

Little Toot

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Joint Rail Group Wrestles Issues

*"There's one law that says ye can't wander,
 And there's another that says ye can't tarry."
 -- The Tinker's Lament, an Irish ballad*

Corridor preservation and conversion has taken on aspects of a Joseph Heller novel as the NC Rail-Trails Plenary Committee's three strategy teams headed into their fourth joint meeting. For every law that says the public can use rail corridors, there's another Catch 22 law, legal opinion or administrative stance that says not. It leaves the committee searching for effective solutions to the legal standoffs.

At the heart of the problem is dated state statutory and case law that favors private property rights over public interest. The body of existing law makes state departments and railroads extremely cautious about how they deal with abandoned rail corridors.

While a complete examination is not possible in this space, the main issues can be touched on.

The state's railbanking law designates NCDOT as the state agency authorized to preserve corridors for present and future transportation purposes. It does not authorize other departments, such as DEHNR, Commerce and Cultural Resources, to preserve corridors for recreation, infrastructure, tourism or historic preservation.

Ashe, Pender Projects Selected

Extension of the popular Virginia Creeper Trail into Ashe County and a 30-mile trail that will span Pender County have been selected as the pilot projects for the North Carolina Rural Economic Development Center's Ecotourism Program which is being administered by NCRT.

The projects will utilize abandoned rail lines to develop off-road facilities for hiking, bicycling, saddle riding and other compatible uses. The program's goal is to spread tourism into the state's remote rural counties.

The Rural Center and NCRT will work with the communities and counties to plan tourism business development and to draw up marketing programs. The anticipated results will be new employment opportunities, community improvements and greater visibility for the rural counties.

Thirty-five miles of the former Virginia Carolina Railway have been in trail use, since the mid 1980's, between Abingdon, VA, and White Top Gap on the North Carolina line. The extension into Ashe County will provide convenient North Carolina access to the scenic trail.

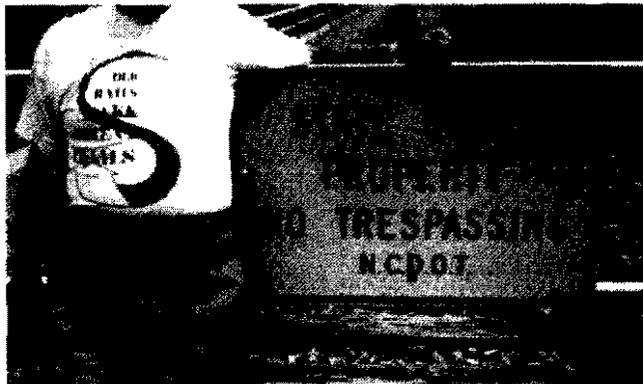
Surveys have determined that about 80 percent of present Virginia Creeper Trail users are from the Tar Heel state. It also attracts a growing number of users from as far south as Georgia and Florida.

The Ashe County plan is to convert the railbed to trail in stages as leases are obtain south of the state line. The railroad property reverted to adjoining property owners when the line was abandoned in 1977. The line extended south to Husk, Lansing and West Jefferson at that time.

The Pender project stretches from Castle Hayne on the Cape Fear River north to Wallace on the Duplin County line. It passes through Rocky Point, Burgaw, Watha and Willard in Pender County.

It is anticipated that the trail will draw tourists from the coast and nearby Interstate 40.

The corridor is part of the historic Wilmington & Weldon, one of the state's first railroads. CSX ceased service on the section in the mid 1980's but still owns the corridor. The railroad plans to donate the Pender section to the state. The NCDOT can then lease the corridor to the county or a land trust for interim trail use.



No Title, No Trail

Another law authorizes the NCDOT Rails Division to lease railbanked corridors for interim uses . . . only if they are acquired in fee simple absolute. Fee simple corridors are a small part of the state's railroad system.

Conflicting Laws -- continued page 3

Class Says Teachers Flunk Transportation

Beginning December, 1991, with passage of the federal Intermodal Surface Transportation Efficiency Act, the NC Department of Transportation was challenged to think of transportation, not just highways. What with 78,000 miles of state owned and maintained roads --the most in the country -- the NCDOT had a highways program to be proud of.

Plus, NCDOT had big plans for building many more with federal money and the state's highway trust fund. The goal was a four-lane highway within 10 miles of 90 percent of the state's population, plus paving on every state road.

However, with ISTEA came re-quirements

*Student: When will there be Transportation plans?
NCDOT: As soon as we change the name.*

for sharing more of the federal funding decisions with the state's 17 Metropolitan Planning Organizations. The new planning process was also to be opened up to public review and inputs.

After three more years of heavy-handed management and stonewalling, NCDOT decided to take the initiative against mounting charges of not complying with ISTEA. It teamed with the NCSU Institute for Transportation and Environment and the NCU Institute for Transportation Research and Education to establish the Transportation Environmental Round Table. There have been two meetings with over 140 participants.

Some from the environmental movement have characterized the meetings as "DOT School," much like the annual state MPO briefings.

For the most part, it has been a one-way process of being enlightened on how NCDOT works and what a good job it does of building roads. It should, for it is the largest and richest bureaucracy in state government, overseen by a board that is rewarded with special projects funding for members' BOT divisions.

But now, because of ISTEA, the NCDOT says it is becoming more sensitive to the environment, which has caused reconsideration of how planning is

conducted and of developing a team approach. The most recent round table was Aug. 16 at NCSU.

The Boone public participation experience was held up as a model. Yet, NCDOT still asked the question: How to get the public involved?

The response was: Speak straight English, identify and publicize the critical issues, invite public input, and then utilize the inputs while providing project feedback to the public.

The session on long-range transportation system planning for cities and towns was, in fact, a presentation on how NCDOT

works with local governments to develop

thoroughfare plans, ie: How to build roads.

When will there be *transportation* plans, asked Bill Holman of the state Conservation Council and Sierra Club Chapter?

Answer: As soon as NCDOT changes the name.

Is there to be planning for regional light rail and interregional high speed rail, asked NCRT's Al Capehart? Response: NCDOT will consider studying high speed rail *impact on highways* between Charlotte and Raleigh, should high speed rail come to pass.

And so it went. These first encounters appeared to shock NCDOT personnel, hearing sharp complaints, perhaps for the first time. They came to the meeting confident that they were doing a good job. But, it was evident that they have been insulated from the troubling transportation issues expressed by concerned citizens.

Either that or it was good showmanship on NCDOT's part. The only positive feedback it got was that the department had finally established a public forum for airing citizens' concerns.

Can such exchanges bring new perspectives? Perhaps. Just keep in mind that the Planning and Programs section is under, not over, the Highways Division.

To Underline New Sensitivity, Openness

So, only a couple of days after the NCDOT staged its second Transportation Environmental Round Table, the road builders showed their new sensitivity by blocking public hearings on a state wetlands reform plan that had been two years on the making.

The reason? It would make road building too expensive.

Under a technical legal provision, NCDOT's refusal to sign off on the proposal effectively blocked the plan. If NCDOT doesn't relent, it could completely block any new wetlands protection regulations.

The wetlands plan had been set to go to public hearings. Daniel Besse, a member of the NC Environmental Management Commission, said he was concerned that such a move by an official could block looking at the issues in an open public forum.

Palmetto Plan Patches Connections To Beach

Another mountains-to-the-sea trail proposal has been launched in South Carolina. The Palmetto Conservation Foundation has announced plans to raise \$2.6 million for the Palmetto Trail.

The foundation says that about 120 miles of new trail will have to be built; the rest can be put together from existing trails. The route will stretch from Oconee State Park in the mountains to McClellanville on the coast.

Some section will be made available to bicyclists and saddle riders.

North Carolina has had a Mountain-to-Sea trail authorized as part of the state trails system since the 1970's. So far, significant sections have only been completed in national forests in the mountains and near the coast.

Both efforts need legislative attention. Perhaps some friendly competition could heat up a race?

Closing for Fall Issue: November 1

Trail Projects Awaiting Environmental Papers

Environmental irony: The state's two longest pursued rail-trails are now waiting for the completion of environmental statements before moving ahead.

The Durham to Bonsal American Tobacco Trail deals have been cut since last winter. The NCDOT rails office now waits for the environmental section to provide the necessary paperwork before it can close on a partial purchase from Norfolk Southern and an easement for the remainder from Duke Power, which stepped in to outbid developers for Chatham County north to I-40 in Durham County.

In a much more recently struck deal, it was agreed that Lincolnton will acquire 1.8 miles from Norfolk Southern for the Railroad Greenway project. The city will turn over an environmental statement and the corridor title to the NCDOT rails office, which will then lease the property back to the city for a nominal sum. Acquisition costs will be shared 80-20 by the state and city. The arrangement clears the way for greenway development and resolution of what to do about two aging highway bridges that span the corridor.

NCRT Takes Preservation Issues To Rails Council

NCRT Directors David Coats and Al Capehart appeared before the North Carolina Rails Council on July 21 to urge the new state body to study issues identified by the NC Rail-Trail Plenary Committee.

Coats, who is NCRT lead attorney, urged the council to view abandoned rail lines as alternate transportation options. He asked that corridor preservation be assigned to a subcommittee to review present laws and preservation policies, draw 21st Century regional and statewide strategic corridor plans, and to develop new corridor preservation legislation that would include the state's right of first refusal option to acquire rail abandonments.

Council Chair Margaret Klutz assigned the issues to the Long Range Committee,



Priscilla Brown and J Blevins accept the NCRT Golden Spike Award on behalf of the Ashe County rail-trail initiative. As chair of the group, Brown conducted a physical inventory of the Virginia Carolina Railway corridor, researched landowners and organized the campaign to obtain leases for the Virginia Creeper Trail extension into North Carolina.

Conflicting Laws Block Corridor Efforts *(Continued from front)*

The problem is compounded by an attorney general's opinion that less than fee simple corridors -- lines in which the NCDOT has acquired the railroads' tracks, ties and easements -- requires escrowing the estimated property value if the NCDOT does lease the corridor.

The same attorney general's opinion holds that tracks and ties must remain in place to avoid presumption of abandonment under yet another state law. The presumed abandonment would allow other than fee simple corridors to revert to adjoining property owners. Both conditions set out by the opinion greatly increase the cost of state railbanking.

Then, there's the local problem. Another state railbanking law allows local governments to obtain rail corridors by donation or purchase. This works fine in the case of rare fee simple corridors. Should a city or county want to acquire a corridor that was established by charter or easement, it runs the risk of legal challenges from adjoining property owners

who would otherwise have the right-of-way revert to them.

This threat is causing local governments to even shy away from federal railbanking under the National Trails System Act Section 8(d). In addition to the political risks, this could involve defending the local government in a test of state laws

against the federal law.

The railroads would also run the risk of be involved

in the legal challenges, in addition to extending the time and expense of participating in a federal railbanking .

Again, this would drive up the cost of railbanking, even though the U.S. Supreme Court has upheld the federal trails law as constitutional and the U.S. Claims Court has ruled that it does not constitute an additional taking of private property.

And that is just a start on the issues identified by more than two dozen lawyers, rail executives, state administrators, policy advisors and NCRT.

The attorney general opinion holds that tracks and ties must remain in place . . .



It's getting to be that time again! If you'd like to join a NCRT fall color ride on the Virginia Creeper, leave a message at 704-495-4472. We'll be watching the color during October and let you know the date. We're hoping for a day like this group of Charlotte riders enjoyed last years when they took in bright sun and crisp air during a break at the Green Cove general store, which also served as a station on the historic mountain railroad.

Watch For Flying Objects

Your editor recently had a memorable trail experience that got him thinking about his opinions on fate.

Off-road riding is safe, right? Rail-trails have to be the safest place in the world for bicyclists, right?

There we were, gliding along, taking in the wildflower show. Not a soul in sight. Suddenly, the field of view was fully filled with flying horseflesh!

A group of five riders was descending, from a hidden parking area high above, hell-bent-for-Silverado. The thick trees and brush completely concealed their made-for-TV trail arrival.

Whoa! Binders full on! Side slide! Stopped with but a horsehair to spare! Otherwise, we would broadside the first nag and be pounded into the cinders by the next four. Whew, a near thing!

From now on, you can bet we'll also be alert for flying pigs and cows.

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Whistle Stops:

What Happened To The Lines?

Sheeesh! What happened to rail corridors on the way to the Governor's Greenway Advisory Panel Report? It seems that rail corridors all but disappeared from the landscape as potential greenways. In 58 pages, rail corridors got only four passing mentions.

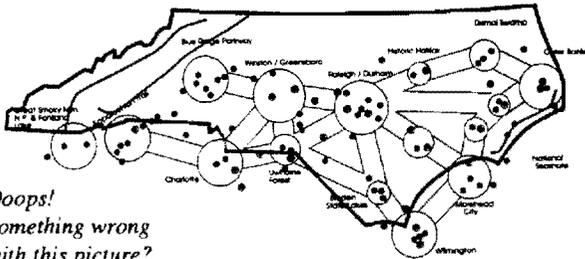
Heck, even sewer line rights-of-way came in for special attention. But rail lines? Zip. Nada.

How could the panel simply ignore nearly 2,000 miles of abandoned rail corridors? Or the intermodal possibilities for an equal number of active rail lines?

Go figure.

It's like rail corridors got sidetracked on the way to the governor's desk. And it wasn't like NCRT didn't try to get its story across to the advisory panel. Shucks, with friends like these, who needs the Farm Bureau?

The report has a wishful schematic map which depicts interurban "planning corridors" spanning the state. It looks familiar, kind of



like a state railroad system map from 1880. But, there is no discussion - not even a hint - that rail corridors could make the proposed greenway trails network a reality. Yet, consider this:

Mile-for-dollar, rail corridors are still the state's best potential linear park investments. And many of the state's rail corridors are just fading away, begging for executive and legislative action.

We'd at least like to see that simple point amended to the executive report, preferably as the bottom line.

Railroad Attorney Really Pulled A Good One On Apex

A funny thing happened to the proposed Apex to Holly Springs Bright Leaf Trail. Just as it looked like all the pieces were finally in place to complete a federal Section 8(d) railbanking, a CSX corporate lawyer lets it be known that he had pulled the rug out more than a year ago. Ha, ha.

Those corporate legal types can be such cards. They don't even tell their own property managers when they pull a good one.

And another attempt to effect a National Trail System Act railbanking in North Carolina hits the dust. Poof!

The two-year effort to turn 5.5 miles into trail dwaddled along after the ICC issued a Notice of Interim Trail Use. CSX didn't respond to Apex's initial attempts to arrive at terms during the attached 180-day Public Use Condition negotiation.

Then, belatedly, Apex and NCRT worked with CSX property management to strike a deal that would turn over the corridor and the Highway 1 bridge to the town. That would save CSX \$40,000 in bridge removal expense.

The deal was set to go before the Apex town commission for approval this July. Then Charles Rosenberger, senior legal counsel for CSX, pulled the Joker from his deck. He informed Apex's attorney that he, Rosenberger, had pulled the plug April 25, 1993. He had told the ICC, and no one else, that CSX had completed abandonment on that date.

To compound the mirth, that was 87 days before the original negotiating period was to expire.

It gets funnier. When Apex had petitioned the ICC for extension of the negotiating period in June of last year, Rosenberger told the ICC that "the expiration of the Public Use Condition on July 20, 1993, would in no way prohibit negotiations to continue."

The railroad attorney played his final wild card a year later when he turned down the town's proposal.

As a result, Apex had to spend \$240,000 to reroute a water main that is carried over Highway 1 by the railroad bridge. And the railroad? CSX gets stuck with the expense of removing a perfectly good bridge.

Can railbanking get more rib tickling than that? Probably.

ENLIST TODAY IN THE NORTH CAROLINA RAIL-TRAILS MOVEMENT!

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Telephone: Home _____ Work _____ Best Time _____

Reason for interest in rail-trails _____

Member of other conservation/recreation/historical organization? _____

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

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

THANK YOU FOR JOINING NCRT

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Trailbuilder Notebook

Itching to build a rail-trail in your community? Well, building a trail on a railbed is the easy part; getting access to the railroad property is the hard part.

So let's review the options. There are essentially four, each fraught with unique problems.

1. Federal Railbanking -- Can only be accomplished while railroad is filing for abandonment. Limited public notification and very tight time constraints for filing interim trail use petitions with the ICC. Must negotiate a deal with the railroad in a limited amount of time. This method has been covered in detail in the last three issues.

2. State Railbanking -- Convince NCDOT that the line has future transportation potential. Under present state legal restrictions, only lines purchased by state in fee simple absolute title can be leased for interim trail use.

3. Local Purchase -- A good solution, but limited to the small number of lines where railroad owns the property, instead of holding a dedicated easement. This can be a mine field of century-old property titles that requires careful examination. Work with your local government and/or land trust.

4. Leases Or Easements -- The line is abandoned and has reverted to adjoining property owners. Each and every property owner must be sold on trail concept and its value to them and the community. Develop a tight public/private partnership to mount the campaign. Involve land owners in policy and management decisions. Local government, land trust or service organization can obtain leases and must accept management responsibility, including public liability.

NCRT is working with others on several fronts to remove some of the legal restrictions and to develop new corridor options.

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ANNUAL MEETING SEPT. 10 AT DURHAM

The NCRT Annual Meeting will convene at 10:30 a.m. Saturday, September 10. The location is 23 Beverly Drive in Durham. Take E. Forest off University to Beverly Drive.

A deli tray lunch will be served, followed by a stroll on the American Tobacco Trail route. The public is invited to attend meeting or the 2 p.m. trail outing.



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