

## Durham, NC DOT back corridor protection

Recent local and state government resolutions show a welcomed interest in protecting surplus railroad corridors in the Triangle and elsewhere.

The Durham joint city-county planning and zoning ordinances received an overdue modification last November when surplus rail corridors were included as protected spaces. The resolution requires developers to submit data that rail corridors are given the same protective consideration as waterways, wetlands and similar natural resources. The modified ordinances also discourage new road crossings and other corridor incursions. This resolution was originally ordered by Durham some five years ago, but was lost in the reorganization which created the joint city-county planning department.

That action was followed by a joint Durham city-county and NC DOT resolution that specifically addresses protecting the American Tobacco Trail corridor from encroachments. The state Rail Division has railbanked the Durham city and Wake County segments of the corridor and continues to negotiate with Norfolk Southern for the south Durham County and Chatham County segments. The joint resolution stipulates that:

1. At-grade street and driveway crossing of the ATT will be discouraged in adopted plans, zoning changes, site plan approvals and building construction approvals.
2. The governmental agencies will work cooperatively to reduce the existing number of at-grade crossings to the minimum number possible.



**THINK SPRING - THINK TRAILS!** Trail advocates make a spring walk-through inspection of a Pitt County section on the Coastal Carolina Trail project corridor.

3. The governmental agencies participating in the agreement shall provide for land development which is harmonious with the development of the ATT and which enhances the community benefits of the ATT.
4. Before any new at-grade crossings are approved by any of the respective government agencies, an advertised public meeting will be conducted.
5. And that the resolution shall apply to the ATT master plan and any subsequent amendments and extensions to the plan.

That intent was expanded to the state when in January the NC Board of Transportation adopted a resolution that recognizes "the importance of preserving rail corridors for future transportation use to the economic and social well being . . ." It continues on to cite the value of future rail, public transit and interim trails. The state BOT action mirrors the ATT resolution and calls on all local governments to use planning and zoning regulations to implement protection of railbanked corridors.

## SE region advocates meet on trail issues

Why is it so cotton pickin' hard to bring rail-trails to Dixie?

That was the broad issue posed to fellow advocates from neighboring states at a regional rail-trail camp. Rail-trail leaders from South Carolina, Tennessee and Kentucky joined NCRT board members at the Great Smoky Mountain National Park headquarters in January to compare issues.

As expected, this first regional meeting only identified and defined the problems. The round table turned up a complex mix of state statutes, politics, economics and cultures. While the states recognized many common challenges, each state had a unique blend of the mixture.

Two issues were marked for cooperative efforts: Communicating with railroads and publicizing successful projects.

It also was decided to explore interest in regional rail-trail workshops and an expanded southern states conference.

## ISTEA reauthorization bills take final shape; funding still an issue

More than a year of transportation wheeling and dealing is coming down to the wire to the tune of a \$215 billion, six-year reauthorization of the Intermodal Surface Transportation Efficiency Act.

The Senate wrapped up its ISTEA 2 version by mid-March. The House Transportation Committee then shaped up its BESTEA version during the following week. Several more House committees will do additional tinkering before the bill, HR 2400, hits the floor. Then it's on to Senate-House conference. The goal is to send the final compromise to the White House before an ISTEA 1 extension expires on May 1.

While the pork swapping continues, balanced budget backers will be taking a final swipe at the 40 percent increase over the original ISTEA.

Transportation Enhancements are in line to get more of a boost than the overall ISTEA, an increase of 75 percent to \$700 million for the next six years. However, half of the Enhancement funds above the old level are subject to being transferred to other programs. Non-motorized demonstration programs are also in for a big boost, some \$255 million, if not cut back in the final negotiations. None of these ear-marked projects are in North Carolina.

The House bill also includes \$30 million in FY 98, \$40 million in FY 99 and \$50 million in FY 2000 for the National Recreational Trails Fund. Half goes equally to each state, the other half based on their shares of non-highway recreational fuel use. States must match federal funding dollar for dollar.

Analyses and the evolving details are frequently updated at the Surface Transportation Policy Project's special web site, <http://www.ISTEAA.org/>.



## Whistle Stops:

### Railroad Rights-of-Way and Public Transportation

*From a paper prepared by Al Capehart, NCRT, for the NC Public Transit Association legislative meeting in Raleigh.*

NCRT sees three related major public transportation issues:

1. *The public holds a vested interest in railroad rights-of-way. They serve a "public purpose" and a state government function is transportation.*

North Carolina General Assembly established railroad company charters that granted the power to condemn private property for a public purpose, transportation. The railroad companies built 5,200 miles of transportation infrastructure, connecting nearly every hamlet, city, town and hamlet.

To justify granting the railroads the power of eminent domain, the legislature had to recognize the "railroad purposes" as "public purposes" Providing transportation for the public is one of the most fundamental public purposes of the state. Although specifically designated as "railroad" easements, these rights-of-way are in fact "transportation easements"

North Carolina's "public highway" doctrine suggests "public purpose" in recognizing the public transportation value of railroad rights-of-way. (Jefferey Alan Bandini, North Carolina Law Review Vol 75 Sept. 97.,#6, p. 2043)

2. *The public transportation infrastructure includes rail corridors, both used and abandoned.*

Highway building and automobile travel resulted in the decline of rail travel. Railroad companies began to merge. The merged companies had redundant rail lines. They began a process of abandoning the unprofitable lines. By 1996, 1,732 miles of rail corridor had been abandoned or were unused. Twenty-two miles were preserved as trails by local governments. The Rail Division of NC DOT had self-railbanked 137 miles. Many of 1,573 miles of unused or abandoned rail corridors offer regional connectivity.

Connectivity, ie destination points, is a critical feature in public transportation. Regional public transportation plans need to recognize and incorporate the public purpose in all rail corridors.

3. *North Carolina rail legislation needs to be updated to speak to the "public purposes" of railroad rights-of-way.*

- a. In the abandonment process the railroads have been allowed to abandoned the "public purpose" without public input. New legislation should require that all abandoned or unused railroad rights-of-way be returned to the state for determination of the corridor's "public purpose".
- b. Dedicated funding for rail corridor acquisition and retrieval needs to be identified. For example, re-establishing the tax on locomotive diesel fuel and directing it to regenerate the state's rail infrastructure for public transportation is one option.
- c. The NCDOT and its Board needs to advance the public purposes in railroad rights-of-way by networking the regional public transportation planning efforts and utilizing all available ISTEA rail, multi-modal and enhancement funds.
- e. Conflicting legislation that prevents other modes of public transportation on railroad rights-of-way should be brought into concert with the "public purposes" of the North Carolina "public highway" doctrine.

## Senate amendment encourages local opposition to Section 8(d) railbanking

After withdrawing one amendment to make ISTEA Transportation Enhancements optional, Sen. Sam Brownback (R-KS) succeeded in loading a federal railbanking amendment aboard the ISTEA reauthorization bill, S 1173. The Brownback measure was adopted by consent as a long string of amendments were attached to the Senate version of the omnibus surface transportation act.

The amendment, No. 1956, would not allow National Trails System Act Section 8(d) railbanking if a majority of local governments opposed interim trail use. Sen. Brownback compromised on the measure after originally proposing that the opposition of any one local government would stop a rail-trail. Kansas is an anti-trail hot spot that is being fuel by adjacent farm and ranch land owners who want rail corridor reversions.

Sen. Brownback struck a more moderate tone in support of his amendment: "My goal here, in fact, is to improve the process so that people on both sides of this issue will receive an equitable opportunity to air their views before any designation of a trail is made. This is not an issue of whether rail-trails are good or bad; it is an issue of whether it is the role of the federal government to engage in community planning. I contend that it is not. . . I do not seek to dismantle that authorization. I simply believe that it should be at the discretion of the local government whether that authorization should be utilized. . .

"In fact, my amendment does not limit rail-trail funding or prohibit rail-trails

from being developed where they are wanted by the local community. I do, however, have an objection to a process whereby railroads, private groups, and federal bureaucrats can make sweeping land use decisions, while private propertyowners and local authorities are shut out. Let's improve that process by giving local governments a decision-making role."

The Brownback amendment will be put to additional scrutiny before ISTEA reauthorization is complete. Sen. John McCain (R-AZ) claimed jurisdiction for his Commerce, Science and Transportation committee. Sen. McCain is the committee chair and Sen. Brownback is the junior majority member. On the Senate floor, Sen. McCain expressed concern that the amendment "offers the potential to greatly impede the establishment of future trails."

Sen. McCain agreed that all local concerns should be considered, then continued: "That is an important consideration and, in fact, local governments as well as any interested persons already have the ability to participate in the process. However, they do not have the ability to veto an agreement reached at the end of the process. Similarly, no one has the ability to force a trail's establishment. There is a balance."

For updates  
stop by the Info Depot:  
<http://www.NCRail-Trails.org>

## Modified House proposal wipes interim rail-trails from railbanking act

Congressional rail-trail opponents again tried to relight a short fuse on Rep. Jim Ryun's (R-KS) anti-trail bill, H.R. 2438. On less than 48 hours notice, a surprise markup was set for March 12 in the House Resources, National Parks and Public Lands subcommittee.

Instead, the subcommittee minority moved to have an amended substitute declared not germane to the proceedings. That resulted in delaying any action. The substitute for Rep. Ryun's own amended proposal was offered by subcommittee member and H.R. 2438 co-sponsor Rep. Richard Pumbo (R-CA).

Rep. Pumbo's amended version was even more damaging to railbanking and interim trails than either Rep. Ryun's original or amended versions. Any reference to trails was completely eliminated from the National Trails System Act statute.

All versions offered thus far strike rail corridor preservation as a national purpose from NTSA Section 8(d). Furthermore, the amended versions require the Surface Transportation Board to determine which rail corridors are "appropriate" for railbanking. The STB does now not render that decision.

Rep. Ryun's previous attempt to fast-track an attack on Section 8(d) federal railbanking hit a speed bump Nov. 6 when the subcommittee waved off an early vote to rush H.R. 2438 to the full Resources committee.

Rep. Walter Jones (R-NC 3rd) is on the subcommittee.

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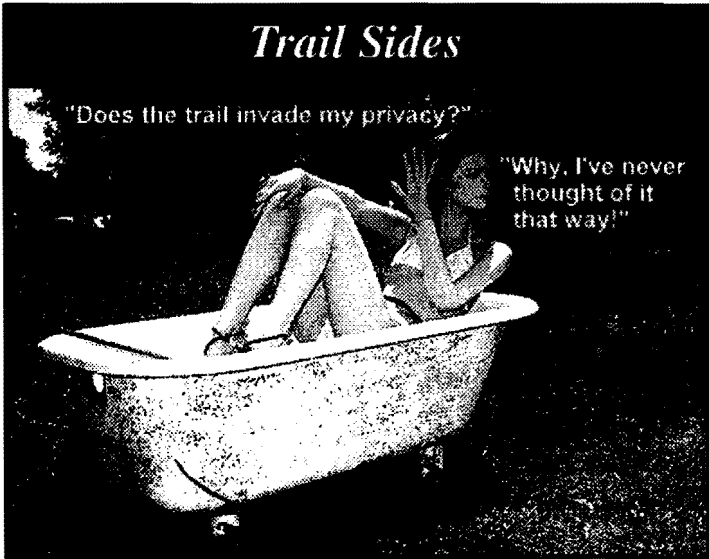
(Spring 98)

**THANK YOU FOR JOINING NCRT**

## Trail Sides

"Does the trail invade my privacy?"

"Why, I've never thought of it that way!"



### Brevard trail planning gets state boost

The Brevard Bicycle/Predestrian Study Committee has been notified that it will receive a \$4,500 Adopt-A-Trail grant to plan a trail between the community recreation center and an existing park in Pisgah National Forest. Most the two-mile trail will be built on donated easements.

### Anson group starts Heartlands trail clearing

The Carolina Heartlands Rail-Trail Committee has obtained easements to one-mile of abandoned rail corridor between Morven and the new elementary school north of that Anson County town. Volunteers have started clearing the section. The entire project is 12 miles between Wadesboro and McFarlan.

### NCRT meets April 4 at Greensboro

NCRT's spring quarter meeting will be held at 10:30 a.m. Saturday, April 2 at the Guilford Courthouse Battleground National Park headquarters building off Old Battleground Road in Greensboro. Quarterly meetings are open to the public.

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