

Santa Cruz: No Rails, "Trail Only" Legal Can of Worms?

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In November 2016, Santa Cruz County voters approved Measure D, a one-half cent county-wide sales tax for transportation. Measure D included an 8% set-aside for maintaining the tracks in the County's 31.48-mile rail corridor. Portions of a pedestrian and bicycle trail parallel to the tracks between Davenport, Santa Cruz and Watsonville are currently under construction.

Four years earlier, the Santa Cruz County Regional Transportation Commission (SCCRTC) purchased the rail corridor from the Union Pacific Railroad.

SCCRTC is conducting a "Unified Corridor Investment Study" scheduled for completion in fall of 2018. This study is examining various transportation options along the three main transportation corridors between Watsonville and Santa Cruz (Highway 1, Soquel Ave / Freedom Blvd and the rail corridor). Options being studied include: Bus Rapid Transit (BRT) along all three corridors; passenger rail in the existing rail corridor (along with improved pedestrian and bicycle facilities); and HOV and/or auxiliary lanes along Highway 1.

While adding a freeway lane in each direction on Highway 1 is the most controversial transportation project being considered in Santa Cruz County, proposed rail service on the rail corridor is second. Two outspoken and apparently very well-financed groups, "Trail Now" and "Greenway Santa Cruz," are attempting to convince SCCRTC to abandon the current "rail and trail" plan in favor of a "Trail Only" option that would remove existing tracks.

Support for these groups appears to be coming primarily from residents with property adjacent to the rail corridor, who are opposed to rail transit in Santa Cruz. The Trail Only idea proposes to convert the current rail alignment and embankment to a combination bicycle-pedestrian trail. These anti-rail groups claim that in addition to conventional bicycles, electric-assisted bicycles and scooters would be adequate substitutes for transit (thus ignoring longer-distance commuting between Watsonville and Santa Cruz).

The "Trail Only" idea put forward by rail opponents has major shortcomings and a potentially fatal oversight.

First, the anti-rail faction claims

that the existing rail corridor can be "rail-banked." That is, existing tracks and ties can be removed now, in favor of using the corridor for a bicycle/pedestrian trail, and then reinstalled at some future date when rail service is determined to be "feasible."

However, we are unaware of any rail service that has been reestablished in a publicly owned "rail-banked" corridor after the tracks were replaced by a trail. In the few cases where service reestablishment was attempted, trail users and adjacent property owners united and stopped implementation by influencing agency Board members. In short, the call for rail-banking seeks to eliminate the only remaining serious option to prevent Santa Cruz County's descent into total gridlock.

Second, rail opponents claim likely rail ridership would be too low. Given the rapidly growing congestion in the Highway 1 corridor, this claim cannot be taken seriously. In SCCRTC's 2015 Passenger Rail Feasibility Report, consultants estimated that the highest ridership option would carry from 6,150 to 6,800 daily riders under projected 2035 conditions. The study assumed no service to downtown Santa Cruz or Cabrillo College. In the accompanying article, we show how extending service to those destinations would double the projected ridership.

Third, rail opponents overlook another major problem, which is probably fatal to their Trail-Only proposal. A series of Federal Court rulings regarding the conversion of railroad rights-of-way to trail usage suggest that removing the tracks will spark years of litigation.

SCCRTC has established outright ownership of only 31% (93.09 acres) of the total land used for the railroad right-of-way. The remaining 208.53 acres consist of 10 rail only easements that legally revert to adjacent landowners after abandonment of rail usage, and dozens of other parcels for which no clear title could be established. The status of parcels not apparently owned outright by SCCRTC is ambiguous at best. Should railroad usage be abandoned by removing current tracks in favor of a trail only, it is clear that



"Daisy the Streetcar" operated on the Santa Cruz Branch Line until recently. Daisy proves that rail may be technically and economically feasible, even with smaller than standard railcars.

constructing a trail would require purchasing the parcels with reversion clauses. In addition, the dozens of additional parcels that have unclear titles are likely to lead to years of litigation to determine ownership and compensation to adjacent property owners.

A key United States Supreme Court ruling on a railroad right-of-way reversion dispute in Wyoming after abandonment was favorable to property owners. In the *Marvin M. Brandt Revocable Trust v. United States* case, the Court ruled that property ownership granted outright to a now abandoned railroad in Wyoming by the Federal government must revert to an adjacent property owner, despite the fact that their property was granted by the government a significant time after the railroad was granted full ownership through an earlier land grant. This suggests that the current Supreme Court – and the rest of the Federal judiciary – is likely to be favorable to adjacent property owners, particularly where clear reversion clauses exist, or in ambiguous cases such as in Santa Cruz County.

The proposal by Trail Now and Greenway Santa Cruz to rip out existing Santa Cruz Branch Line tracks, replaced by only a trail, would open up SCCRTC and taxpayers to great uncertainty and years of litigation. In addition to the cost of removing tracks, this author's educated guess is that purchasing expanded rights for existing easements originally granted for railroad use could cost \$80-\$100 million. Retaining the existing tracks is the least costly and most prudent action for SCCRTC, whether rail is implemented within the next few years or later in the 21st Century.

This article is based on a longer white paper available online at www.calrailnews.org