask you to answer that question. I would find it difficult to see in the current system, as it exists with a balance of power, how you would achieve what you just outlined. It would be difficult to see how that would come about. And I think that testifier described that, how the shared power structure, that can happen. When one entity has all or nearly all of the power in a case...in this case, eminent domain for the use of recreational trails, it's hard to see how there would be any need or, frankly, much of a desire to have these individual things you just outlined come about. But I appreciate your candor as it relates to what might be able to be done differently in that case. [LR124]

JOHN WINKLER: And if I could just for a second address the power structure, we are the duly elected board by the citizens, as well as a city council or county. To say that the citizens do not have any authority or say would mean that they have no representation on those boards. And so I...it's a little philosophical debate maybe, but their elected representative on our board or the county board should serve their interests on that board. So I think they have a lot more power than they think they do. The organization may have the power of eminent domain, but the elected representatives are the ones that wield that. I don't have the authority to tell my board, I'm going to use eminent domain on these 12 landowners, but their elected representatives tell me if I do have that authority to do that. So I would not say that they're entirely unarmed in the process because they do have elected folks and they have state senators and they have other elected people that represent their interest. And if that person isn't representing them on those boards, then they have the ability to change that with the election process. That's my feeling. [LR124]

SENATOR McCOY: Sure. Thank you, Mr. Winkler, appreciate it. [LR124]

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SENATOR LANGEMEIER: Are there other questions? Seeing none, thank you for your testimony. [LR124]

JOHN WINKLER: Thank you. [LR124]

SENATOR LANGEMEIER: And they're coming right up, I like to see that. Welcome to the hearing and we're ready when you are. [LR124]

TYLER MOHR: Thank you, Senator Langemeier and Natural Resources Committee. My name is Tyler Mohr, M-o-h-r. As a Nebraska property owner, I'm concerned about the abuse of eminent domain by the natural resource districts. I welcome a hard honest look at the necessary use of eminent domain. As I read the legislative resolution, LR124, I became concerned with the wording "corridor development." For many concerned property owners of Cass County for whom a proposed trail would have split their farms or passed through their front yard, the Lower Platte South clearly define the property they want to acquire. On the other hand, the use of eminent domain for corridor development concerns me. The term "corridor" is not a clearly...the term corridor is not clearly defined whether it is for a trail, wildlife corridor, or development corridor, or any other unspecified use. We heard testimony earlier that it was always included with a trail, but the wording...on the resolution, it says "recreational trail or corridor development," which to me implies that it could be a corridor development separate from a recreational trail. I believe that the use of eminent domain should be clearly defined. And I, as many property owners in Nebraska, feel that its use has been abused. I'm proud to be a Nebraskan and I appreciate the opportunity for success and ownership of property as given our family and others, and I appreciate that this committee is doing an interim study to address our concerns. Thank you very much. [LR124]

SENATOR LANGEMEIER: Mr. Mohr, very good. Are there any questions? Seeing



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none, thank you very much. [LR124]

TYLER MOHR: Thank you. [LR124]

SENATOR LANGEMEIER: Did a great job. Next testifier. Now you were almost the first person here behind me. [LR124]

SADIE NICHOLSON: (Exhibit 12) I'm Sadie Nicholson, S-a... [LR124]

SENATOR LANGEMEIER: Do you have a green...can I stop you? Do you have a green sheet? [LR124]

SADIE NICHOLSON: Pardon? [LR124]

SENATOR LANGEMEIER: I need to have you put your green sheet in the box. I think you filed it away somewhere. Okay. Now we're ready. Go ahead. [LR124]

SADIE NICHOLSON: Okay. [LR124]

SENATOR LANGEMEIER: Go ahead. [LR124]

SADIE NICHOLSON: S-a-d-i-e N-i-c-h-o-l-s-o-n. I live in Wabash. There are some questions, I served on the task force, but I won't have time. I'll have to eliminate some of mine. 1782 during the Continental Congress, our founders when writing the constitution gave all power and authority to the landowners and then to the nonowners for fear that they cease the land. The eminent domain laws are federal laws and codified in 40 US Code Sections 3110 through 3118. Eminent domain was established to erect government buildings to do the business of the government. Its powers are limited. The projects must be necessary for the public safety and public health. Quoting the Fifth Amendment: The role of the judiciary in determining whether that power is being

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exercised for a public purpose is an extremely narrow one. The Fourteen Amendment further limits it. In other words, judges do not have the right to give eminent domain except in this strict sense of the law, which does not include recreation including trails. There's no funding for trails when eminent domain is used nor is federal funding available unless it's on federal property. The property owner owns the land to the center of the road and has a say in what it's used for. Electric lines, gas lines, and petroleum lines use eminent domain. When cars were built and overcome the capacity on roads laid out by counties when they were platted, it became necessary to build highways for safety. Air travel became common and it was necessary to build airports for public safety. Laws laying out organizing and a town said it was for public use but not for a particular group, but for the masses. The intent of the 1975 Legislature had recreation on the bottom, and that's the only place because NRDs have put it in top. The eminent domain laws was tried in the Michigan Supreme Court in 2004 and ruled that the entity wanting to take land negotiate with the owner and if the owner does not want to sell, they should go elsewhere. Public use does not allow the taking of one's property to give to another. They cannot take the property because they believe someone else will use it better. Nebraska passed a law, chapter 79-1096 that says no to using eminent domain for public parks. And 76-710 says no for economic development. And farmland is a regulated business, and part of the economic system. It allows...Nebraska allows movement of water, electricity, gas, traffic, road improvements where there is a menace to travel, school buildings, transmitter buildings, and tower sites. No landowner should have to defend his property against a taxpaying entity when the project is not necessary. To subject landowners to arbitration invites an expensive, long, drawn-out process at the will of a tax-spending natural resource district which is accountable to no one. The National Trail System Act codified in US Code title 16 Chapter 27 Sections 1240 through 1251, in Section 1243, "private property can be used for trails with the written consent of the owner of the land involved." I have downloaded the whole law if anybody wants to see it. In there it tells you a lot of this can't be done. It states that trails be built on federal lands in urban areas where the masses live and not in remote areas. Connecting trails need not be built, except where they might lead to a national park

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area. The role of authority of affected local government bodies is in this same federal law and cannot be changed by this proposed legislation. The county commissioners are the authority in Nebraska because they have jurisdiction over the land involved. You should not usurp local control. Bike riders ride from 10 to 20 miles a day. South Bend is about 25 miles from Omaha. The trail of connection about 10 miles long, and Wabash to Lincoln leaves 60 miles with no toilets or urbanite accommodation. Long trail builders are responsible for sanitation which is if the NRD builds it would be at taxpayer expense. I can visualize a toilet paper strewn paper trail from Lincoln to Omaha. The trail is part of the Discovery Trail, so it is a national trail. I don't believe that the state Legislature has a right to give permission for eminent domain as based on federal laws and the US Constitution Amendments Five and Fourteen. Fifth Amendment protects against abuse of government authority and legal procedures. And the Fourteenth Amendment is citizenship rights, procedures must be followed before a person's life, liberty, or property can be taken away. The Fifteenth Amendment guarantees rights as a preexisting status. A farmer is involved in a regulated business and cannot be forced to abide by new regulations. This is the grandfather clause. The NRD modified the MoPac Trail. I testified about our bald eagles that lived in the area, but it was deleted and not in the transcript. We used to see them everyday, but they moved after the right of way was modified. The NRD talks of putting a water fountain on the trail outside of Lincoln at taxpayer expense. What will they want next? Pepsi fountains? Coffee or beer? The temporary trail has had an average use of two per year with a maintenance cost of a thousand dollars per mile for ten miles. So with two average a year using it, that's \$5,000 per rider each year. They now use the highway shoulders; let them continue. To take tilled prime farmland it to take from the farmer's income and local economy. The land should not be removed from the tax roles or will the farmer have to pay taxes on it without being able to use it? Where can the state get a return to justify building a trail and qualify for funding without building road houses or lying about the project? The NRD claimed that 40 miles of bicycles spaced six foot apart would use the 26-mile trail to the 7g recreation area everyday. Ninety-one horses would use the same trail everyday. I visualized that the bicycles would all need chains. More than a century ago,

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railroads were crucial to our country's economic and social development. Owners of the land granted easements to build them for that purpose. I own a complete copy of the Docket of the Missouri Pacific Railroad Abandonment in Cass and Lancaster Counties, Nebraska that runs from Lincoln to Omaha junction. In it it's proof that the national...or the Nebraska Trail Council under the National Trail System Act in Section 1247(d) giving the right of way for interim use. It was not sold. Copies of the docket and documents from the District Court of Appeal, District of Columbia Circuit are legal and are in my possession. Since 2005, it is being approved in federal courts that this trail act giving temporary use of the right of way for trails was illegal because the land should have reverted back to the land from whence it come. And I can tell you some of the cases that's involved. They...Nebraska Trails Council and/or the NRD have sold parts of the right of way, which they don't own. According to 43 US Code 912, the right of way adjoining or within a municipality, the right of way reverts to the municipality. Legally they are not a part of the trail system. My throat has got burn out, so. Don't make a monumental mistake like the federal government did when the National Trail System Act which gave railroad right of ways for interim use when it should have reverted back to the landowner. Congress refuses to address the problem. They say that just compensation remedies the situation. They think nothing of robbing me to pay me and expect me to thank them for their generosity. Our rights should be granted freely without having to fight for what is ours, but we'll fight if we must. The Legislature should make NRDs accountable and not give them more power. Don't cause further illegal seizure by advocating for (inaudible) property rights with this proposed legislation. [LR124]

SENATOR LANGEMEIER: Very good. Very good. Give you some lenience there for being the first one here, first testifier in the room today. Are there any questions for Ms. Nicholson? Seeing none, thank you very much. And as I read through your testimony and the parts you skipped were quite detailed in your examples, so we will review those. Thank you very much. [LR124]

SADIE NICHOLSON: And if downloaded the whole thing, you'd learn a lot of what the

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law says that this can't be proposed because it would be illegal and violate federal law.  
Thank you. [LR124]

SENATOR LANGEMEIER: Thank you very much. Next testifier. Come on up. I'm ready when you are. [LR124]

DALE NIELSEN: My name is Dale. I'm from Brainard, Nebraska, N-i-e-l-s-e-n. I'm not related to the Cass County resident unless he has a lot of money anyway and then we'll figure something out. (Laugh) I'm a teacher at East Butler High School in Brainard and I have been for the last 27 years. And I'm here this afternoon on my own time to give you some testimony about how the Oak Creek Trail has influenced our community. About 15 years ago, they proposed a trail corridor between Valparaiso and Brainard and it met with an awful lot of opposition from the area. And through the efforts of the NRD, the issue was resolved, the trail was built, and it had been a tremendous benefit to our community. I'm the track and cross country coach at East Butler, and we use the trail two or three times a week for practices. It's a safety issue for us getting our kids off the road. We don't have a track facility. And I'm an avid runner and biker and I use the trail a lot. The horses...the NRD has put in an equestrian trail beside it that's heavily used. The cooperation is pretty good. I've never seen an incident between the riders or runners or hikers and the horse people. Everybody is cooperative. A large number of people come up from Lincoln with their horses and ride on the trail. Every week, I meet bikers and runners from out of town. And for our community of about 300 people, this has been an economic benefit. And as far as trails and being a public good, I think that they really are. I think they are a gift to our future generations. It's really influenced people in town as far as exercise habits and the trail is well kept, it's well maintained, it's clean. And many of the concerns I've heard landowners here express today I've heard expressed in our area, and I've not seen any incidence of any of that ever happening. People that use the trail are considerate. The litter is almost nonexistent on it and a lot of local people pitch in and help keep the place clean and horse trails trimmed and branches removed after a storm, and I think it's been a very positive thing. I'd really like

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to see this issue resolved since I've been following this in the news for a long time, and I hope that everybody can reach a compromise on this. And I'm opposed to the legislation. I think eminent domain ought to be a last resort for anybody, but I think that in the future that might be necessary in some of these instances and I would hate to see that language removed. I think this issue should be compromised and that should not have to enter into it, but. That's what I'm here for. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Cook. [LR124]

SENATOR COOK: Thank you, Mr. Chairman. Are you the Mr. Nielsen to which Mr. Schulz made reference earlier? That's a different Mr. Nielsen. [LR124]

DALE NIELSEN: No. [LR124]

SENATOR COOK: All right. Thank you very much. [LR124]

SENATOR LANGEMEIER: I think we're going to have more questions for you. [LR124]

DALE NIELSEN: I'm sorry. [LR124]

SENATOR LANGEMEIER: You can't run away. Senator Fischer. [LR124]

SENATOR FISCHER: Thank you, Mr. Nielsen. You mentioned you're from Brainard. Is that correct? [LR124]

DALE NIELSEN: Yes. [LR124]

SENATOR FISCHER: And what's the population there, 300? [LR124]

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DALE NIELSEN: About 300. [LR124]

SENATOR FISCHER: What were the economic benefits to the community? [LR124]

DALE NIELSEN: We have increased business in the cafe. There haven't been any new businesses open as far as trail use goes, but a great many people ride from Valparaiso. It's about 12 miles up to Brainard, most of them have lunch in the cafe or buy snacks in town, stop and visit, and then leave. I know at least one family that's moved into town because in part the community is nice and clean, but the trail opportunity and the recreation is something that they mention from time to time. I don't know that...I can't give you specifics on anybody else, but people in the community that were opposed to it, I know several that have turned around and become avid users of it. [LR124]

SENATOR FISCHER: Now the people in the community that were opposed to it, were they the landowners? [LR124]

DALE NIELSEN: In one instance, one of the people that maintains the trail now and helps keep it mowed is a landowner. This was a... [LR124]

SENATOR FISCHER: Along the trail. [LR124]

DALE NIELSEN: Along the trail, and the railroad crossed his property and he wanted to unite his farmland. And he was quite opposed to the idea and I doubt today that he's probably terribly enthusiastic, but I see him on the trail using it, and. [LR124]

SENATOR FISCHER: Was eminent domain used in this trail at all? [LR124]

DALE NIELSEN: Not to my knowledge. I think it was a rail corridor and I think the last mile that went into town to Brainard was bought from the landowners, negotiated. [LR124]

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SENATOR FISCHER: So any private land that is used on this trail you believe was paid for out of negotiated price, willing seller, willing buyer. [LR124]

DALE NIELSEN: To my knowledge, yes. [LR124]

SENATOR FISCHER: Thank you. [LR124]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LR124]

DALE NIELSEN: Thank you. [LR124]

SENATOR LANGEMEIER: We're going to go from Mr. Nielsen to Mr. Nielsen.  
(Laughter) [LR124]

DAVE NIELSEN: Yes. [LR124]

SENATOR LANGEMEIER: From s-o-n to s-e-n. [LR124]

DAVE NIELSEN: I don't have any money but I'm bigger than he is. (Laughter) [LR124]

SENATOR LANGEMEIER: Well, we'll let you guys handle that. [LR124]

DAVE NIELSEN: S-e-n, s-e-n. [LR124]

SENATOR LANGEMEIER: I'm ready when you are. [LR124]

DAVE NIELSEN: N-i-e-l-s-e-n, Dave. [LR124]



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SENATOR LANGEMEIER: Go ahead. [LR124]

DAVE NIELSEN: The reason I come up here is Dan mentioned that you could ask me questions about the committee we were on, the citizens committee about the road and I didn't feel we got a fair shake of the answers he was given. And that's... [LR124]

SENATOR LANGEMEIER: Okay. Do you want to go ahead... [LR124]

DAVE NIELSEN: I didn't prepare anything. [LR124]

SENATOR LANGEMEIER: Do you want to go ahead and try and answer some of those? [LR124]

DAVE NIELSEN: Sure. [LR124]

SENATOR LANGEMEIER: Or are you hoping there's questions? [LR124]

DAVE NIELSEN: Well, I'm hoping there's questions. [LR124]

SENATOR LANGEMEIER: Okay. [LR124]

DAVE NIELSEN: But, you know, it's easier for me if you give me a question. [LR124]

SENATOR LANGEMEIER: Okay. [LR124]

DAVE NIELSEN: Because I didn't prepare anything. [LR124]

SENATOR LANGEMEIER: We'll start over here. Senator Cook. [LR124]

SENATOR COOK: Thank you, Mr. Nielsen, e-n. I had some questions about the task

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force as its input may or may not have been communicated to the NRD policymakers and/or to the members, elected members of the county board at that time. So you were--yes or no--a member of the citizens task force. [LR124]

DAVE NIELSEN: Yes. [LR124]

SENATOR COOK: Okay. Can you answer or, a little bit, tell me about your experience and what your expectations were in terms of that information getting past along and/or acted upon? [LR124]

DAVE NIELSEN: When we started the task force, we asked to set up our own committee and we didn't want NRD there. The engineering firm came down the first time we met and explained what we could do. We didn't pick this corridor right of the bat. We started with another one but they said it wouldn't work. That's the one we're working on today and it worked now. And that's...this is a problem. On the corridor down there, 334th, there's so many houses along that they had to go through people's yards. We tried to avoid this. So that's the reason it's been chosen now to try to go down through 310th because there's only one house that it'll effect and it's way back in the field, it's not right up next to the road. But as far as the information getting to the NRD, we worked on this and worked on it and then we met with the NRD which I remember. And we met with them and told them what we wanted to do or what we would like to see, and that wasn't taking any land. It was along the side of the road, like they said. And the commissioners have never been involved in that. I mean even as a commissioner myself I didn't take it back to the board room, I didn't, you know, even talk about it because at that time it was the NRD. When we got involved with the commissioners is when they come down and explained it to us (inaudible) what Schemmer Associates come down and told us what they wanted to do, and that was the first we had with it. [LR124]

SENATOR COOK: All right. Thank you very much. [LR124]

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SENATOR LANGEMEIER: More questions? Are there...Senator McCoy. [LR124]

SENATOR McCOY: Thank you very much, Mr. Nielsen, for coming in and talking to us or coming up and testifying. Perhaps you'll be able to fill in a few of the gaps, maybe some of the questions I asked. And I want to make sure I've got this straight in my mind. Are you currently a board member in the NRD, correct? Now you also...I got confused just a moment ago when you were answering a question for Senator Cook. Did I also hear you don't sit on the...or you do sit on the Cass County board also? Okay. [LR124]

DAVE NIELSEN: I'll explain that. I'll tell you why. [LR124]

SENATOR McCOY: Okay. If you could I'd really appreciate that. [LR124]

DAVE NIELSEN: When you start at 65, you got to get on several boards to get all your political stuff in before you croak. [LR124]

SENATOR McCOY: Okay. (Laughter) [LR124]

DAVE NIELSEN: You know, if you get it on a bucket list, you know. (Laughter) [LR124]

SENATOR COOK: Great idea. [LR124]

SENATOR McCOY: So at the time this started in 2006, you were on the NRD board of directors. [LR124]

DAVE NIELSEN: Yes, yes. [LR124]

SENATOR McCOY: But at the time you were also on the Cass County board as well. [LR124]

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DAVE NIELSEN: Yes, yes. [LR124]

SENATOR McCOY: Okay. That's very helpful. I appreciate that clarification. Perhaps you could outline, if you could, what the involvement was because you were in the unique position of also being on an NRD board and Cass County board? Can you...you said a moment ago in response to a question from Senator Cook that the...am I understanding correctly that the Cass County board wasn't involved with the citizen's task force. [LR124]

DAVE NIELSEN: No, not at all. [LR124]

SENATOR McCOY: Okay. Can you explain what that relationship, what you mean by not involved? Was that not involved... [LR124]

DAVE NIELSEN: Well, and we didn't go to the...when we met with the task force, it was among ourselves until we went to the NRD. We didn't bring the county board into it at all. [LR124]

SENATOR LANGEMEIER: What was your experience between 2002 when this process started and 2008 what the relationship was between the NRD and the county board, notwithstanding the citizen's task force, I guess? [LR124]

DAVE NIELSEN: Let's see, I went on the county board in '04, so I must have went on in '02. But when I first went on the NRD board, why, I mean I didn't...took me about two years to get my feet on the ground as to what was really going on. [LR124]

SENATOR McCOY: Um-hum. Okay. And so you were...it sounds as an earlier testifier has talking about, you were invited to a couple of public meetings and it sounds like one presentation was made by the NRD to the Cass County board, is that right in your

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memory? [LR124]

DAVE NIELSEN: No, no. The presentation was made from Schemmer Associates.  
[LR124]

SENATOR McCOY: Okay. [LR124]

DAVE NIELSEN: And that was in 2008. [LR124]

SENATOR McCOY: Okay. [LR124]

DAVE NIELSEN: But before that, if we were invited it was in the paper, you know, it wasn't an invitation that they sent to us. [LR124]

SENATOR McCOY: Okay. [LR124]

DAVE NIELSEN: If they did, I didn't get one. [LR124]

SENATOR McCOY: Okay. So there wasn't a lot of involvement between 2002 and 2008. [LR124]

DAVE NIELSEN: No, no. And I do know that it happened that I couldn't even attend the...as an NRD member when they were...because I was gone on vacation, so I couldn't be there. But I know as a county board member we weren't invited specifically. I mean, yeah, it was in the paper, we could go if we wanted to. [LR124]

SENATOR McCOY: As any public meeting would be... [LR124]

DAVE NIELSEN: Right, right. [LR124]

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SENATOR McCOY: ...sure, in the paper. Okay. Did that...I'm just curious, that seems like a long time in between the start of this project and in 2002 where this project started to be talked about and in 2008. And I asked a question earlier and wasn't able to really get the answer. The board member who was talked about was kind of worked from Elmwood that was working with the NRD, as being on the board can you shed any light on what that relationship was? Was it... [LR124]

DAVE NIELSEN: I can, I can, I can tell you the whole deal but I'd just as soon not get into that. (Laughter) I don't want to set here and talk about a few of them around the board before I was. [LR124]

SENATOR McCOY: Okay. Let me... [LR124]

DAVE NIELSEN: But it was a bad deal. I mean I...he wasn't appointed, I can tell you that right now. [LR124]

SENATOR McCOY: That's what...okay. So he wasn't representing the Cass County in and official capacity? [LR124]

DAVE NIELSEN: And neither was road superintendent. [LR124]

SENATOR McCOY: Neither was what now? [LR124]

DAVE NIELSEN: The road superintendent. He wasn't appointed. I'll just tell you, I'll just bring one thing out. I went to Greenwood to a board member and they asked me what we could do, and I told them, I don't really know but I'll be back. I'll find out and I'll be back. Anyway, when I went back, some of the board said to me, is this another one of those deals where you promise and that's the last we see of you? Just that right there is kind of the way it went with those two that promised the NRD they could do it. [LR124]

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SENATOR McCOY: All right. I appreciate your integrity to not want to speak ill...  
[LR124]

DAVE NIELSEN: Well, I don't want to...yeah. [LR124]

SENATOR McCOY: ...of somebody who's not on the board. Whether they are or aren't doesn't really matter and I appreciate that. I guess I'm more interested to know, at the time did that seem a little peculiar that there might be somebody out there in essence representing the board that wasn't really representing the board? [LR124]

DAVE NIELSEN: Yeah, but I wasn't on the board at that time. [LR124]

SENATOR McCOY: Okay. So this was...you came on... [LR124]

DAVE NIELSEN: It just...that happened that right. [LR124]

SENATOR McCOY: ...in 2004. Okay. [LR124]

DAVE NIELSEN: I come on in '04. [LR124]

SENATOR McCOY: Was that discussion still going on between the NRD and this particular board member from Elmwood when you did...when you were elected?  
[LR124]

DAVE NIELSEN: No. It was when we changed board, why, it was pretty quiet over there on some of those issues. [LR124]

SENATOR McCOY: So that individual maybe went off the board in 2004. [LR124]

DAVE NIELSEN: Yeah, he did. Yeah. [LR124]

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SENATOR McCOY: Okay. That's... [LR124]

DAVE NIELSEN: No, he went off in '06. He went off in '06. [LR124]

SENATOR McCOY: So there were a couple of years in between there where... [LR124]

DAVE NIELSEN: Right, yeah. [LR124]

SENATOR McCOY: ...you were on the board with that individual. [LR124]

DAVE NIELSEN: Right. [LR124]

SENATOR McCOY: Okay. That's helpful information. Thank you. [LR124]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LR124]

DAVE NIELSEN: Thank you. [LR124]

SENATOR LANGEMEIER: Further testimony. Welcome. [LR124]

ROSS GREATHOUSE: Hello. [LR124]

SENATOR LANGEMEIER: A familiar face from the last hearing. We're ready when you are. [LR124]

ROSS GREATHOUSE: (Exhibit 13) I am Ross Greathouse, R-o-s-s G-r-e-a-t-h-o-u-s-e. I'm representing the Nebraska Trails Council, and because we need some clarification, I'm also going to represent the American Discovery Trail. I am the past-president of the



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Nebraska Trails Council, and I am currently on the board of directors of the American Discovery Trail, the national board of directors. I'm going to try to be real quick here because I know you're all tired. I'm tired and tired of being here. And we've talked about this recreational trail. It's a transportation corridor, folks. Where do we get our money? Transportation, federal transportation provides the funds to build the trails. Why? Because it's a transportation corridor. Now it's recreational also. It's also healthful. We haven't talked about that. It's a very important ingredient in our life, and finishing it is even more. This project started in 1991 and I have to say we've heard a lot of criticism of the local NRD today. There isn't a better form of government in Nebraska than the NRDs. The 23 districts of the NRD which are controlled by an elected, nonpaid board of directors, like your school board, and they take all the heat and all of the...for every decision they make. Do they have the interest of this community and all communities at heart? Every one of them otherwise they wouldn't serve. Why would you stand up and get beat up on a daily basis? You have to love your community to be on an NRD board, you really do. They've used eminent domain, we've heard, three or four times ever in their 40-year history and we are going to take it away from them because they've misused it? You have to be kidding me. That's...they're not misusing that. And everyone of them never wants to do that. They don't want to use eminent domain. First of all, we've talked about 15 eminent domain cases. I think I heard, if my ears were correct, that there were 14 people who agreed to negotiate. There was one that chased the surveyors off of his land. Well, that isn't exactly a lot of folks. We've been led to believe that there were 15 landowners there. Yes, they didn't want to do it, but 14 of them said they'd sit down and talk and there was one that said he wouldn't. So let's don't make the size of this thing as large as it appears right now. As to the American Discovery Trail, I've been on its board for 12 years. I was the secretary of the board. By the way, we had our meeting in Omaha, our national board of directors meeting in Omaha, two weeks ago, and I've never seen a more excited group of people in my life walking across the new bridge that connects Iowa with Nebraska, the Kerrey Bridge, which is part of the American Discovery Trail as well. And this American Discovery Trail Society has never owned an inch of land and we don't own one now and we never will. We are only a

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society which promotes trails and we came up with a plan for a trail across America cooperating with all 16 states where the trail traverses. We don't own land, neither does the Nebraska Trail Council. I heard a testimony here just a moment ago from somebody that said we violated some law in acquisition on trails. We never owned a trail, we never owned any land. Nebraska Trails Council does not own land. If you're talking about the Nebraska Trails Foundation, which is a 501(c)(3) foundation which was started by the council, it has owned some land and still does. It owns part of the Homestead Trail between Lincoln and Marysville, Kansas south of Beatrice about 20 miles, the foundation does. But the council has never owned land and it isn't our intent ever to own any. So we'd like to get all those things straightened out. Please remember it's transportation as well as recreation. It's helpful and as far as land values are concerned, I'm sure this is not true in the rural area yet, but in the city of Lincoln all of the property adjacent to the trail system, was 123 miles of trails within the city of Lincoln, the property adjacent to the trail sells for more money in relation to its appraised value than the property away from the trail. So that tells you about land values and tax entities. So that's it, folks, as Donald Duck would say. [LR124]

SENATOR LANGEMEIER: Very good. And I think we moved this hearing because of that exact board meeting you had talked about, we rescheduled for that. Are there any questions? Seeing none, they're going to let you off easy. [LR124]

ROSS GREATHOUSE: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you very much for your testimony. Next testifier, please. [LR124]

RICHARD CLEMENTS: (Exhibit 14) I'm Richard Clements,, American Exchange Bank president in Elmwood, Nebraska. My name is Richard, R-i-c-h-a-r-d, Clements, C-l-e-m-e-n-t-s. I'm also an attorney in Elmwood, Nebraska, lifelong resident. I brought...I don't know if you want them, but I brought a copy of the Game and Parks

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Commission statute Section 37-301. Just wanted to kind of respond to Glenn Johnson's comment that there was no other entity that would be appropriate to be making trails in Nebraska. And I think the Section 37-301 says that the Game and Parks Commission: shall have sole charge of state parks, game and fish, recreational grounds, and all things pertaining thereto. The next section mentions that: the commission, with the consent of the Governor, may purchase when funds are in hand or appropriated therefor or by gift, device, or otherwise required titled in the name of the state of Nebraska to sites for state parks and state recreational trails. It appears to me that Nebraska Legislature has established a Game and Parks Commission for the purpose of a statewide trails system or park system or whatever. The problem that the people who wanted a trail needed to fund an NRD entity was that they don't have taxing authority with the Game and Parks and don't have the eminent domain authority that NRD has, it's apparently unrestricted. I guess my suggestion is the Legislature take a policy look and see what the statewide goals are for a trail. The other thing Mr. Johnson said that was that he has a regional...there are number of regional NRDs. That's true. But then he said, well, we need to link Omaha and Lincoln trails. Well, he has trails in his region. He has trails in Elmwood, Nebraska, where I sit and in Lincoln. So if his NRD is needing to accomplish a statewide purpose of connecting a state or maybe a national trail, then maybe a statewide agency needs to be referred to instead of the local NRD agencies. I guess my feeling we're trying to use the taxing authority on myself and my residents in my state, in my county to accomplish what a statewide goal is. And that is attempting to charge my taxpayer, my taxpayers in my county to give the people in Omaha ability to ride through our county and then onto another county, then maybe to another NRD. I question the public policy that currently seems to be in place that we just allow all these small entities to create one large state or a national trail without a state coordinated effort. I guess my last comment would be to Mr. Greathouse. He mentioned that only one of the landowners objected. State law allows NRDs or eminent domain authorities to go on private property for purpose of surveying without consent. The landowners rights are absolutely nonexistent. So the landowners in this case who didn't object had no objection. The authority in the mediators comments, the authority...the

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power gain was 100 percent NRD, 0 landowner. And the landowners, except for one, knew or at least were of the opinion that they had no right to object at all. The one landowner put up signs, told the surveyor you'll need to get a court order to come because he was simply willing to not succumb to that loss or right. But anyway, those are my comments. If there are questions, I'd be glad to entertain them. [LR124]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Schilz. [LR124]

SENATOR SCHILZ: Mr. Clements, it's just...I just have one clarification. So are you claiming that the NRDs are using local property taxes for a state purpose when they go out and build these trails? [LR124]

RICHARD CLEMENTS: It they're going to use them to connect the state or the national trails, that appears to be what I believe is occurring. [LR124]

SENATOR SCHILZ: Okay. [LR124]

RICHARD CLEMENTS: So I'd say, yes. [LR124]

SENATOR SCHILZ: Thank you. [LR124]

SENATOR LANGEMEIER: Senator Fischer. [LR124]

SENATOR FISCHER: Thank you, Mr. Chairman. You just spurred all sorts of ideas. (Laughter) I was going to ask the same thing that Senator Schilz asked. When you were saying local property taxes are paying for a state purpose, that is not allowed. As an attorney, would you agree with that? [LR124]

RICHARD CLEMENTS: Correct. [LR124]

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SENATOR FISCHER: One of our first testifiers gave a handout out, a number of pages. And in that were the purposes of the natural resources districts, and he highlighted 11, which I had circled to look up later, but since I can get free legal advice here, I'm going to take advantage of it. (Laughter) I won't burden our committee counsel too much then. The development and management of recreational and park facilities, what's the definition of a facility? [LR124]

RICHARD CLEMENTS: Whatever you want to put in there. Really, I don't think there's a statutory definition. If the NRD has its own regulation I don't know. My personal opinion is that the legislation was designed to allow for picnic tables, maybe trails around a flood control project, you know, bathrooms, whatever facilities that were within another allowed purpose of the NRD. To take them outside of the other traditional conservation projects to me takes some outside of what the legislative intent was to begin with. But, you know, the facilities that I've seen in the past are in connection with another larger public need such as flood control. [LR124]

SENATOR FISCHER: When you mentioned the Game and Parks, could you give me a copy of the your testimony on that, on that statute? [LR124]

RICHARD CLEMENTS: I didn't write it, I just... [LR124]

SENATOR FISCHER: Oh, okay, on their statute. [LR124]

RICHARD CLEMENTS: I don't have it. All I have is the statute and my thoughts. [LR124]

SENATOR FISCHER: Do you know who the state of Nebraska gave responsibility to maintain the Cowboy Trail to? [LR124]

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RICHARD CLEMENTS: No. [LR124]

SENATOR FISCHER: We have representatives in the audience, but I believe it was the Nebraska Game and Parks. It wasn't the local NRD districts that the trail traverses through. We'll have to talk sometime. [LR124]

RICHARD CLEMENTS: The Lied Platte River Bridge, I live next to it or near it in the summer, and I believe it was donated to the Game and Parks Commission, and I see a lot of Game and Parks lawn mowers mowing along that trail during the summer. Its funds are being used to maintain it, its funds were not available to purchase it, as I understand. [LR124]

SENATOR FISCHER: I know the Game and Parks Commission is looking at cutting some services and they did this year because of lack in revenue and decreased funding, and then you're talking about trails, that takes a lot of maintenance as we heard from the gentleman from Brainard, I believe it was, who said the litter pick up and the maintaining of the trails. So that's a problem and it's a problem with the Cowboy Trail that traverses from Norfolk to Chadron, too, in being able to maintain that. But you raise an interesting point about the taxing authority and the use of eminent domain and perhaps those being the reasons that trails are being developed by NRDs. [LR124]

RICHARD CLEMENTS: Absolutely is. The authority of the commission to purchase is restricted by the appropriated...dollars being appropriated, that's by the Legislature and that's why we have a Legislature that has budgeting authority for statewide entities because those are thoroughly reviewed and there are priorities. With the NRDs, the taxing...the direct taxing authority is a very significant power. [LR124]

SENATOR 0: Yes, it is. Thank you very much. [LR124]

SENATOR LANGEMEIER: Are there any other question? Seeing none, thank you, Mr.

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Clements, for your testimony. Further testimony? Good afternoon. [LR124]

PAUL MORRISON: Good afternoon. My name is Paul Morrison, P-a-u-l M-o-r-r-i-s-o-n, from Lincoln, Nebraska. I'm a former board member of the Lower Platte South NRD. And might I first start out with a comment about representation on NRD boards in response to the general manager from the Papio NRD. I might ask the members of the committee, do you know who your NRD representative is? Good. When you voted in the NRD election the last time, do you know why you picked one person over the other? Well, I'm glad. I would guess that the majority of the public can't answer that way, can they? Okay. I'm just going to kind of go through some whereas bullets that I'd like to make some points on before I kind of get to what I might say is my policy recommendation. And I think Mr. Clements' comments are a good lead into mine very well. The legislative intent that was given to the NRD for the recreation authority was to be for recreational projects coincidental with flight control structures. That was in a published natural resources commission document shortly after the laws were passed. It was not a wholesale ticket to develop recreational projects. The recreational projects that the NRDs have undertaken, in my opinion, have taken their focus off of soil conservation and flood control brought projects. Cass County here itself has several flood control dams that were proposed a long time ago and have not yet been built in this county in particular, and there are probably some in your counties. As Mr. Clements was alluding to, trails cross NRD boundaries. It cost a thousand dollars per mile to maintain a trail. That's a national figure that's been given to NRDs and to other people. That does not come from those federal tax dollars that NRDs have for trails; that maintenance of trails come from property taxes. Okay? You got that? The master trail plan that Nebraska has was developed by Game and Parks Commission. Game and Parks Commission has a paid state employee as a state trails coordinator. Game and Parks, as Mr. Clements said, should be the state entity managing parks. You already have laws that govern eminent domain by the Game and Parks Commission. We don't need to discuss eminent domain for the Game and Parks Commission, we already have those laws in place. Therefore, I want to go back and would say, you need to reinforce

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what the NRDs that their recreational authority is for those projects associated with flood control structures only. Go to the Game and Parks Commission, designate them as the people who (inaudible) principles for the management of trails, and in my opinion, I go even further and say, all trails outside of municipalities. With inside of the municipalities, let the cities manage those. Thank you. [LR124]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Morrison? Seeing none, thank you very much for your testimony. [LR124]

PAUL MORRISON: Thank you. [LR124]

SENATOR LANGEMEIER: Very good. Further testimony. Welcome. [LR124]

LARRY FLETCHER: Very short. Larry Fletcher, a 25-year member of the Great Plains Trail Network. The MoPac was a... [LR124]

SENATOR LANGEMEIER: Can I get you... [LR124]

LARRY FLETCHER: I'm sorry. [LR124]

SENATOR LANGEMEIER: Can I back you up there. I need you to spell that, your name, for me. [LR124]

LARRY FLETCHER: Oh, I'm sorry. L-a-r-r-y Fletcher, F-l-e-t-c-h-e-r. [LR124]

SENATOR LANGEMEIER: Thank you. [LR124]

LARRY FLETCHER: Twenty-five-year member of the Great Plains Trail Network. We wouldn't be here today if we wouldn't have done this. This is the pioneer event. Hadn't been done in Nebraska. I spent many hours biking in rails-to-trails events in Iowa,



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Wisconsin, Minnesota, and when we come back and there was an opportunity to buy the MoPac, the Great Plains Trail Network said, let's do it. The railroad wanted their money in 24 hours, so we had to go out and get a loan. Eight members put \$25,000 of a lien on their home to get the loan. That put a lot of pressure on fund raising, but the people really come through, they wanted the trail. We raised \$250,000 in 18 months. I got involved with trails because it's more than just transportation; it's an environmental issue, it's a health issue. I'm a pediatrician. Seventeen percent of my children are obese or overweight. I wanted to do it for them. So the trail become very important. I bought 40 acres on it, restored a prairie, made it part of the trail. I bike everyday on it. I go to Wabash without using the rest room. And it's very important that we have an end point for the trail to get economical development. I've been very disappointed in the way things have worked out, to be honest. If you go to Lanesboro, Minnesota, small little farming community become vitalized with a trail. With innovative uses with the use of a bridge and going on Platte River, I think we can make much better use of the trails. We've absolutely done very little with it. There's great opportunities. You've got to be innovative. You go on a trail in Minnesota, first in Octoberfest, they have people coming from all over spending the night, doing all sorts of things. There's art shows, art exhibitions, there's music. A trail is supposed to grow a community together, not tear it apart. There's an issue of rural versus urban, and it's very difficult to get ownership of a trail. It's a fight all the way. You have to really fight. And I don't know who's right, but I think trails are very important. And I think that we really need to have an end point for the MoPac and develop it so that it's at its fullest and make a good opportunity out of it. Thank you. [LR124]

SENATOR LANGEMEIER: Very good. Are there any questions for Dr. Fletcher? Seeing none, thank you very much for your testimony. Further testimony? Come on up. You can just leave them there, she'll come get them. You can just set them there on the end. There you go. Welcome. [LR124]

ROB SCHUPBACH: (Exhibits 15 and 16) Good afternoon. My name is Rob Schupbach,

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Rob, R-o-b S-c-h-u-p-b-a-c-h. I live at 2304 South 24th Street in Lincoln. I'd like to thank you committee for the opportunity to speak this afternoon. For the last, oh, since 1979...I have a handout, since 1979, I've been a very grateful user of the Lincoln trail system. At that time, I lived about two blocks away from the first one that was installed in Lincoln. And I've watched them grow into what they have become today. It's rather frustrating to see the controversy that's going on with the background that I see. What's being handed out to you, first of all, is a brochure from the Cass County Visitors Bureau. If you simply look at the front page of it, there's a beautiful view of the Platte River. And then the title of it says, "in the middle of it all." That's the title of the brochure. I'd like to ask you to remember it because we'll be coming back to that in a minute. If you open up the brochure, it shows that they have 41 different tourist attractions in the county. Number 22 is the MoPac bike trail that goes from the left-hand corner of the map, it's the dotted line that goes through Eagle and then Elmwood and the Wabash where it stops. I've taken the privilege of taking a green highlighter and highlighting the area from Wabash to South Bend to show the potential trail corridors. And then I took a green sharp-tipped pen to show where the Platte River...the Lied Bridge goes across the Platte River. And then I drew a line over to an air view picture, a beautiful picture from the Platte River State Park of the Platte River Bridge. The county also...the county visitors bureau also shows a lovely picture of a man and a dog riding a bicycle along the MoPac bike trail. I have a great deal of trouble believing that when the county takes \$124,357.56 of its tourist money and spends it on promotional literature like this that there aren't people in the county that favor trails. The county that...my second display for you is a spreadsheet of the county lodging tax money. The orange line is Cass County and shows by the month what they get from 4 percent, their 4 percent share of motel tax. And last year the county took in...got \$124,357 from tourism. Every county is outlined on the map. Tourism is a big business in Nebraska. Omaha got \$5,578,000 of tourism tax money. York County got \$249,000 from tourism. People going to destinations like this, like the MoPac bike trail, spending money in the local county to help the local people. Next display I have for you is page 47 of the Game and Parks SCORP book, and it lists the activities from the survey that the state did of preferred recreational activities. Walking

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for pleasure was participating by 82.9 percent of the people that participated in the survey. Everyone of the high-ranking survey items are things that are in the...are needs that are recreational needs that are served in Cass County. There seems to be some confusion, and Dan Schulz had a little trouble talking to you people, as did one of the former county commissioners, just exactly when did the MoPac...when did the trail issues start coming up in the county. I didn't realize that he was going to have that trouble, and so I only made one copy of it, but I have a copy of the Cass County comprehensive plan. My experience in dealing with legal matters is the mind is a very convenient thing. People tend to remember what they want to remember, especially when they've on the spot speaking in public. But I printed the 1998 copy of the Cass County comprehensive plan. I have only one copy and I'll be turning it into the committee as soon as I read what they have to say about trail participation. But this is the 1998 Cass County comprehensive plan. It's on their Web site. If you go to [CassCounty.com](http://CassCounty.com), you can print a copy of it just as I did. But I'll read from page 53, paragraph 4, guide to development of a regional recreational tourism hiker/biker trail system. This project should be developed over the next one to five years. The location of these trails should remain along existing U.S...along existing state and U.S. highway routes in Cass County. Efforts should be made to limit the amount of land removed from the county's tax roles. Any opportunities for further development, i.e., Nebraska Department of Roads highway construction should be taken advantage of while they were in the design and construction. This system would connect Cass County to other recreational and tourism amenities of Douglas, Lancaster, Sarpy, Cass Counties. This trail system would build off the existing trails being developed through the area. Going back to the title of their brochure, "in the middle of it all." Cass County is in the middle of Douglas, Lancaster, Sarpy, Cass, Dodge, and Saunders Counties. If we go to map 3, my third handout, this is page 15 of the state SCORP book, they've divided the state into seven population regions. They based their population figures off the 2000 Census. Concentrating on the metro area, which is Lancaster, Cass, Sarpy, Douglas, Washington, Dodge, and Saunders County, in 2000, there were 935,575 people in that region in those seven counties. Those seven counties represent 5 percent of the state's

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land mass. In 2000, in the year 2000, 54.76 percent of the people that lived in Nebraska lived in 5 percent of the state's land mass. Today, according to the 2008 United States Census Bureau's statistics, the state's population is 1,783,482 people. In 2000, it was 1,711,266. The state over that eight-year period has grown 72,216 people. Of great interest is region 1, which is the area that we're talking about. The 2008 Census now carries 1,032,453 people in 5 percent of the state's land mass. In 2000, that same area had 935,457 people. That area has grown by 96,878 people. It's growing faster than the state. What I find it extremely interesting is that 58 percent of the people that live in Nebraska now live in Lancaster, Cass, Sarpy, Douglas, Washington, Dodge, and Saunders County. There's been an innuendo that has come from some of the committee members that recreation sure is nice, but it's not necessary. I suggest to you that when 58 percent of the people of Nebraska live in 5 percent of the land mass recreation is necessary for that area. I also contend that when you're talking about removing authority from elected government bodies, when you have that much concentration of people living in that small land area, you're asking for more trouble. There are going to...the subject of this hearing today is peanuts compared to what's going to be coming up because of the concentration of people in region 1 in the future. All...it doesn't make an difference whether it's the NRD, the counties, the school districts, the police, the fire districts, anybody that has law to enforce is going to need more authority where there's a high concentration of people compared to the lower concentration of people, the lower concentration areas. Region 7, which is the north central, is the least populated. In 2000, they have 52,096, 3.1 percent of the state. It's not difficult to understand that if you come from an area that doesn't have a large population, you're not going to relate to it. But if you divide out the number of people, which I should have done and I didn't, if you divide 1 million people into 3,916 square miles, you have a tremendous land mass, a tremendous concentration of people. Okay. I think it's very foolish to try and take authority away from the areas that it's needed. That's it. Any questions? [LR124]

SENATOR LANGEMEIER: Thank you very much. Are there any questions for Mr.

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Schupbach? Senator Fischer. [LR124]

SENATOR FISCHER: Thank you. Mr. Schupbach, I stepped out for a minute and came in late. [LR124]

ROB SCHUPBACH: No, that's okay. [LR124]

SENATOR FISCHER: I do appreciate your handouts here on Cass County and the population growth in the areas. Can you tell me where you're from again? I didn't get that? [LR124]

ROB SCHUPBACH: I'm from Lincoln. [LR124]

SENATOR FISCHER: From Lincoln. [LR124]

ROB SCHUPBACH: Yeah. This is the Cass County plan. I'd like to introduce that into the record. [LR124]

SENATOR FISCHER: I hope you weren't disparaging any of my colleagues or myself... [LR124]

ROB SCHUPBACH: No. [LR124]

SENATOR FISCHER: ...with your comments at the conclusion of your testimony. I think we all try to be fair... [LR124]

ROB SCHUPBACH: No, I just think that... [LR124]

SENATOR FISCHER: Let me finish, please. [LR124]

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ROB SCHUPBACH: Please. [LR124]

SENATOR FISCHER: I think we all try to be fair and balanced, and as committee members on here I can tell you that many of us are. Senator McCoy grew up in southwestern Nebraska, and now he lives in Omaha. [LR124]

ROB SCHUPBACH: I understand. Um-hum. [LR124]

SENATOR FISCHER: I think he brings a very balanced perspective to this committee. I happen to grow up in Lincoln and now I represent the 43 district. [LR124]

ROB SCHUPBACH: Um-hum. [LR124]

SENATOR FISCHER: I'm from Valentine. [LR124]

ROB SCHUPBACH: I understand. [LR124]

SENATOR FISCHER: I think I bring a very balanced view to this committee. And I think if you look at the membership on the committee, we have urban and rural senators and I assure you that we try and look at all issues, and what we believe is the best not only for our districts, but for the state as a whole. [LR124]

ROB SCHUPBACH: My feeling is quite simple. I think that there's been a tremendous skewing of a population movement. No changing any law is going to get anybody to move back to wherever they came from. There's a million people in five counties in Nebraska; that area is 5 percent of the state's land mass. There are going to be much more problems to deal with taking authority away from the elected government agencies that need to deal with those problems is a step backwards. [LR124]

SENATOR FISCHER: I don't disagree with you that the population in the state is moving

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and in many areas, especially in my legislative district, we're trying to maintain our population base because it's sparsely populated and it's also an ag-based economy. [LR124]

ROB SCHUPBACH: Um-hum. [LR124]

SENATOR FISCHER: I would like to point out that the state of Nebraska is reliant on agriculture and it is an ag-based economy as well. And the views of all people, with due respect to you, the views of all people need to be represented by all forms of government whether at the local level or the state level. [LR124]

ROB SCHUPBACH: Well, hopefully moving the state fair to Grand Island will provide some diversity. But at the same time, when you have 58 percent of the people already living in 5 percent, in the eastern 5 percent of the state, that's a bell you can't unring. [LR124]

SENATOR FISCHER: I think the comment...we'll have to talk later, but I think the comment with the state fair moving to Grand Island, some of us would argue the main reason the state fair moved to Grand Island was so the University of Nebraska could get an Innovation Park; it wasn't to help rural Nebraska. [LR124]

ROB SCHUPBACH: Well, we can always hope. [LR124]

SENATOR FISCHER: Thank you. [LR124]

SENATOR LANGEMEIER: Thank you very much for your testimony. Further testimony. Welcome. [LR124]

SCOTT JAPP: Good afternoon. My name is Scott Japp of Arlington, Nebraska, S-c-o-t-t J-a-p-p. I believe that recreational facilities are a great enhancement to the community.

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However, they are not vital that eminent domain should be used. You should not put recreational facilities on the same level as roads, electrical lines, pipelines, and railroad tracks, and schools. All of these are infrastructure needs for the community and the nation. Having a natural asset is a benefit to the community, not a right. I do believe that an NRD should work with governmental agencies to use existing facilities. However, the NRD should not acquire additional lands to accomplish a desire of other governmental agencies. For example, the Papio Missouri NRD in 1998 approved a project called the Missouri River corridor. They are the sponsor of an Army Corps of Engineering 1135 project. Their state admission is to have a corridor along the entire Missouri River. The Papio NRD has used and threatened to use the eminent domain to require lands for a habitat reclamation projects. None of these lands that the NRD owns have public access today. The Papio Missouri NRD has also acquired lands in the state of Iowa. Recently, the NRD sold some of these holdings to the Army Corps of Engineers, held it for years for the same price they bought it for. The Papio NRD still holds additional lands in the state of Iowa for more than ten years, which nothing has been (inaudible) to this day. The NRD is just a mechanism for the NRCS to acquire lands for the wetland reserve enhancement program, which the NRCS doesn't have the right to use eminent domain. I'm providing you with documents that Tom Tobin (phonetic), he's a farmer from Tekamah which went through, as he says, my six-year long ordeal with the NRD. In Washington County, the federal government owned more than 2,200 acres adjoining these properties. The Missouri Valley NRD also holds an additional 1,500 acres. Much of the land...how much land is adequate for these local endeavors? Local governmental agencies have not been compensated for the last lost property values and taxes on these lands. One can build bike trails in heavily populated areas where they can justify the cost and use. One can incorporate such trails in their developments and accomplish this by having a comprehensive city plan. However, it is difficult to justify the cost benefit of building bike trails in rural Nebraska where they wouldn't generate much use. I believe that eminent domain should not be used by government agencies because of wants. If eminent domain is used, they should be greatly compensated for the land, not just given fair market value. I have an example in Blair, Nebraska. Again, the Papio



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NRD just condemned land to revamp an existing 3-acre dam. The dam structure, it's called W-3. The NRD staff has stated in a board meeting that they could revamp the structure for the same cost on the present site. However, they chose not to. In my opinion, this is another example of extreme powers and misuse of eminent domain.

[LR124]

SENATOR LANGEMEIER: Thank you very much, Mr. Japp. Are there any questions? Senator Fischer. [LR124]

SENATOR FISCHER: Thank you very much for being here. I just wanted to clarify one of the points you made towards the end of your testimony. Did I understand you correctly when you said that the government should give more than fair market value?

[LR124]

SCOTT JAPP: Yes, I... [LR124]

SENATOR FISCHER: ...if they use eminent domain. [LR124]

SCOTT JAPP: Yes, I do. [LR124]

SENATOR FISCHER: Why? [LR124]

SCOTT JAPP: Because I think if you're going to be...need to be compensated greatly, if someone is going to take my family farm, for an example, just not given fair market value, no. [LR124]

SENATOR FISCHER: Okay. Thank you very much. [LR124]

SCOTT JAPP: Um-hum. [LR124]

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SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Further testimony. Just a show of hands, how many more do we have to testify? I think you're...oh, one more over there. Oh, one more, two more after you. Welcome. [LR124]

SHAWN MELOTZ: Are you counting the flies or... [LR124]

SENATOR LANGEMEIER: Both. [LR124]

SHAWN MELOTZ: My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z, and I'd like to thank Chairman Langemeier and members of the Natural Resources Committee for studying the need for eminent domain powers of NRDs, particularly for recreational trails. I comment this committee for recognizing that there is a problem and studying the need for change. I believe eminent domain should never be a power held by governmental entities when recreation is its primary purpose. I believe land rights should be considered sacred and, thereby, protected at all costs. Since condemnation is an expensive and discouraging process, the mere threat of eminent domain is to make most property owners succumb to the NRD's desires. Condemnation proceedings, of course, are the process of negotiating for a price rather than protecting one's property rights. Fair market value is a situation where willing buyers and willing sellers negotiate a price. In condemnation proceedings, that is not what occurs. Again, the threat of eminent domain is as deadly to a landowner as the process itself. I would like to have the NARD executive director do a survey to those people on trails on how many of them were threatened with eminent domain, not those that had the proceedings occur on them. And as a tongue-in-cheek comment to the fact that the survey stated that eminent domain was only used in two circumstances, then my comment would be, what's the need for eminent domain? However, I think the purpose of it is to threaten the use of eminent domain more so than use it. My family and I own property within the Papio NRD. Unfortunately, I believe the Papio NRD uses the threat of eminent domain too freely. Therefore, I ask this committee to support future legislation that would abolish

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natural resource district's powers of eminent domain when recreational purposes are the need. Thank you. [LR124]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Seeing none, thank you very much for your testimony. Next testifier. [LR124]

PHYLLIS BUELL: I'm kind of stiff from sitting so long and a little bit glassy eyed too. (Laughter) Phyllis Buell is my name, P-h-y-l-l-i-s B-u-e-l-l, and my presence here today is to protest the possibility of any further eminent domain. My personal experiences with the NRD getting their own way at any cost have not been pleasant. The farm owned by my mother near Elmwood has fallen victim to both the MoPac Trail and the Seven 7-C dam (phonetic). When the Missouri-Pacific Railroad was abandoned many years ago, local farmers waited for that rail site to be returned to the farms it crossed as promised. Questionable dealings kept this from happening, and it did not. A very expensive trail, a play thing occurs today as a result. In the early years of the trail, mother had her tenant cut the sunflowers, cockleburs, and button weeds from the trail bordering her farmland to keep them from seeding. She was threatened with a registered letter telling her she would be sued if this happened again. The NRD considers the seeds as valuable bird feed, according to that infamous letter. Where is common sense, I ask you? I walk that trail that goes through her property Saturday evening. I observed sunflowers as high as the proverbial elephants eye, button weeds and hemp thriving. In addition, weed trees are rapidly growing in the NRD installed fence line. To add insult to injury, those will soon be sapping adjoining crops. The trail was promoted to keep bicycle traffic from the highways. Has it? Serious bikers don't want a level path. The hills of highways provide a challenge so they continue to ride the busy highways on a smooth surface. Next, will the trails need to be hard-surfaced? Imagine the concern of a 90-year-old woman when curious bikers came off the trail in early years and asked to look through here building because they'd never had the opportunity to be on a farm. They came over a quarter of a mile to do this. Next, came the 7-C (phonetic) dam which backs up on her land from the north. The design of this dam is flawed. The spillway is much, much too high. More

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and more land is claimed each year as silting causes backwater to spread further and further onto her land. Does the NRD care? Goose hunters come each year to enjoy shooting at the thousands of snow geese that rest near the dam. Some ask, some don't. Those that ask were often so excited they came into her house without even knocking. Keeping her doors locked 24 hours a day became necessary. Should the rights of the general public overshadow the rights of the landowners to that degree? I don't think so. When first formed, the initials NRD stood for natural resource districts dedicated to flood control and land devotion management. In recent years, those same initials have come to stand for no responsible decisions. There's always a hidden agenda ceasing land for recreational purposes. It doesn't matter how much taking the land hurts the landowner and the farmer. Some developer or buddy of the back-scratching groups will be the eventual benefactor. Please use your wisdom and your power to keep eminent domain for recreational purposes out of the hands of the NRD. Their power needs to be cut instead of enhanced. Use your authority for good and stop this travesty of justice. Thank you very much. [LR124]

SENATOR LANGEMEIER: Very good. Glassy eyed it went very well. (Laughter) Thank you very much for your testimony. Last but not least. [LR124]

JAMES ENGELKEMIER: I hope not. [LR124]

SENATOR LANGEMEIER: We're ready when you are. [LR124]

JIM ENGELKEMIER: Senator Langemeier, my name is similar to yours. My name is Jim Engelkemier, E-n-g-e-l-k-e-m-i-e-r. I am also a present county commission, a farmer in this county. Unlimited eminent domain or supreme authority, I would suggest that we look at some of the trails that we have presently. Now I see trails as a positive thing and our county board, as our commissioner brought out, that we're not speaking out or the county board is not speaking out. What I'm saying here is my own personal issues. My personal issues, I know a lot of people in Omaha, I know a lot of people that ride the

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trails in Omaha and they're wonderful trails. But there's a lot of difference between trails in Omaha and I believe Lincoln and also rural trails. The type of people that you might have on those will be different. We're looking at possible wanting local people to be involved in the trails in the rural areas. And or people to get involved in the rural areas, that means we need to tie into towns. We need communities involved in it. We need their input. We need their willingness to provide services. Those are some of the things. What's this have to do with eminent domain? I believe some of the issues that we're dealing with today have to do with and NRD that has had the ability to do what they wish to do and didn't have to go to the local community to necessarily ask that they're going to do it; they assume that they had that authority. It's puzzling on my side of the fence being a farmer and having been farming since 1974, knowing the NRD's history through that time how its changed. I don't see them as...previously they were providing services, I don't see that much providing services. And a lot of what I've heard about trails, and before I was even a board member, had to do with they're going to do whatever they wish. We've been told during this meeting that there's...they're trying to finish a process, trying to finish a trail. But what they are doing is taking and trying to connect trails that were to rail services previously. So it's really a new process and we got kind of caught in the middle as our county because we don't have a railroad that goes through, so they have to go to the county roads, and that became an issue. How the county board is involved in it would be really in question, other than they came to us and told us what they were going to do. They didn't ask us what they were going to do, they told us what they were going to do. And we chose to vote no to the process, not knowing that probably we didn't have any authority to change anything because they would go after the individuals before they'd come after the county. One thing I see by eliminating eminent domain is that the provide flexibility of design. One of the issues we've had to deal with is on county roads and also on paved roads, and the state asking the state, we wish that the state would be able to utilized their roads for bike trails. Bike trails...if you drive Highway 50, they have a trail along Highway 50 or part of Highway 50, but it has almost no use, very little use. I drive that thing six times a week and I see very few people on it, and almost always they're on the highway. So we got a 12-foot

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side road side of the highway and they utilize that. And my question was then why don't build the trails on the side of the highway? What's wrong with doing that? They're saying that they're design guidelines don't permit that. My question is, who's designing? Who's making the guidelines and is that a state issue? And is it something that the senators need to take up with the state roads department? So I'll end it right there. [LR124]

SENATOR LANGEMEIER: (Exhibits 17-21) Okay. Thank you very much for your testimony. Are there any questions? That's the best part about going last, never a question. Thank you very much. I'd like to thank everybody that came here today and participated. We appreciate your feedback, and have a great trip...oh, I have some letters to get into record. Right here we have Lincoln County Board of Commissioners of North Platte, Nebraska, has entered a letter in; Grant County Board of Commissioners of Hyannis has put a letter in; and John Turnbull of the general manager of the Upper Big Blue NRD at York has put in a letter for the record. Again, thank you all for coming and we conclude our hearing today. Thank you. [LR124]

To: Senator Dave Pankonin  
Sherrie Geier, Senior Legislative Aide

From: Kate Gaul, Research Analyst  
Legislative Research Office

Date: September 18,2009

Re: NRD survey for LR 124

A three-question survey was emailed to Nebraska's 23 natural resources districts on August 13,2009, as part of the information-gathering process for LR 124. As of September 18, all 23 NRDs have responded to this survey. The results of the survey are below, alphabetized by responding NRD.

The questions asked of the NRDs were:

1. What criteria does your NRD use when identifying land for a recreational trail or corridor? (E.g., **advantages** **disadvantages** of a given parcel; desirable land features; consumer demand; etc.)
2. What process does your NRD use in obtaining the land you identify for recreational trails? (E.g., land title review; public hearings; etc.)
3. Has your NRD ever used eminent domain in order to acquire land for the sole purpose of establishing a recreational trail?

Because only one of the questions involved a yes/no answer, it is impossible to generalize the results in a table format in any meaningful and accurate way. Still, it is possible to make some generalized statements about the results. First, only two NRDs reported they had used eminent domain to acquire land for a recreational trail. They are the Lower Elkhorn and Papio-Missouri River NRDs. They each reported using eminent domain once. In the case of the Papio-Missouri River NRD, it appears that the land was acquired to provide public access to a trail that existed as part of a larger project, not for a standalone trail project. You may wish to seek further clarification on this point.

Eight NRDs indicated no experience developing recreational trails, whether on their own or with other entities. (They are: Lower Niobrara, Lower Republican, Middle Niobrara, Nemaha, North Platte, Upper Loup, Upper Niobrara White, and the Upper Republican.) An additional eight indicated that their primary or sole involvement with trail development has been to provide monetary assistance to other entities to build trails. (They are the Central Platte, Little

Blue, Lower Loup, Lower Platte North, Middle Republican, South Platte, Twin Platte, and Upper Elkhorn.)

Although it was difficult to assess the trail activity level of the responding NRDs using the questions posed, it appears that the Lower Platte South, the Papio-Missouri, and the Upper Big Blue have been involved in the most trail projects. Bear in mind that the projects are not all, or even mostly, stand alone trail projects. For example, the Papio-Missouri NRD indicates that its trails are on land where the NRD already had flood control projects located.

For ease of reference, each NRD's response is reprinted verbatim below. However, the original emails are also available, should you wish to see them.

### **Central Platte Natural Resource District, Grand Island**

The CPNRD has never purchased land for a trail. We have helped fund other agencies trails. With the makeup of our present board I can safely say that the CPNRD would not be willing to use eminent domain for the sole purpose of a hike/bike trail.

### **Lewis & Clark Natural Resources District, Hartington**

- (1) We have only used existing Dept of Roads R.O.W. on current trail plans.
- (2) Easement transfer documents only – no purchase required.
- (3) No.

### **Little Blue Natural Resources District, Davenport**

(1) Our district does not own any projects that are specific to recreation trails or corridors. We have provided financial assistance to some communities to develop trails within their jurisdiction, and have included rustic trails as components of our own multipurpose flood control/recreation sites. Our staff and board's decision to develop any lands for public use are determined by a) location in relation to other outdoor recreation opportunities (we select areas set apart from other sites), b) since all of our areas are associated with new or existing watershed flood control dams, we look for sites which have the best natural water quality and spring flow to maintain lake levels, and 3) depth of water for recreation opportunities and fisheries.

(2) Again, we have not acquired property for recreation trails. For other watershed projects, we are bound by the statutes for uniform acquisition of private property and follow them closely.

(3) We have not used eminent domain for recreation trails, nor for any other project I have been involved in during my 32 year tenure at the Little Blue



NRD. We had one case where condemnation papers were filed about five years ago for a single tract out of eight needed for a flood control project, but the issue was resolved before the court appointed appraisers. I think our history shows that the NRD will only use eminent domain as a last resort and when the public interest dictates proceeding with the project in question.

### **Lower Big Blue Natural Resources District, Beatrice**

(1) The Lower Big Blue NRD has not been active in acquiring and developing trails. The NRD board has voted not to be involved in the new Homestead Trail between Lincoln and Beatrice. We do have a short trail located on one of our public recreation areas.

(2) See #1

(3) No.

### **Lower Elkhorn Natural Resources District, Norfolk**

(1) As with any project, we try to assess whatever alternatives may be available, and choose the best one. This would include the examples you have listed as well as safety of users, public support, cost compared to benefits, and willingness of landowners to sell their land. Some trail projects may have several alternative routes, while on other projects, the alternatives may be to put it in the only feasible location or don't do the project.

(2) We follow Nebraska statutes as required by law, which include public meetings, personal contact or correspondence, public hearings, title searches, appraisals by licensed appraiser, and negotiations with landowners which begin at or above appraised values.

(3) Yes, one parcel in the Cowboy Trail Extension project was obtained by eminent domain. The condemnation went through county court, after which an agreement was reached with the landowner on compensation.

### **Lower Loup Natural Resources District, Ord**

The Lower Loup has never initiated a trail project or our own, or obtained land for a trail. Our participation with trails in the District has been financial assistance with trail project sponsors. We have also granted a free easement for a portion of a trail on District property.

### **Lower Niobrara Natural Resources District, Butte**

(1) We have never needed a criteria.

(2) We have never used a process.

(3) We have never used eminent domain to acquire land for the sole purpose of establishing a recreational trail.

We have no written procedures.

### **Lower Platte North Natural Resources District, Wahoo**

(1) Our NRD does not own or operate any connector trails but has cost shared and is committed to assist in funding several trails within our NRD being constructed by cities. We have trails on both of our active recreation areas which are large flood control projects retro-fitted to accommodate public recreation. We do plan to construct  $\frac{3}{4}$  mile of trail to connect the Wahoo trail system to Lake Wanahoo when completed which is part of the Wahoo Trail Master Plan.

(2) We have never purchased land for a trail. The trail to connect Wahoo to Wanahoo has one willing to sell landowner between the City Park and NRD land.

(3) No.

Currently the Lower Platte North NRD Board does not wish to be the lead agency on trails. We recognize the recreation demand and are willing to assist cities with some expenses. We currently budget \$20,000 per year for construction assistance.

### **Lower Platte South Natural Resources District, Lincoln**

(1) The trails/corridors with which this District has been involved primarily have followed former railroad corridors or streams, so the route generally identifies itself. The important points to consider still include the following:

a. Origin and destination, or what points of interest the trail is connecting. (e.g. parks, communities, other trails, public lakes)

b. Safety for the trial users is the top concern. Separation of the trail from vehicles, and the design of trail surface, curves, slopes, and crossings require special attention.

c. While directness of the route is important, some variance is acceptable to take advantage of existing public right-of-way, scenic areas, and avoidance of design challenges and expensive features such as steep slopes, stream crossings, and proximity to private residences.

(2) All acquisition of private property for public use by NRDs is governed by the

Uniform Procedure for Acquiring Private Property for Public Use, Section 25-2501 through 2506 in the Nebraska Statutes. This procedure prescribes both minimum timetables and specific requirements for property owner notification and public hearing. In addition, if federal funds are planned to be used in the project, there is a very specific set of requirements for notices, appraisals, negotiations, etc. that must be followed. The Lower Platte South NRD follows all of the above requirements, at a minimum, and generally precedes the land rights process by an extensive public process on the planning, siting, and design of the projects.

(3) No.

### **Lower Republican Natural Resources District, Alma**

Our NRD has no recreational trails and has expressed no interest in developing any. We have no experience or criteria to share with you at this time in this area.

### **Middle Niobrara Natural Resources District, Valentine**

(1) The MNNRD has not had the opportunity to consider right-of-way issues regarding trails.

(2) Same as above.

(3) No. The Cowboy Trail does run through our district for approximately 145 miles, but the land was owned by the railroad and became a railroad bank. We have helped with a community trail head project by assisting with trees/shrubs and grass seed.

### **Middle Republican Natural Resources District, Curtis**

(1) We have never initiated a trail project. Using our local grant program we have assisted several communities with their projects.

(2) Same as above.

(3) "We have never used eminent domain for trail projects.

### **Nemaha Natural Resources District, Tecumseh**

(1) Our district has not worked with developing any trails on a non existing corridor such as a railroad right-of-way so no procedure/criteria have ever been developed.

(2) Although we have never done this for a trail we would use the same process we use for obtaining land rights for any other improvement project which includes developing land rights maps, identifying landowners impacted by the project, holding public hearings, appraising the land in question using a licensed appraiser, extending offers to landowners, additional negotiations with landowners if necessary and title searches and land surveys if applicable.

(3) No.

### **North Platte Natural Resources District, Gering**

The North Platte NRD does not have any trails that we maintain and we have never been involved with establishing trails. We therefore have never used eminent domain for establishing trails.

### **Papio-Missouri River Natural Resources District, Omaha**

(1) We selected areas where we had flood control projects (levees or channels), and then made them multipurpose. The levees were already under easement for flood control, so we had to acquire additional rights to allow public access.

Other trails were intended as a transportation feature, connecting points of interest, e.g. parks, shopping, schools, etc.

We also cost-share with other communities to build trails. They had their own criteria for selecting routes.

(2) State law dictates us as to the procedures required for acquiring land for public projects. The sequence would be select route, survey and design project, determine land rights needs, title searches, hold public hearing, prepare appraisals, and negotiate with land owners. Hopefully, an agreement can be reached. If not, the District can use eminent domain to acquire the property. In the Papio-Missouri River NRD, eminent domain has been used on one trail project, the remainder have resulted in negotiated settlements.”

(3) See above.

### **South Platte Natural Resources District, Sidney**

(1) The District’s involvement in the planning and development processes of constructing recreational trails or corridors is a low priority. At this point, we will get involved in this activity(ies) if a community requests our assistance. For example, we financially assisted the City of Chappell, Nebraska, through our Community Assistance Grant Fund Program with their small trail project that was located on their property.

(2) Again, the involvement and development of recreational trails for our District is a low priority. At this point, we do not have a specific protocol, policies or procedures addressing this issue. Applications received through our Community Assistance Grant Fund Program are reviewed through a committee and again reviewed and considered for approval at a board meeting.

(3) No.

### **Tri-Basin Natural Resources District, Holdrege**

(1) Tri-Basin NRD has only been involved in construction of two recreational trails. Both trails were entirely located on public land. Therefore, the only considerations relative to trail routing were design and scenic aspects of the trail routes.

(2) Land remained in public ownership of the cooperating agencies (City of Holdrege in one situation and NE Game and Parks Commission in another), we didn't acquire any easements for maintenance.

(3) NO.

### **Twin Platte Natural Resources District, North Platte**

The Twin Platte NRD has never developed a recreational trail or corridor. The Twin Platte NRD personnel have participated in local committees developing trails in and around the City of North Platte and the Twin Platte NRD has provided funding assistance for trails in and around the City of North Platte.

(1) Not applicable.

(2) Not applicable.

(3) No.

### **Upper Big Blue Natural Resources District, York**

*Manager Turnbull mailed a three-page response to the questionnaire. Rather than reprint it here, a copy of his letter is attached at the end of this memo.*

### **Upper Elkhorn Natural Resources District, O'Neill**

(1) The Upper Elkhorn NRD is unique that we have never had to address this issue. The Cowboy Trail goes through our district for approximately 90 miles and our district decided not to participate in that project and the land was already owned by the railroad and eventually became a railroad bank. The small trails we have helped with have been communities wanting to connect to

the Cowboy Trail and they already owned the property to build the trails. The district contributed trees, grass seed and small monetary contributions to those trails.

(2) Again, we have not had to obtain land for any recreational trails.

(3) Our district had not used eminent domain for any recreational trails or for any other NRD projects.

### **Upper Loup Natural Resources District, Thedford**

(1) Our NRD does not have ANY type of recreational facility of any kind. We do not have any immediate plans to develop trails or any other recreational facility either, therefore at this time we have no criteria or policies in regards to the above.

(2) NA

(3) Our NRD has never used eminent domain for trails or any other recreational or nonrecreational project.

### **Upper Niobrara-White Natural Resources District, Chadron**

The Upper Niobrara White Natural Resources District has never used eminent domain to acquire land and we currently do not own any recreational trails.

### **Upper Republican Natural Resources District, Imperial**

The Upper Republican NRD does not have any trails that we maintain and we have never been involved with establishing trails. We therefore have never used eminent domain for establishing trails.

To: Senator Dave Pankonin  
Sherrie Geier, Senior Legislative Aide

From: Kate Gaul, Research Analyst  
Legislative Research Office

Date: September 15, 2009

Re: State survey for LR 124

A three-question survey was mailed to a sampling of other states, with similar demographics to Nebraska, regarding their trail-building procedures as part of the information gathering process for LR 124.

The chosen states were Arkansas, Kansas, Kentucky, Michigan, Missouri, Montana, North Dakota, Oklahoma, South Dakota, Tennessee, Wisconsin, and Wyoming. Emails were sent on August 6, 2009, to persons listed as their state's Recreational Trails Program State Administrators on the webpage of the Federal Highway Administration, which administers federal grants under the Recreational Trails Program. Seven of the states had responded as of the date of this report.

States were asked three questions relative to trails. They were:

- (1) What entity/political subdivision(s) in your state identifies where recreational trails should be placed?
- (2) Does this entity or entities have the power of eminent domain and can it be used to acquire land intended solely for use as a recreational trail?
- (3) What provisions does your state have to give landowners the opportunity to respond to/appeal the use of eminent domain?

The responses follow.

**Kansas**  
**Jerry Hover, KS State Parks Director**

“(1) There is no one specific agency or entity. Each city, county, township, ward has their own government and authority to decide where trails would be built, however, they do not have authority to place trails on state or federal land without the owner permission. Some local governments do have condemnation authority, but again not on state or federal land.

(2) Some do and some do not, each entity is specified in law as to what they may or may not condemn for public use.

(3) Eminent domain goes through the court system up to and including the KS Supreme Court just like any other taking. I am sorry for not being any more specific, your questions are extremely broad and would take a great deal of research to be more specific.”

### **Kentucky**

**Jodie McDonald, State Trail Coordinator  
Governor’s Office for Local Development**

“(1) Eligible applicants such as state and federal agencies, city and county government, and non-profit organizations that are applying for RTP funds to develop or provide maintenance to trails.

(2) No land of eminent domain is eligible for RTP funds and cannot be acquired or developed with the funds.

(3) I don’t have to deal with eminent domain for my projects, but assume there would be public meetings. Applicants who are applying for RTP funding have to have a public meeting and allow time for comments, but no trail site is acquired or developed with RTP funds on eminent domain land.”

### **Michigan**

**Jim Radabaugh, State Trails Coordinator  
Forest, Mineral, and Fire Management, Department of Natural Resources**

(Response was via phone on August 25, so answers are paraphrased. We did not discuss question No. 3.)

(1) No one entity responsible. Land use is largely a local issue.

(2) At the state level, the departments of Transportation and Natural Resources could be involved in recreational trail development. Both agencies have the power of eminent domain, however, it would not be used for recreational purposes.

(3) N/A.

### **Missouri**

**Chris Buckland, Grants Administration Section Chief  
Division of State Parks, Department of Natural Resources**

“(1) None.



(2) N/A

(3) Should a local government, state or federal entity receive a Recreational Trails Grant they must follow the Uniform Appraisal Standards for Federal Land Acquisitions. These standards give landowners the opportunity to respond to the value of the land.”

## **Montana**

**Beth Shumate, Program Manager**

**Montana Fish, Wildlife & Parks**

“(1) Public Land Managing Agencies – U.S. Forest Service, Bureau of Land Management (BLM), Department of Natural Resources and Conservation (DNRC – State Agency for State Lands), Montana Department of Transportation and Fish, Wildlife and Parks.

(2) No, none of the entities listed have the power of eminent domain.

(3) MT has never dealt with eminent domain yet (that we know of in our Trails Office) but landowners have the opportunity to respond or appeal land use or land acquisition decisions through Environmental Review processes and the allotted 30 day public comment periods that are a requirement.”

## **North Dakota**

**Jessica Riepl, RTP Coordinator**

**North Dakota Parks and Recreation**

“(1) The jurisdiction that sponsors the trail project determines where the trail is placed. North Dakota Parks and Recreation is the agency which is responsible for determining which jurisdictions are awarded grant money to support the construction of these trails. The location of the trail must be described in the grant application and approval/clearance must be given by several different agencies before the project is approved by ND Parks and Recreation (including FHWA, ND DOT, SHPO, etc.)

(2) ND Parks and Recreation does not have the power of eminent domain, nor would ND Parks and Recreation ever use power of eminent domain to acquire land to be used solely as a recreational trail.

(3) Not applicable to our agency. Individual jurisdictions would have their own policies regarding eminent domain, and ND Parks and Recreation would not participate in that process.”

## **Tennessee**

**Robert Richards, Greenways and Trails Program Coordinator**

**TN Department of Environment and Conservation**

“Tennessee has the Tennessee Trails Act of 1971 which creates seven designated Scenic trails along with connecting side trails. A second part of the act creates state recreation trails that are within the boundaries of existing state owned or acquired lands. Eminent domain was originally part of this Act, but was amended out several years later due to public opposition. See Tennessee Code Annotated 11-11-102 et seq. The recreational use statute: TCA 70-7-101 et seq. The website is <http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp>.

The State of Tennessee does have a real estate recordation tax of \$0.015 per \$100 that kicks in when property is sold. This tax generates approximately \$4 million per year and the funding is targeted at City and County government for parks and recreation. This is a 50%/50% grant to match program and the funds are used to acquire land and develop park and recreation facilities including Greenway and Trails. Each city and county government in Tennessee has eminent domain authority, but it is rarely, if ever, used for parks and recreation purposes.

For the 2008 Tennessee Greenways and Trails Plan, go to: <http://www.tn.gov/environment/recreation/greentrails.shtml>. Executive Summary is pages 3-5, the rest is an elaboration of each benefit.”

September 14, 2009

Larry Dix  
Nebraska Association of County Officials

Gary Krumland  
League of Nebraska Municipalities

Dear :

As you are aware, the Nebraska Legislature's Natural Resources Committee is conducting an interim study on LR 124, a resolution calling for an examination of the use of eminent domain by natural resources districts for recreational trails.

As a part of the study, it would be helpful to the committee to hear from the cities and counties a narrative of their involvement in the planning, placement, and approval of recreational trails by natural resources districts.

Specifically, we would like to know what role the municipalities and counties play in the trail planning process. As I understand, it was mentioned during a meeting you had with my committee counsel that a county has the ability, through a vote of the commissioners, to stop a proposed trail. We would like to know the details and law relied upon when this has happened.

Next, here are several scenarios/solutions that have been discussed regarding trails and the Natural Resources Districts: (1) eliminate natural resources districts' power of eminent domain for recreational trails; (2) require a majority or certain percentage approval by affected property owners before eminent domain could be used by a district for recreational trails; (3) implement a dispute resolution process; (4) require use of a state trail plan; and (5) require additional conditions that must be met before eminent domain for recreational trails may be used.

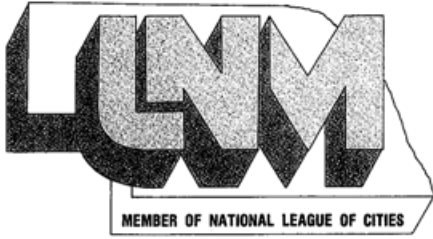
We would be grateful to receive your initial reactions to each of these scenarios. I realize that your opinions may vary depending on the details, but your initial general thoughts are what we are looking for.

Finally, I would like you to describe what improvements or clarifications would be useful to your organization's members relative to the eminent domain laws involving recreational trails and the natural resources districts.

As you know, the public hearing for LR 124 is next Monday, September 21, 2009. Thank you for your quick attention to these questions.

Sincerely,

Sen. Chris Langemeier  
Chairman  
Natural Resources Committee



September 18, 2009

Senator Chris Langemeier  
Chair  
Natural Resources Committee  
State Capitol, Room 1210  
Lincoln, Nebraska 68509-4604

Dear Senator Langemeier:

Thank you for the opportunity to provide information for LR 124 regarding the role of municipalities in the development of trails. Municipalities consider biker/hiker trails an important part of the municipal infrastructure.

Cities and villages own extensive trails for bikers and hikers as part of their transportation/recreation systems. For example, the City of Grand Island has an extensive thirty-mile biker/hiker trail network that runs throughout the city and extends outside the corporate limits of the city. Many Nebraska municipalities, both larger and smaller communities, have similar trail systems.

In developing trail systems, cities and villages often work with the State and other political subdivisions, especially counties and natural resources districts. In North Platte, the city and Lincoln County, through an interlocal agreement, have developed an extensive network of biker/hiker trails both inside and outside the city. The city owns the trails within the corporate limits and the county owns the trails outside the corporate limits. The City of Kearney has seventeen miles of trails that were established by several local governments working together.

Enclosed are several maps of city trail networks. Although the trail maps are from larger cities, many smaller cities and villages also develop trail networks for their citizens.

Because most of the city trails are within the city or just outside the city, they are not directly part of the state trail plan. The trails on the state plan are intercity systems outside municipal corporate limits. The city trails were developed to reflect local needs but they do, however, complement and often connect to trails on the State Plan.

L. LYNN REX, EXECUTIVE DIRECTOR • PHONE: (402) 476-2829 • FAX: (402) 476-7052

WEB SITE: [www.lonm.org](http://www.lonm.org) • E-MAIL: [info@lonm.org](mailto:info@lonm.org)

Senator Langemeier  
September 18, 2009  
Page 2

City and village trails are funded with funds from several sources of revenue. These include municipal taxes, state and federal grants, and private donations. Within municipalities, trails can be very popular and sometimes are financed with donations rather than property taxes or grants.

An example of a federal grant program is the Transportation Enhancement Program administered by the Department of Roads. The program provides funding to local, state, and regional governments to build and restore transportation funding. Eligible activities under the program are trails for pedestrians and bicycles, scenic byways, restoration of historic transportation facilities, and other similar projects. Many cities and villages have received grants for trail development, including many smaller communities such as Bennington, Franklin, McCool Junction, Benkelman, and Axtell, among others.

We contacted several cities about the development of trails and were told that eminent domain is rarely, if ever, used to purchase property for municipal trails. The local officials consider eminent domain an important tool to have available. An official from one city told us that the city came close to using eminent domain in order to complete a final stretch of a trail but did not use it. Ultimately the city and the landowner were able to come to agreement on a financial package.

One of the concerns expressed by some city officials is that their authority to develop trails not be curtailed in an effort to find a solution to the issues raised by LR 124. For that reason, we appreciate the opportunity to be included in the discussion and to provide information to the Committee on this study resolution.

Sincerely,



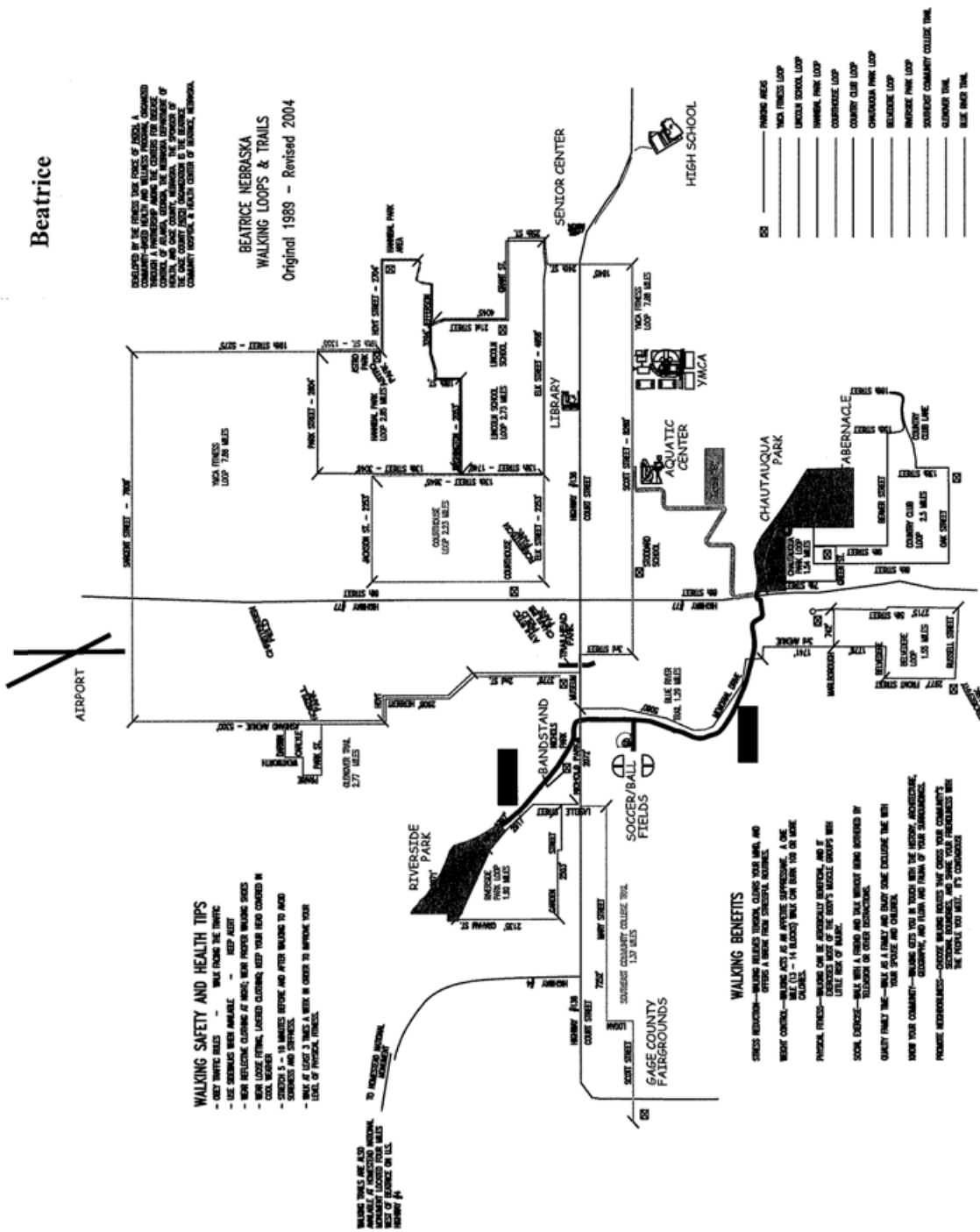
Gary G. Krumland  
Assistant Director/Legal Counsel

Enclosures

# Beatrice

DEVELOPED BY THE FITNESS TRAIL FUND OF BEATRICE, NEBRASKA. FINANCED THROUGH A PROGRAM OF THE FEDERAL DEPARTMENT OF TRANSPORTATION AND THE BEATRICE AREA DEVELOPMENT CENTER OF BEATRICE, NEBRASKA. THE BEATRICE AREA DEVELOPMENT CENTER IS A DIVISION OF THE BEATRICE AREA DEVELOPMENT CENTER OF BEATRICE, NEBRASKA. COMMUNITY HOSPITAL, 15 HEALTH CENTER OF BEATRICE, NEBRASKA.

## BEATRICE NEBRASKA WALKING LOOPS & TRAILS Original 1989 - Revised 2004



**WALKING SAFETY AND HEALTH TIPS**

- GET TRIMMED HAIR - WALK FROM THE FRONT
- USE SHEDS WHEN AVAILABLE - KEEP ALERT
- WEAR REFLECTIVE CLOTHING AT NIGHT, WEAR REFLECTOR WALKING SHOES
- WEAR LOOSE FITTING, LIGHTWEIGHT CLOTHING, KEEP YOUR HEAD COVERED IN SUN
- STRETCH 5 - 10 MINUTES BEFORE AND AFTER WALKING TO AVOID STRAINS AND SPRAINS.
- WALK AT LEAST 3 TIMES A WEEK IN ORDER TO IMPROVE YOUR LEVEL OF PHYSICAL FITNESS.

WALKING TRAILS ARE ALSO AVAILABLE AT THE BEATRICE AREA DEVELOPMENT CENTER, 15 HEALTH CENTER OF BEATRICE, NEBRASKA.

### WALKING BENEFITS

**STRESS REDUCTION**—WALKING HELPS TO RELIEVE STRESS AND OFFERS A BREAK FROM DAILY CONCERNS.

**WEIGHT CONTROL**—WALKING ACTS AS AN APPETITE SUPPRESSANT. A ONE MILE (1.6 - 1.6 KILOMETERS) WALK CAN BURN 100 TO 150 CALORIES.

**PHYSICAL FITNESS**—WALKING HELPS TO IMPROVE ENDURANCE AND INCREASES THE RATE OF THE HEART'S BEAT, WHICH HELPS TO BURN LITTLE BIT OF FAT.

**SOCIAL EXERCISE**—WALK WITH A FRIEND AND TAKE WALKS TOGETHER TO ENJOY THE COMPANY OF OTHER PEOPLE.

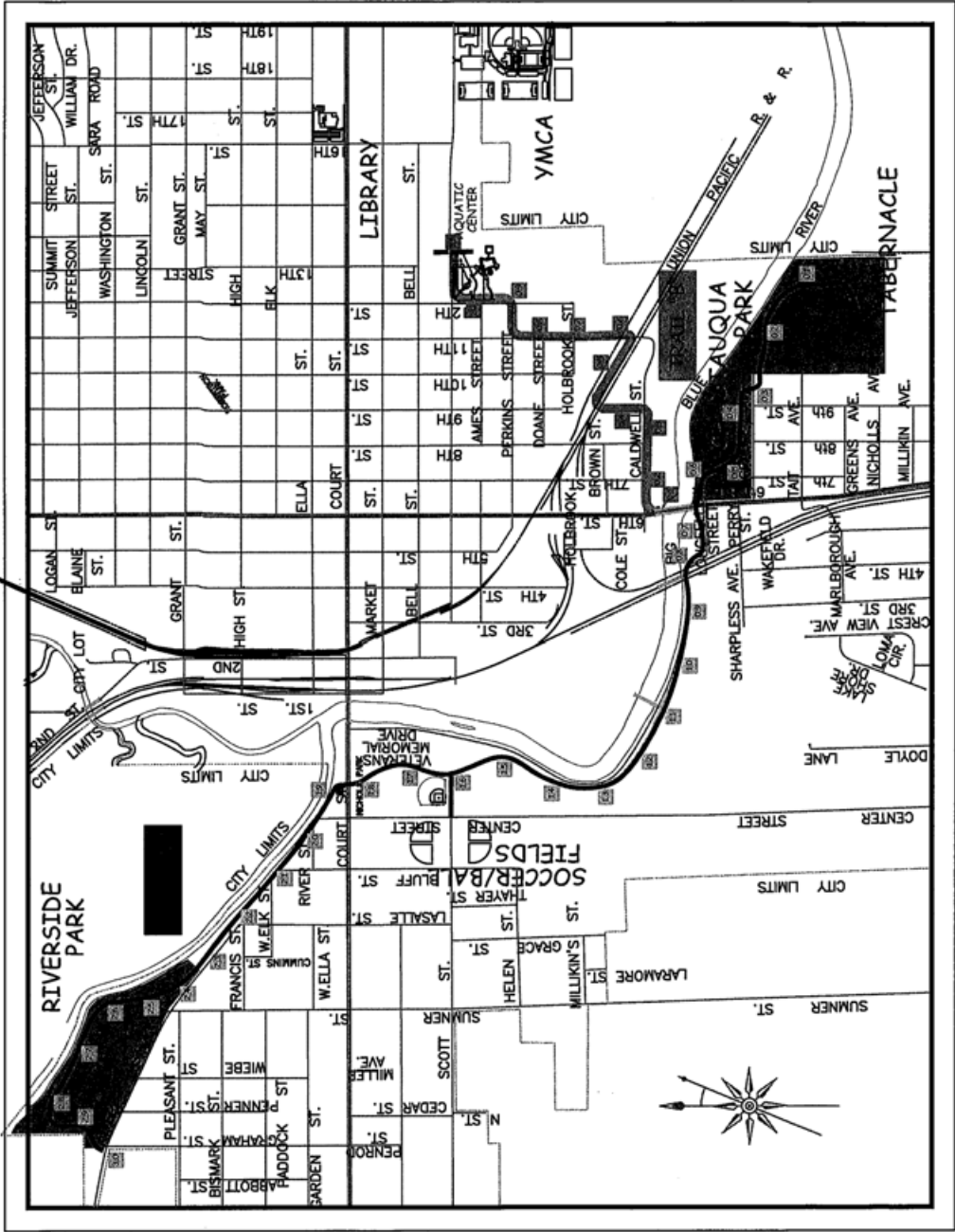
**QUALITY FAMILY TIME**—WALK AS A FAMILY AND ENJOY SOME EXERCISE TOGETHER WITH YOUR SPOUSE AND CHILDREN.

**KNOW YOUR COMMUNITY**—WALKING GETS YOU IN TOUCH WITH THE HISTORY, ARCHITECTURE, SCENERY, AND PEOPLE OF YOUR COMMUNITY.

**PHYSICAL BENEFITS**—WALKING HELPS TO IMPROVE YOUR COMMUNITY'S PHYSICAL FITNESS AND GIVE YOUR COMMUNITY THE PEOPLE YOU WANT. IT'S COMMUNITY.

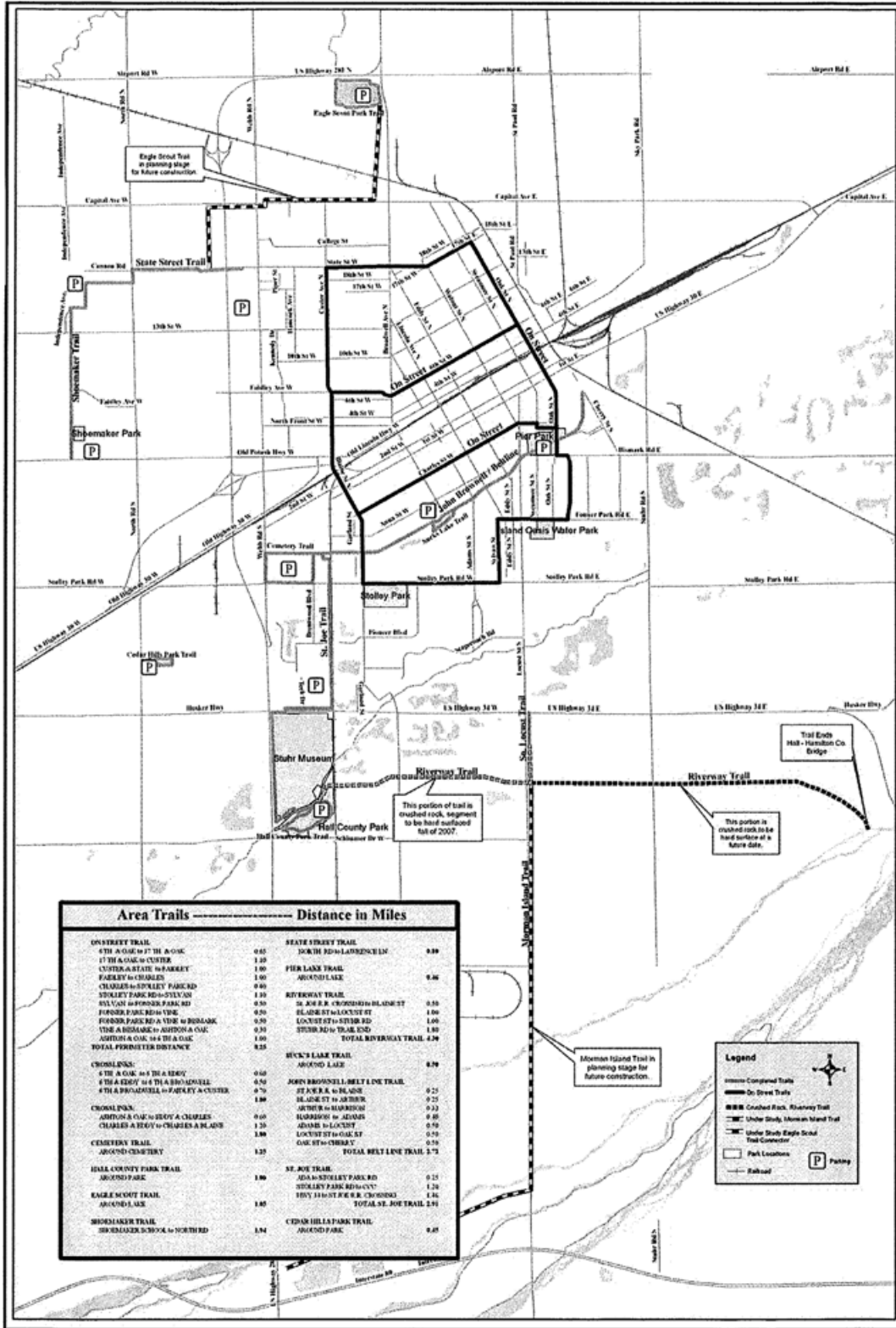
- YAKA FITNESS LOOP
- LINCOLN SCHOOL LOOP
- HANNAH PARK LOOP
- COUNTRY CLUB LOOP
- CHAUTAUQUA PARK LOOP
- BELLEVUE LOOP
- HANNAH PARK LOOP
- SENIOR CENTER COLLEGE LOOP
- CLERMONT TRAIL
- BLUE HILLS TRAIL

To Hoyt St.  
Beatrice





# Grand Island



## Kearney

### A TREASURE OF TRAILS

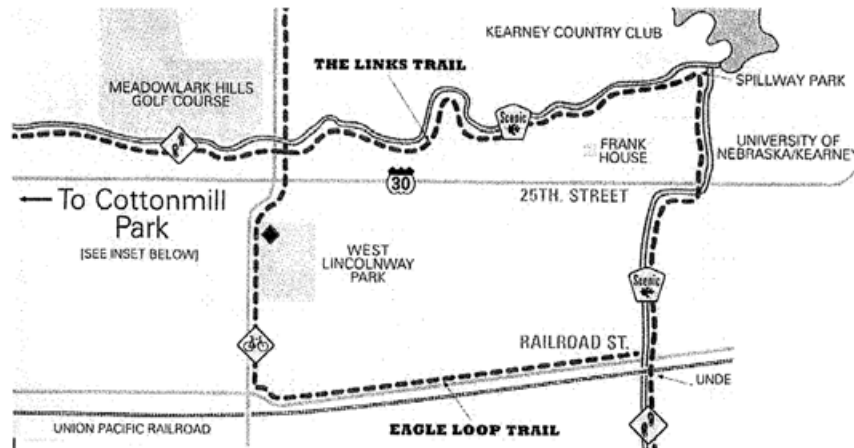
Kearney has the historical significance of providing a haven for pioneers traveling the Oregon and Mormon Trails, and presently provides that same hospitality for the numerous travelers on I-80. You will find Kearney has not only historic trails, but community trails that total 17 miles. The 8" wide, concrete paths have beautiful scenery and have contributed to the quality of life that people enjoy today.

#### COTTONMILL TO FT. KEARNEY TRAIL (WEST TO EAST)

##### THE LINKS - 2.77 miles (5,540 steps)

This portion of the Cottonmill to Fort Kearney Trail was named due to the two golf courses that the trail passes on its way to Highway 30. The Link begins at Cottonmill Park and goes to Highway 30. This section is largely flat, and is perched just above the NPPD canal. Meadowlark Hills Golf Course, the Kearney Country Club, Spillway Park, and UNK can be seen along "The Link".

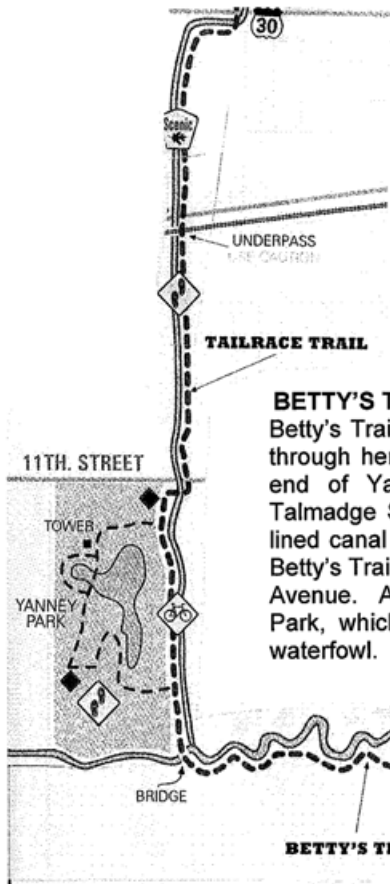
**Trailhead:** Cottonmill Park, 2795 Cottonmill Avenue - parking, drinking water, restrooms, picnic shelters, swim lake, fishing, playground, and cross country skiing, sledding, ice skating and ice fishing permitted during winter months.



##### EAGLE LOOP - 3.07 miles (6,140 steps)

You can begin this trail loop at the West Lincolnway Park Trailhead, going south on 30th Avenue to Railroad Street where you will turn East until you connect with the Tailrace Trail portion, then you can follow the Tailrace Trail north towards UNK, and a portion of The Links Trail until you are back to 30<sup>th</sup> Avenue just north of West Lincolnway Park.

**Trail head:** West Lincolnway Park parking lot. Parking, restrooms, picnic shelter, water fountains, playground, soccer fields, baseball/softball fields.



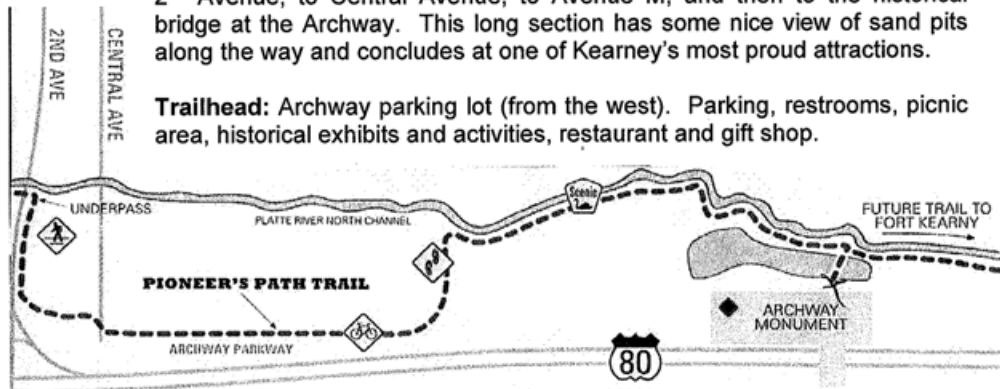
**TAILRACE TRAIL – 1.11 miles (2,220 steps)**  
 This portion of the trail runs along the canal from Highway 30 to 11<sup>th</sup> Street, on the north side of Yanney Park. Tailrace Trail includes some rolling hills near UNK, and a railroad underpass.

**BETTY'S TRAIL – 1.77 miles (3,540 steps)**  
 Betty's Trail is named after Betty Connell for providing trail access through her land. This section runs from 11<sup>th</sup> Street, at the north end of Yanney Park, to the 2<sup>nd</sup> Avenue undercrossing and Talmadge Street. This flat, peaceful section runs along the tree-lined canal and finishes near the "hotel row" on south 2<sup>nd</sup> Avenue. Betty's Trail is great for visitors to Kearney with lodging on south 2<sup>nd</sup> Avenue. A fun 1.08 mile spur to this trail is available at Yanney Park, which circles Yanney Park Lake, and has great views of waterfowl.

**Trailhead:** E.K. & Mary Yanney Heritage Park 2020 W 11th. Parking, restrooms, picnic areas, observation tower, amphitheater, wetlands, walking trails, fishing, formal garden, playground, splashground during summer months.

**PIONEER'S PATH – 3.13 miles (6,260 steps)**  
 This long trail section begins at the 2<sup>nd</sup> Avenue underpass and goes to the Great Platte River Road Archway Monument. Pioneer's Path crosses under 2<sup>nd</sup> Avenue, to Central Avenue, to Avenue M, and then to the historical bridge at the Archway. This long section has some nice view of sand pits along the way and concludes at one of Kearney's most proud attractions.

**Trailhead:** Archway parking lot (from the west). Parking, restrooms, picnic area, historical exhibits and activities, restaurant and gift shop.



#### OTHER TRAIL OPPORTUNITIES:

##### **MEADOWLARK TRAIL – 1.80 miles (3,600 steps)**

Meadowlark Trail branches off of The Links Trail at 30<sup>th</sup> Avenue. Head north on the trail up the steep hill, with Meadowlark Hills Golf Course to the east. This section crosses 39<sup>th</sup> Avenue in northwest Kearney, and winds around the Lighthouse Point Subdivision. The Trail concludes at Ted Baldwin Park with a transition into dirt trails. Meadowlark Trail is a fun section for those that like some hills.

**Trail head:** West Lincolnway Park parking lot. Parking, restrooms, picnic shelter, water fountains, playground, soccer fields, baseball/softball fields.

##### **HILLTOP TRAIL – 2 miles (4,000 steps)**

This trail takes you from 39<sup>th</sup> Street, near Harvey Park on Avenue N, in the northeast part of town, to the commercial area of 2<sup>nd</sup> Avenue and 56<sup>th</sup> Street. Hilltop Trail has a fairly steep elevation change near the Kearney Cemetery and is highly used by school children going to Sunrise Middle School and Meadowlark Elementary School.

**Trail head:** Harvey Park parking lot, 4205 Ave. N. Parking, restrooms, water fountains, picnic shelter, soccer/softball fields, tennis courts, basketball courts, playground.

#### INTERIOR COTTONMILL PARK DIRT TRAILS

##### **Red Cedar Trail - .56 miles**

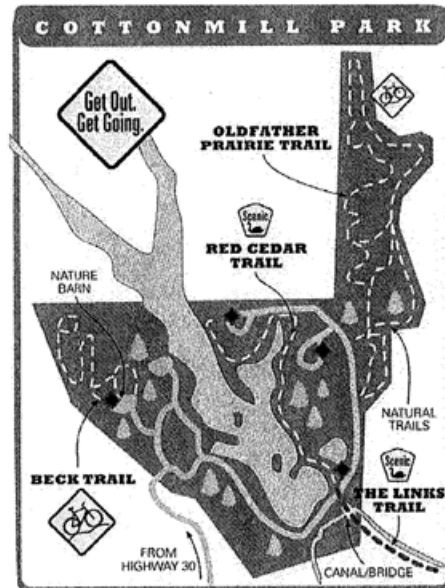
This trail adventures throughout the heart of Cottonmill Park, through mature cedar tree plantings and along the east side of the lake. The trail starts near the marina building by the swim lake and concludes at the north cul-de-sac. Various side trails that will take you into the thick of the woods are also available. Some sections along the Red Cedar Trail can be steep.

##### **Beck Memorial Trail – approx. .5 miles**

Starts just north of the Nature Barn and runs along open ridges and through wooded draws. This trail has some great views of the rolling hills around the Park.

##### **Oldfather Prairie Trails - .75 or 2-mile loops**

These natural surface trails, on the northeastern edge of Cottonmill Park, offer a short .75 mile loop and a longer 2-mile loop, with interpretive signs along the way. Both portions are excellent for hiking, mountain biking or horsebacking. Some sections along this trail can be steep and narrow.



## **TRAIL ETIQUETTE & GUIDELINES**

- Show courtesy to all other trail users.
- Trails are open from sunrise to sunset.
- Use the right side of the trail. Save the left side for passing.
- Bicyclists and skaters give audible warning when passing other trail users.
- Listen for audible signals and allow faster trail users to pass safely.
- Bicyclists and inline skaters should ride at a safe speed, slowing to form in a single-file line during congested conditions, reduced visibility, or in other hazardous situations.
- Bicyclists and inline skaters are encouraged to wear helmets.
- Walk bicycles under the 11<sup>th</sup> Street railroad underpass.
- Obey all traffic signs.
- Motorized vehicles are prohibited on trails.
- Respect the rights of property owners.
- Keep dogs on a leash and remove all pet waste from trail.

### **SNOW REMOVAL:**

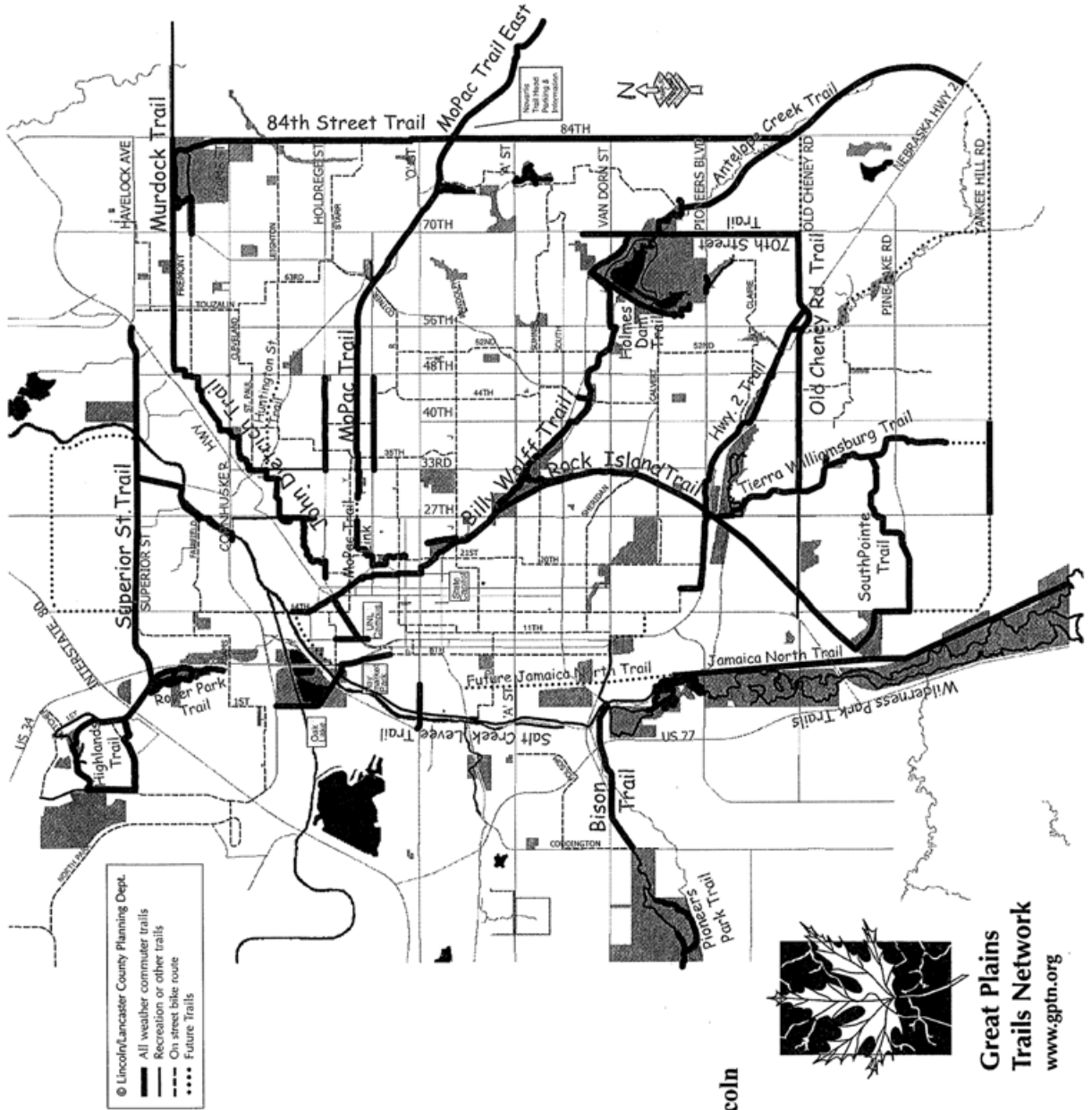
Snow will be removed from the concrete trails after City streets have been cleared. Please avoid using the trails until the snow is removed.

### **WHO TO CALL:**

To report maintenance, safety or other problems on a trail, please call the City of Kearney Park & Recreation Department at 237-4644.

### **TRAIL EVENTS**

Any group interested in holding an organized public event on a trail can contact the Park & Recreation Office at 237-4644 for further information.



© Lincoln/Lancaster County Planning Dept.  
 — All weather commuter trails  
 — Recreation or other trails  
 - - - On street bike route  
 ..... Future Trails

Lincoln

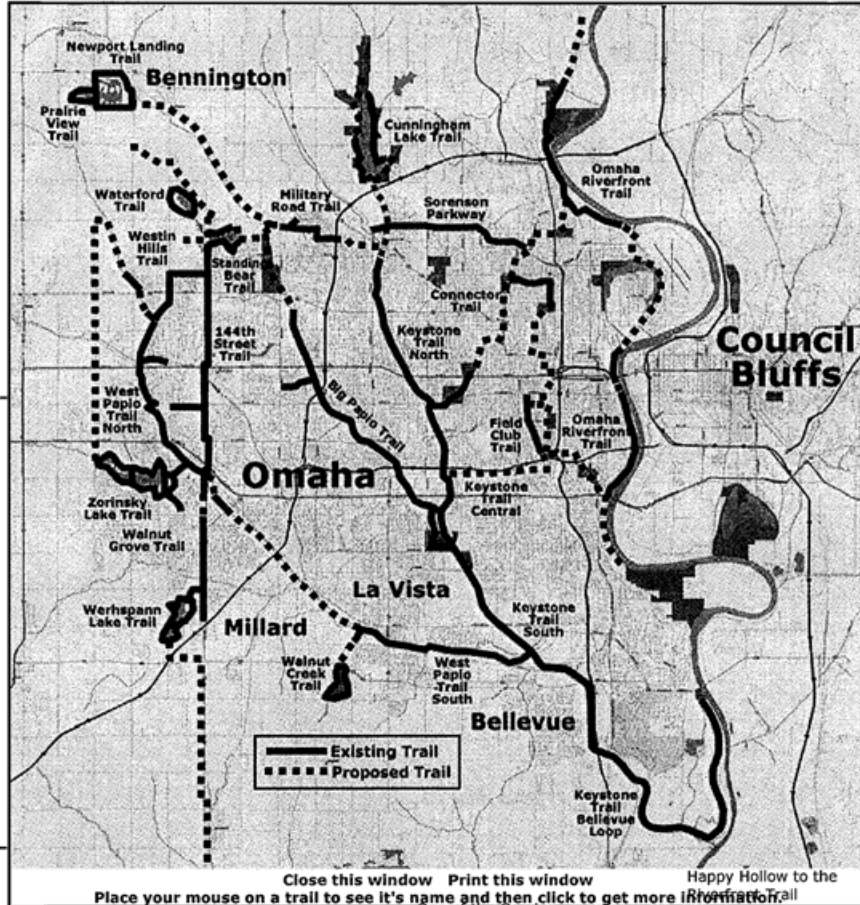


Great Plains  
 Trails Network  
 www.gptn.org

Thu. Sep. 17th, 2009

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Omaha



**OMAHA TRAILS**

- Overall Trail Map
- 144th Street
- Big Papio
- Connector
- Field Club
- Keystone - North
- Keystone - Central
- Keystone - South
- Keystone - Bellevue
- Military Road
- Newport Landing
- Riverfront - North
- Riverfront - South
- Prairie View
- Sorenson
- Standing Bear Lake
- Walnut Creek
- Walnut Grove
- Wehrspann Lake
- Westin Hills
- West Papio - North
- West Papio - South
- Zorinsky Lake

**PAPIO-NRD RESOURCES**

- Know Your NRD
- NRD Trail Map (PDF)
- NRD Trail Brochure (PDF)

**THE OMAHA TRAILS COMMUNITY**

- Omaha Trails Forum
- Omaha Trails on Facebook

**NEWS & EVENTS**

- Trail News
- Calendar
- Resources and Links

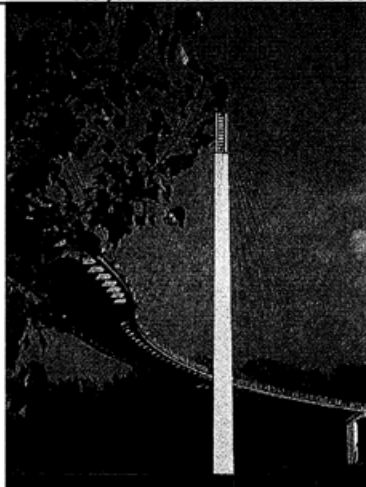
**EVENTS CALENDAR**

September 2009 >>						
S	M	T	W	T	F	S
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	1	2	3

**CONTACT OMAHA TRAILS**

- Provide Feedback
- Report on a Trail

Close this window Print this window Place your mouse on a trail to see it's name and then click to get more information.



One of the Omaha Community's greatest assets is its trail system. They enhance the quality of life by fostering personal health, strengthening community values, preventing crime, protecting the environment, and contributing to a healthy economy.

And the best part - you probably have a trail less than ten minutes away from your own home!

Happy Hollow to the Riverfront trail

More East to West Trails

**LATEST FORUM POSTS**

**Total Trail Miles**

↳ In General Posts by Bill\_Bright, 09-04-09

**Bellevue Loop**

↳ In General Posts by Bill\_Bright, 09-04-09

**Re: It really is closed this time!**

↳ In West Papio Trail by SabreCat50, 08-25-09

Dennis Kimbrough, Fillmore County  
President

Pam Lancaster, Hall County  
Vice President

*Nebraska Association  
Of County Officials*  
Larry J. Dix, Executive Director

Steve Erdman, Morrill County  
Secretary-Treasurer

Joe Hewgley, Lincoln County  
Past President

625 South 14th, Suite 200, Lincoln, NE 68508 Phone (402) 434-5660 Fax (402) 434-5673 www.nacome.org

September 21, 2009

Senator Chris Langemeier  
Chair  
Natural Resources Committee  
State Capitol, Room 1210  
Lincoln, NE 68509-4604

Dear Senator Langemeier:

We would like to thank you and the Committee for including counties in the discussion regarding LR124 and the continued development of recreational trails all across the state of Nebraska. Certainly, counties can and do become involved in the development of these trail systems from time-to-time. There are examples where counties have entered into interlocal agreements with cities for the development and maintenance of trail systems. These agreements can include cooperative management and maintenance while other agreements might outline specific responsibilities for specific areas or trails.

Issues can develop when trails and roads intersect. Counties must consider carefully issues that may affect county roads, the development and maintenance of county roads and safety concerns related to county roads. To that end, county boards have statutory authority of supervision related to county roads outlined in NE Revised Statute 39-1402. I have included that language here for your convenience.

39-1402 Public roads; supervision by county board. General supervision and control of the public roads of each county is vested in the county board. The board shall have the power and authority of establishment, improvement, maintenance and abandonment of public roads of the county and of enforcement of the laws in relation thereto as provided by the provisions of Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908.

We are not aware of specific instances when eminent domain has been exercised in the development of a county trail system. That is not to say there may not be examples of this happening somewhere within the state, it is simply something that we are not aware of at this time. It seems that in most cases, local governmental entities tend to work together in an attempt to determine the best course of action moving forward in the



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development of trail systems. While certainly eminent domain is not a tool that is used often in the development of trails, it is a tool in place that can be used if necessary in a given situation.

At this time, counties believe that local governmental authorities tend to work together with the public to resolve whatever issues might be in place when developing recreation trail systems. As with many different issues, many times those at the local level tend to have the best sense of how best to work together in their local communities in finding solutions to issues that do arise in circumstances such as the development of trails. We are certainly willing to listen to concerns presented regarding recreational trail development. We would simply ask that eminent domain remain as one of many tools to resolve issues related to recreational trail development.

Sincerely,



Larry Dix  
Executive Director

