

## Railbanking faces renewed challenge

Another round in the most prominent test of National Trail System Act Section 8(d) railbanking reminded trail advocates that property rights interests are not giving up, even after setbacks in an earlier U.S. Supreme Court opinion.

On Nov. 5 the U.S. Circuit Court of Appeals ruled in *Preseault vs United States* that the disputed Burlington, VT, rail-trail is a property taking and that the federal government should compensate the plaintiff. The matter now goes to the U.S. Claims Court to determine the amount, if any.

The latest court decision followed a congressional hearing Sept. 18 in the House Railroads Subcommittee, where a move was afoot to repeal Section 8(d) railbanking.

The lengthy court decision does not

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jeopardize interim trail use certificates that are in place. However, the federal government may have to compensate

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## STB reduces filing fee; will consider waivers

After protests from NCRT and others, the Surface Transportation Board reduced the National Trails System Act railbank filing fee from \$650 to \$150. At the same time, the STB waived the fee for federal, state and local government units.

Private organizations can apply for a hardship waiver or reduction, but must pay the \$150 up front to file for interim trail use. To obtain a waiver or reduction, the filing organization must convince the STB that the railbanking request serves the public interest.

NCRT has joined the Rail-to-Trails Conservancy in a legal challenge to the imposed fee.

They went. They saw. They got all excited.

That's what happened last month when a group of Charlotte public officials and business leaders went to Ottawa to witness the Canadian city's successful busways.

It's a scenario that trail advocates often try to stage. And to hear the reaction: "Oh, *this* is what you were talking about. It's wonderful! Why didn't you *tell* us before?"

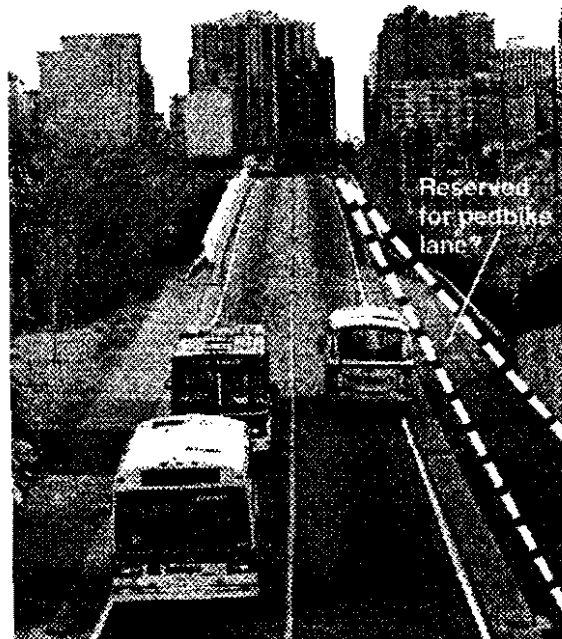
See is believing.

In this case, what the Charlotte delegation saw was Ottawa's two-lane busses-only expressways that carry 70 percent of the city's commuter traffic, some 72 million bodies per year.

While drivers creep along on still-congested roads and highways, busway commuters zip toward their destinations at an average speed of 50 mph.

The Charlotte group returned in the frame of mind that it's not if the

## Charlotte borrows vision of transit solution



Queen City would embark on busways, but rather *where*. One route under consideration is the Norfolk-Southern corridor from downtown Charlotte south to Pineville.

Now, while the revelation is fresh, Charlotte could look for additional transportation alternatives on busway corridors. How about busways with trails or bikeways? This is a golden opportunity to demonstrate multimodal corridor utilization, exactly the type of creativity and flexibility that federal ISTEA encourages.

Such visionary steps would be a wonderful antidote to the Charlotte-inspired \$900 million-plus-interest highway bond issue just to speed up construction of already planned beltways. North Carolina voters bought into the paving acceleration bonds at the Nov. 5 election.

In the U.S., only Pittsburgh has started building a similar busway system.

## NCTC presses for dedicated trails fund

A proactive note was sounded when the North Carolina Trails Committee drew up an agenda to focus attention on the need for a state trails network and dedicated funding sources to make it happen.

NCTC Chair Jennifer Toole, in presenting the agenda to DEHNR Sec. Johnathan Howes, said NCTC views trails as a necessary part of the North Carolina infrastructure.

Toole brought the secretary the following goals:

- Sufficient grant funding to provide assistance and incentives to agencies, nonprofit organizations and volunteers to plan, acquire, develop and manage a state trails network.
- State Trails Program staff and resources to assist with the creation and operation of a state trails network.
- Develop a comprehensive North Carolina Trails System Plan based on citizen input and a state data base of existing, proposed and potential trails.

## Coastal Carolina region planning takes shape

With the interest that the Coastal Carolina Trail study committee has generated in rail-trails, the town of Williamston has begun to look at activating a long-range plan to connect downtown with the Roanoke River front.

Brent Kanipe, Zoning Officer and Planner for the town of Williamston, came to the October meeting of the CCT to discuss the possibility of a greenway on the 1.25-mile railroad line that connects the town with the water front. He has begun to research the status of the rail line as the tracks are still in place.

The CCT study committee suggested that the town include in its TIP a request for an off-road bicycle path feasibility study of the corridor. With interest in the river front now increasing, Brent says, that town would like to develop the connection between the downtown and the river.

The Beaufort, Martin and Pitt Counties rail-trail study committee has adopted the name of the Coastal Carolina Trail for their project and have submitted a Travel and Tourism Rural Tourism Development Grant for funding of the first phase of

- Conduct workshops, provide publications and make trail information available to the public.

The Division of Parks and Recreation does not acquire, develop or manage trails outside state parks. Therefore, dedicated funding is needed to spur local initiatives.

Toward that end, NCTC urges the creation of a North Carolina Trails Fund modeled on the National Recreational Trails Fund which was established under ISTEA by the Symms Act.

The federal program, though authorizing \$35 million a year, has had a spotty history of appropriations. Of the \$175 million authorized so far from federal off-road fuel taxes, only \$50 million has been distributed to states over five years.

A state trails fund, receiving unrefunded state off-road recreational fuel taxes, would tap into more than \$7 million a year. That money is now going into the general highway fund.

their feasibility study. Martin County Travel and Tourism Office is serving as the coordinator and has already secured \$5,000 required local matching from the Weyerhaeuser Foundation. Weyerhaeuser is a major property owner in Pitt and Martin Counties through which the Washington Branch of the W & W RR passes.

The CCT committee has also established its executive committee: Chair Elsa Desrochers, Beaufort County; Vice Chair James Rhodes, Pitt County; Secretary Crystal Baity, Martin County; Treasurer Chuck McClure, Beaufort County; and Property Owner Representative, Bryant Hardison, Weyerhaeuser Inc.

The second committee formed was the property owner contact committee chaired by Debbie Vargas, Greenville-Pitt County Visitors Bureau. This committee is working on a land owner information flyer that will be used in land owner contacts.

The CCT committee expects to publish its Coastal Carolina Trail concept brochure in January of 1997.

## Decision does not affect current NC trail projects

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adjoining property owners where the federal law railbanks an easement corridor. Adjoining property owners may not seek compensation where the railroad owned the corridor fee simple.

North Carolina has no NTSA Section 8(d) railbankings in effect, although several attempts have been made to use the federal law.

Trail opponents are expected to point to the latest court decision as the defeat of rail-trails, which is not at all the case. Existing trails can't be dismantled and any compensation claims against the federal government have to move through the U.S. Claims Court.

In 1990, the U.S. Supreme Court ruled in the Preseault challenge that Congress had the constitutional authority to enact federal railbanking. The high court remanded the issue of taking to the claims court, which ruled in 1992 that the Preseault case was not an additional property taking.

The Rails-to-Trails Conservancy attorney points out that the latest appeals decision focuses narrowly on Vermont law and now is limited to that state.

Attorney Charles Montange of Seattle, a longtime rail-trail legal advocate, believes the U.S. Justice Department will seek to overturn the latest Preseault decision in order to preclude federal exposure.

North Carolina Rail-Trails  
participates in workplace campaigns with



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800-200-6311 or 919-687-4840

## Whistle Stops:

### What \$1.5 billion buys

Okay, the people spoke Nov. 5 on the highway bond issue.

What does \$900 million - probably \$1.5 billion with interest - buy in speeding up already planned highway projects? Immediate relief from traffic congestion?

The sound you hear is bulldozers cranking up for five years on highway construction gridlock throughout the state . . . especially in the metro areas getting beltways.

Enjoy.

### ME people & WE people

Opposition to saving surplus corridors and to creating public ways is an unsettling reminder of community in decline.

Sadly, for complex reasons, uncivil behavior by a few threatens all. The natural reaction? Withdraw; create a secure personal island.

But, the tighter the personal islands, the more uncivil and less safe the community becomes: me, Me, ME!

Ah, another sliver of land. That will shore up MY island. And it costs ME nothing. I'll even fight for it. Stay away: mine, Mine, MINE!

The result? At one end people who still desire an open community with public greenways and trails -- the WE. At the other those who fear or stubbornly oppose public access -- the ME.

What causes a ME to become a WE dropout?

Fear? That WE can work with.

Greed? That is another matter.

### Next meeting Dec. 14 at Apex

NCRT's quarterly meeting will be 10:30 a.m. Saturday, Dec. 14 at Eva Perry Regional Library at the intersection of U.S. 64 and Shepards Road in Apex. Following the business session the board will visit the American Tobacco Trail underpass at U.S. 64.

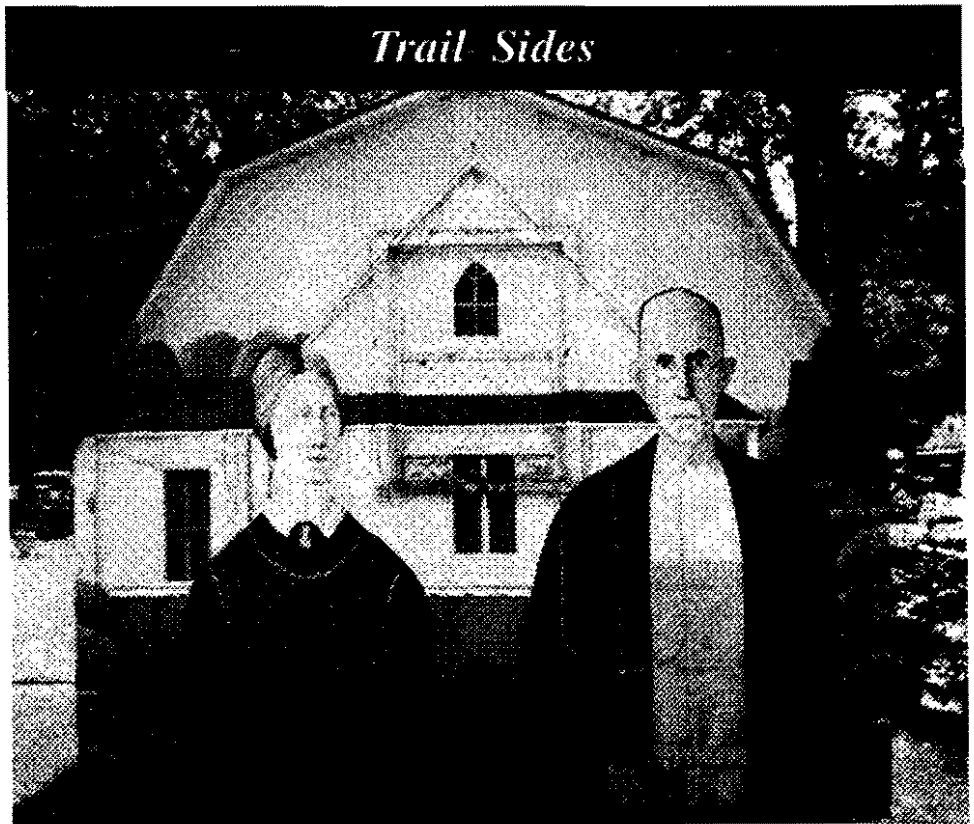
### Trails advocate authors Dan River guide book

Forrest Altman, a founder of the bi-state Dan River Trails Association, has compiled the *The Dan River Book, Odyssey, Epic, Guide*.

The publication has maps, photos, drawings, notes and reflections on foot and float outings along 21 sections of the Dan River, covering 200 miles.

It is available for \$20 plus \$3.50 shipping and handling from Star Square Press, 1200 Jack Pointer Road, Semora NC 27343-9437.

### Trail Sides



*"You want to do WHAT with that railroad?"*

## JOIN THE NORTH CAROLINA RAIL-TRAILS INITIATIVE. NOW!

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Telephone: Home \_\_\_\_\_ Work \_\_\_\_\_ Best Time \_\_\_\_\_

Reason for interest in rail-trails \_\_\_\_\_

NCRT annual memberships: Individual - \$15, Family - \$20, Corporate - \$100

Mail to North Carolina Rail Trails, 703 9th St. Drawer 124, Durham, NC 27705 (Fall 96)

**THANK YOU FOR JOINING NCRT**

## Trailbuilder Notebook

Is the handling of trail neighbors an open or closed issue? That is a subject that has been knocked around a bit on the Internet.

One voice of experience, Ted Curtis of the St. Louis-based Gateway Trails Council, sparked the discussion with the following advice. We'll bring you more takes on this thread.

As a non-profit that has acquired two rail corridors, we can appreciate landowner opposition. After trying several approaches we generally:

- 1. Do not hold public meetings.** Meet one-on-one with any opponents who are reasonable, recognize that they face a loss and change (privacy, more people in the area) and offer to work with them as the trail goes in. But do not waiver in the fact that the trail will go in.
- 2. Keep someone in the opposition generally informed.** We have found that one or two leaders of the opposition are reasonable and we reward that by keeping them informed about events, progress, etc., before it hits the press.
- 3. Gather the names of all adjacent landowners.** We put them on our mailing list, so they begin to get familiar with us.
- 4. Set up your own "friends of the trail" group.** Trail neighbors usually don't join even if they support the project because they do not want to antagonize their opponent-neighbors.
- 5. Keep close to the press.** There is always someone from the neighborhood paper who is sympathetic and a good working relationship with them is very valuable. Neighborhood papers often are closer to local issues than the large city-wide papers.
- 6. Get help if you need it.** An expert from out of town has much more credibility than anyone local, no matter how much they know. The farther the better. But don't expect to change anyone's mind. Some opponents will be opposed no matter what the "facts" are.
- 7. Keep a low profile but keep moving ahead.** Open part of the corridor as soon as possible, gravel base only, to show progress and to get people used to it - and start building a constituency. Persistence pays off.

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