

## **Confidential Attorney Client Communication**

**DATE:** April 29, 2022  
**TO:** Chair Brown, Vice-Chair Koenig and Commissioners  
**FROM:** Steve Mattas and Guy Preston  
**RE:** SCCRTC Response to Questions Presented by Vice-Chair Koenig Related to Greenway Initiative and SCCRTC

### **I. Introduction**

At the April 7<sup>th</sup> Commission meeting, Vice-Chair Koenig advised the Commission that he desired to ask staff for clarification on some issues associated with the Greenway Initiative in relation to SCCRTC. Vice-Chair Koenig also offered to submit the questions in writing. Chair Brown noted that since the issue was not on the agenda for the April 7<sup>th</sup> meeting and that Vice-Chair Koenig had offered to submit the questions in writing that he should do so and that staff could respond to the questions through a report to the Commission that could be presented no later than the next Commission meeting.

The questions submitted and our responses are provided below. Please note that the answers below assume the reference to “passenger rail” in the questions refers to Electric Passenger Rail as referred to as the Locally Preferred Alternative in the Commission adopted Transit Corridor Alternatives Analysis & Rail Network Integration Study (2021).

### **II. Questions and Responses**

#### **1. Would passage of the Greenway Initiative prevent this commission from studying or pursuing funds for passenger rail if needed?**

No. Government Code Section 67941(a) provides the Commission with authority “to preserve, acquire, construct, improve, and oversee multimodal transportation projects and services on rail rights-of-ways within Santa Cruz County in any manner that facilitates recreational, commuter, intercity, and intercounty travel.” Section 67941(b) further provides that the Commission “may contract for any services that accomplish its purposes.” SCCRTC can plan and pursue funding for passenger rail, regardless of the outcome of the Greenway initiative.

**2. Will passage of the Greenway Initiative legally prevent a passenger train from being built?**

No, assuming the passenger rail is constructed by SCCRTC or its contractor. Government Code Section 67941(a) provides the Commission with authority “to preserve, acquire, construct, improve, and oversee multimodal transportation projects and services on rail rights-of-ways within Santa Cruz County in any manner that facilitates recreational, commuter, intercity, and intercounty travel.” This law provides independent authority for SCCRTC to construct passenger rail as a multimodal transportation project within the SCBL ROW.

**3. If the Greenway Initiative passed, would a new ballot measure be needed in order to build a passenger train system?**

No, assuming the passenger rail is constructed by SCCRTC or its contractor. Government Code Section 67941(a) provides the Commission with independent authority for SCCRTC to construct passenger rail as a multimodal transportation project within the SCBL ROW. The proposed language in the Santa Cruz Greenway Initiative (Sections 6D and 10) does, however, require that any subsequent amendment to General Plan and LCP provisions amended through Section 4 of Santa Cruz Greenway Initiative would require voter approval to further amend those sections. Thus, if for any reason the County desired to amend the provisions in Section 4 of the Santa Cruz Greenway Initiative as part of a County project related to building a passenger train system, the relevant General Plan and LCP amendment would need to be approved by the voters.

**4. Does railbanking protect the corridor for a future passenger train?**

Yes. Assuming railbanking is approved by the Surface Transportation Board, the corridor would be preserved for future freight or passenger rail service. The STB has authorized railbanking where the sponsor agency intended to use the rail right-of-way for public trail use, as well as for public transportation system and/or access to public lands.

**5. Does railbanking require that a greenway is built?**

The railbanking process requires an agreement between the relevant railroad operator and a trail agency to use the out-of-service rail corridor for trail purposes, as well as potential other forms of public transportation until some future time when the railroad operator takes actions to resume freight service. Although trails are routinely built as part of railbanking agreements, they are not required.

6. **Does railbanking have to be "withdrawn" to build a passenger train system?**

No. The STB has authorized railbanking where the sponsor agency intended to use the rail right-of-way for trail use, as well as for public transportation system and/or access to public lands. Passenger rail is a form a public transportation.

Cc: Luis Mendez, Deputy Executive Director  
Sarah Christensen, Engineering Manager

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# Confidential Attorney Client Communication

**DATE:** May 2, 2022

**TO:** Commissioner Alternate Schiffrin

**FROM:** Guy Preston and Steve Mattas

**RE:** SCCRTC Response to Questions Presented by Commissioner Alternate Schiffrin  
Related to Greenway Initiative (Measure D)

## I. Introduction

In addition to the questions submitted by Vice-Chair Koenig, Commissioner Alternate Schiffrin submitted the following list of questions related to the current Measure D. The responses provided are limited to answers to factual questions presented below as the questions relate to SCCRTC or its role related to the SCBL railway property. Please note that Commissioner Schiffrin listed his questions in bold text after, in some of following questions, providing excerpts from portions of the 2022 Measure D. The RTC staff responses are presented in *italics*. The organization of the questions follows the order of the questions provided Commissioner Schiffrin.

The answers provided cannot and do not express any position related to Measure D. In the event an FAQ is prepared and made public, we anticipate that the information presented herein would be included in the FAQ along with the information provided in response to Vice-Chair Koenig's questions.

## 2. Questions and Answers

### Section 2. Findings and Declarations

1. Subsection 2. – “The Initiative supports a plan for **interim use** of most of the Corridor as a high-quality, multi-use trail (“Greenway”).”

**Since “interim” is not defined and the Initiative does not limit the interim use to a specified time period, could the “interim use” be permanent under the terms of the Initiative?**

*Possibly.. Interim use would be subject to railbanking the corridor. Railbanking preserves the track for future potential re-activation of rail service; however, if no action is taken to re-activate rail service, the interim trail could remain in place.*

2. Subsection 5. “There are existing funds available through Measure D, the sales tax dedicated to transportation passed by the voters in 2016, for development of the Greenway.” The Initiative gives the impression that Measure D funds have been allocated to Greenway.

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### **Are there any funds in Measure D allocated for Greenway and have any funds been approved by the RTC for Greenway?**

*No, funding has not been allocated nor approved by the RTC for Greenway at this time. If RTC determines the best use of the corridor is a Greenway, it could make 2016 Measure D funds available for the project.*

### **Section 3. Purpose and Intent**

In enacting this Initiative, the people of the County do hereby declare it is their purpose and intent to amend the County General Plan and Local Coastal Program to support the following policies:

3. Subsection 1. “Support the development and interim use of the Corridor between the San Lorenzo Bridge in the City of Santa Cruz and Lee Road in the City of Watsonville as a high-quality, multi-use Greenway for commuting, active transportation, and recreation for people to walk, run, bike and use personal mobility devices.”

### **Does this policy support the implementation of the rail trail projects currently pursued by the RTC and is it consistent with the adopted Rail and Trail Master Plan?**

*The Greenway policy likely supports the implementation of the rail projects currently pursued by the RTC, if the RTC implements the optional interim phase of the projects being pursued.*

*Greenway’s Objective 3.7 is for two lanes of wheeled traffic on a paved path, a divider, and a separate walkway for pedestrians, with a shoulder on both sides. RTC’s trail projects do not call for a divider and a separate walkway for pedestrians. Greenway’s Policy 3.7.3 states that while development of the full multi-lane Greenway is encouraged, where feasible, the policy supports reduced Greenway widths where necessary to accommodate physical barriers, minimize environmental impacts, or avoid the need for new infrastructure, like major retaining walls, in order to reduce cost and expedite implementation.*

*Although the Master Plan Executive Summary and Introduction states in the Overview section that the trail “will be build parallel to (not in place of) the operational rail line, within the rail right-of-way, to the extent possible so freight service can continue and future passenger rail service may be provided, the statement is part of the Overview section and is not expressly included as a goal, policy or an objective. The MBSST Master Plan’s Policy 1.2.4 does, however, state: “Develop trails in such a way so that future rail transit services along the corridor are not precluded”. Since a Greenway is interim and includes railbanking, future rail transit service would not be precluded.*

### **3.a Does it require support for Greenway?**

*The language in the measure speaks for itself and RTC staff do not express a position on this question.*

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4. Subsection 2. “Prioritize interim use of existing trestles and railbed for the Greenway, while preserving future rail options through railbanking.”

**Since the Initiative, if adopted, would only apply to the County’s General Plan and the RTC, not the County, owns the trestles and railbed, might the Initiative give the misleading impression to members of the public that the County has the right to “prioritize” use of the rail line?**

*Staff cannot speak to whether language may give any misleading impression, but as noted in other questions related to the current Measure D, Government Code Section 67941(a) provides the Commission with authority “to preserve, acquire, construct, improve, and oversee multimodal transportation projects and services on rail rights-of-ways within Santa Cruz County in any manner that facilitates recreational, commuter, intercity, and intercounty travel.”*

5. Subsection 3. “Preserve the use of a portion of the Corridor for existing freight service in Watsonville, existing Santa Cruz Big Trees & Pacific Railway recreational service, and a future Watsonville/Pajaro Junction station.”

**This subsection of the Initiative gives the impression that one of its purposes is to “preserve the use” of the rail corridor for Roaring Camp’s recreational service. However, wouldn’t the implementation of Greenway require the removal of the railroad tracks from Watsonville to Santa Cruz making it extremely difficult and expensive, if not impossible, for Roaring Camp to bring heavy equipment to its facilities in Felton, which could threaten the company’s economic viability?**

*Roaring Camp has been unable to move equipment to Felton since 2017, due to the poor condition of the rail line. Since RTC cannot fund, permit, and construct repairs, implementing Greenway will have no immediate impact to moving Roaring Camp’s equipment.*

*RTC could choose to compensate Roaring Camp for any potential future impacts to its ability to transport heavy equipment for use at Roaring Camp’s Felton facility as part of an agreement to not oppose railbanking.*

### **Section 4. General Plan and Local Coastal Program (LCP) Amendments**

6. Objective 3.7 Rail Facilities and Green Planning – The Initiative contains the following definition: “As used in this General Plan, “Greenway” shall mean a trail between the San Lorenzo Bridge in the City of Santa Cruz and Lee Road in the City of Watsonville for commuting, active transportation, and recreation by pedestrians, bicycles, wheelchairs, e-bikes, skateboards, and personal e-mobility that includes two lanes of wheeled traffic on a paved path, a divider, and a separate walkway for pedestrians, with a shoulder on both sides.” **In order to meet this definition of Greenway, would the Greenway trail need to be at least 20 feet wide?**

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*The Caltrans design manual does not provide a minimum width for a Greenway facility. RTC staff estimates that the minimum width of a Greenway facility would be approximately 16-feet (12' paved + 2' shoulders on each side), assuming a white line is the divider. In areas of high traffic, a wider trail would be recommended.*

**7. Would it be possible to construct the Greenway trail in the rail corridor without removing all the existing tracks, thereby making any rail service impossible for the life of Greenway?**

*No. It is not possible to construct the Greenway within the existing SCBL alignment without removing the tracks. During the life of Greenway, rail service between Lee Road and the San Lorenzo River would not be possible.*

**7.a. Moreover, wouldn't returning rail service to the corridor at a future time require removal of Greenway?**

*Yes.*

**8. Could the full 20-foot width of the Greenway trail be built in the rail corridor owned by the RTC even with the removal of the railroad tracks?**

*Yes. Although 20-feet would not necessarily be the minimum width, a 20-foot wide Greenway could be built in the rail corridor with the removal of the tracks and the construction of structures.*

**Policies – Initiative proposals to amend the County General Plan include:**

**9. “~~3.7.1 Rail Ridership Potential~~ *Compatible Development*”**

**(LCP)** Ensure that new development adjacent to rail lines *or the Greenway* is compatible with the General Plan and LCP Land Use Plan ~~objective Objective 3.7 to preserve and protect existing railroad right-of-way and existing rail facilities for current seasonal recreational travel, for availability to carry freight, for possible future passenger rail service within the County, and for possible future passenger rail transportation for intra-County commuter use.”~~

**The current language in the County General Plan supports maintaining “Rail Ridership Potential” and the policy is to “preserve and protect existing railroad right-of-way” for rail services. If the RTC adopted the Initiative policy and amended RTC/RTP policies to be consistent with it, would it continue to seek funding for future rail service? Why?**

*Any subsequent decision to seek or not seek funding for future rail service is subject to the discretion of the Commission.*

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### 10. Is this policy consistent with Measure D?

*The answer to this question assumes the question is asking whether proposed policy 3.7.1 is consistent with the 2016 Measure D.*

*Yes, the Greenway policy is consistent with Measure D, including the Measure D Expenditure Plan. The 2016 Measure D provides Expenditure Plan funding categories. Two categories of funding could potentially be used to fund a “Greenway”, including the Active Transportation category (17% of 2016 Measure D revenue) and the Rail Corridor category (8% of Measure D revenue).*

*The Active Transportation category provides for allocation of funding for the Monterey Bay Sanctuary Scenic Trail (MBSST) Network, otherwise known as the Coastal Rail Trail, for people walking and bicycling along the coast in Santa Cruz County. The 2016 Measure D ordinance recital defines the MBSST Network, including the Rail Trail, as a planned multi-use bicycle and walking path that is separated from vehicular traffic.*

*The Rail Corridor category funding is to be used for preservation of the Rail Corridor infrastructure and analysis of its future potential use to better serve Santa Cruz County residents and visitors. Projects include analysis (including environmental and economic analysis) to answer important community questions about possible future transit and other transportation uses of the corridor through an open, transparent public process; and maintaining and repairing the publicly owned Santa Cruz Branch Rail Line. The Measure revenues do not include funding for any new train/rail service. The Expenditure Plan states that if the RTC determines that the best use of the corridor is an option other than rail transit, funds may be utilized for other transportation improvements along and near the corridor.*

*The Ordinance makes it clear that the best use of the corridor had not yet been determined at the time voters approved 2016 Measure D and that it would be part of the work authorized by the Expenditure Plan. If the Commission, through an open and transparent process, determines that the 2022 Measure D-Greenway is the best use of the corridor, Greenway would be consistent with Measure D, and RTC could allocate Measure D funding for its construction from both the Active Transportation and the Rail Corridor categories, since Greenway would also be a multi-use bicycle and walking path within the rail right-of-way, separated from vehicular traffic.*

### 11. ~~“3.7.3 Greenway-Rail-Trail Planning—Santa Cruz/Watsonville~~

~~Support development of the RTC-owned Corridor, including existing trestles and railbed, rail corridor for use as the Greenway. While development of the full multi-lane Greenway is encouraged where feasible, support reduced Greenway widths where necessary to accommodate physical barriers, minimize environmental impacts, or avoid the need for new infrastructure, like major retaining walls, in order to reduce costs and expedite implementation. passenger transit, recreational, and goods movement; as well as. Support development of the Greenway as part of the Monterey Bay Sanctuary Scenic Trail and in County plans. as a bicycle/pedestrian trail, with~~

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~~improvements to move forward as they are determined by the RTC to be feasible, fundable, and deemed to meet current or future transportation needs.”~~

**The current language in the County General Plan, which the Initiative deletes states: “Support development of the RTC corridor for passenger transit, recreational, and goods movement; as well as a bicycle/pedestrian trail, with improvements to move forward as they are determined by the RTC to be feasible, fundable, and deemed to meet current or future transportation needs.” If the RTC approved similar language to guide its decisions for the use of the rail corridor and revised existing RTC/RTP policies to be consistent with it, would it pursue funding for future rail service along the Corridor? Why?**

*Any subsequent decision to seek or not seek funding for future rail service is subject to the discretion of the Commission.*

**12. Is this policy in the Initiative consistent with Measure D?**

*Yes assuming the policy referenced in the question is the proposed revised Policy 3.7.3. See previous answer regarding consistency with Measure D and the Measure D Expenditure Plan.*

**13. 3.7.7 Rail Planning – Around the Hill**

~~Support passenger rail service between the San Francisco Bay Area and Santa Cruz via Gilroy and Watsonville/Pajaro to serve recreational and inter-regional travel.”~~

**Doesn’t the revision, in the proposed Initiative, of the County General Plan language that currently supports passenger rail service between the San Francisco Bay Area and Santa Cruz indicate that such service should not be provided?**

*No. Removing such language, by itself, does not indicate that such service should not be provided.*

**14. If the RTC adopted this policy, would it be able to ever secure state or federal funding for passenger rail service? Why?**

*Yes. If circumstances change that warranted re-activation of the line for rail service, RTC could re-change policy to support rail service and apply for state or federal funding for passenger rail service.*

### **Programs**

~~15. “a. Encourage and support RTC and other agencies to study and develop the Greenway and to include the Greenway in planning documents, including regional transportation plans and plans for the Monterey Bay Sanctuary Scenic Trail. Identify land use policies which will support future passenger rail use and prepare recommendations for General Plan and LCP Land Use Plan~~

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~~amendments at such time passenger rail use is approved and funded. (Responsibility: Planning Department, Regional Transportation Commission, Board of Supervisors)”~~

**The proposed Initiative would revise language in the County General Plan to encourage and support the RTC to develop Greenway while eliminating the commitment to identify land use policies that support future passenger rail service. Do you see this proposed revision as an attempt to have the RTC support developing Greenway while withdrawing its commitments to future passenger rail service? Why?**

*The proposed initiative encourages, but does not require, RTC policy changes, including the Regional Transportation Plan (RTP) and the Monterey Bay Sanctuary Scenic Trail (MBSST) Master Plan to support a Greenway. The Measure does not require that RTC withdraw its future commitments to future passenger rail.*

**16. While voter approval of the Initiative would have no direct effect on the RTC actions, given the advocacy for Greenway at Commission meetings, would you expect staff and the Commission to feel increased pressure to reduce support for passenger rail service and efforts to obtain funding for such service in the future should the Initiative pass?**

*If the Greenway initiative is approved, it is possible that Commissioners might feel increased pressure to reduce support for passenger rail service and efforts to obtain funding for such service in the future. Staff will follow the direction of the Commission.*

Cc: Chair Brown and Commissioners

Luis Mendez

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