

From: [REDACTED]
To: [Regional Transportation Commission](#)
Subject: Comments for RTC meeting 4 Aug 2022
Date: Tuesday, August 2, 2022 12:59:24 PM
Attachments: [Hartwell factsheet_20220731.pdf](#)

Date: July 31st, 2022

To: Regional Transportation Commission

From: Jacob Wysocki

To start, I would like to thank staff for the implicit recognition of the results of 2022 Measure D which showed overwhelming support for rail service in Santa Cruz County and maintenance of the Santa Cruz Branch Line as a viable freight line within our nation rail network by proposing continued maintenance of the line and the pursuit of funding for passenger service EIR. That said, there are concerns with some of the details and the method of pursuing these laudable goals.

Agenda Item #8: Approve authorizing the Executive Director to enter into a sole source agreement with Industrial Railways Company, Inc. to correct the deferred maintenance along MP 3 to MP 7 and invoice St. Paul and Pacific Railroad/Progressive Rail

While I certainly support the goal of maintaining the physical infrastructure of the rail line, the way in which the proposed resolution is being pursued represents a breakdown in the relationship between the RTC and the common carrier freight provider, Progressive Rail. There seems to be disagreement over the status of the completion of Phase I repairs by the RTC between MP4.0 and MP7.0. Without seeing the inspection report from an independent qualified inspector following the RTC-contracted work in August of 2021, the public is unable to ascertain whether the repairs were completed or which side is correct.

It seems likely that any invoice for new RTC-contracted repairs will be disputed or ignored by Progressive Rail, in which case the ACL dictates that non-binding mediation or, failing that, court action will be required to settle the dispute. Is the RTC really prepared to start the post-Measure D era by initiating court action against the freight carrier of record? Is the RTC staff hoping to simply drive the freight rail operator away? Termination of the ACL does not extinguish the freight easement held by Progressive, it merely extinguishes the contractual relationship between the RTC and Progressive. While the existing relationship was undoubtedly impacted by the potential of adverse abandonment pre-Measure D, now is the time to heal this relationship through dialog.

To remind the staff and Commissioners of how difficult and unlikely it is to win an adverse abandonment action, I have attached a case study on the adverse abandonment case in Hartwell, GA, which I recently had occasion to visit. This case study, other STB decisions, and

the California state legal record show a long history of local communities that have tried to initiate hostile legal proceedings against railroads and mostly failed. While some have been successful, almost all represent large expense and small benefit for the community. Before approving this action, and seeing that communications with Progressive appear to be fraught, it may be prudent for a Commissioner to step up and attempt to mediate this dispute before launching down the path of pain and acrimony.

Agenda Item #24: Request for Proposals for Professional Engineering and Environmental Services – Electric Passenger Rail Transit & Coastal Rail Trail Project between Pajaro Junction and Santa Cruz along the Santa Cruz Branch Rail Line

First, thank you to staff for implicitly recognizing the result of 2022 Measure D and proposing that we move forward with planning for rail transit in Santa Cruz. That said, I do not have sufficient information personally to either support or oppose the proposed release of an RFP. Here I will outline some items causing confusion:

1. No draft RFP has been presented, so it is difficult to understand what will be included in the RFP beyond the high-level descriptions in the agenda packet.
2. How does this step fit into the long term plan to bring passenger rail to Santa Cruz? Does this project have a work plan and schedule that includes measurable milestones by which progress can be assessed? Does this work assume the timeline presented in the 2015 SCBRL Rail Transit Feasibility Study? Or is this action based on the proposed next steps from the unapproved 2021 DRAFT TCAA-RNIS Business Plan?
3. Planning for rail transit seems to have been left at the deadlocked draft business plan. Is the business plan necessary or not? How does the business plan fit into the long term passenger rail plan?
4. What is the long term passenger rail implementation vision and who has ownership for the schedule and implementation of this vision? This proposal seems to punt ownership of the vision to outside contractors that will be selected later based on an undisclosed RFP and who are potentially incentivized to select the most expensive and lengthy implementation options. Is there any chance of using some of the proposed \$17M of engineering and environmental documentation to hire a dedicated staff member/s to ensure effective RTC oversight of its long investment in the rail line and associated Rail and Trail project?

Thank you for your attention to my comments.

Attachment: Adverse Abandonment Case Study, Hartwell, GA

ADVERSE ABANDONMENT CASE STUDY HARTWELL, GA.

Jacob A Wysocki

HARTWELL FIRST UNITED METHODIST CHURCH - ADVERSE ABANDONMENT AND DISCONTINUANCE THE GREAT WALTON RAILROAD COMPANY, INC., IN HART COUNTY, GA. Surface Transportation Board Docket No. AB 1242

An ongoing case in Hartwell, GA demonstrates the length and likely futility of any adverse abandonment proceedings in Santa Cruz.



Timeline

18 months for STB decision, 6+ years of legal proceedings

- 1996 **Last customer served**
- 2008 Portion of line voluntarily removed by Great Walton Railroad (GWRC).
- 2015 Portion of line is leased to community group for 99 years for use as a public park, playground, farmer's market, and walking trail.
- 6/26/2016 **Start of Adverse Abandonment** Initial filings with STB by Hartwell First Methodist Church (Hartwell First).
- 4/14/2017 Adverse abandonment application is officially filed by Hartwell First. State court orders halt to rail repairs.
- 11/3/2017 GWRC files eminent domain petition for the property underlying the runaround track.
- 1/31/2018 **Decision Issued** STB issues decision denying adverse abandonment because railroad intends to rehabilitate line to use as runaround track. STB orders railroad to provide updates every six months describing progress of line rehabilitation.
- 8/24/2018 GWRC eminent domain filing is denied.
- 11/1/2019 Eminent domain appeal is denied.
- 6/9/2020 STB determines that parallel track is Ancillary track. Defers ruling on whether track has been removed from interstate rail network pending results of State Court proceedings over ownership of rail property.

2022 Legal issues still unresolved.

Rail Line Status

No traffic in over 25 years.

No present or future customers.

1/4 mile of rail line, consisting of a main line and a parallel ancillary line.

Tracks in varying states of disrepair. Some track removed for farmers market.



Adverse Abandonment Denied

Railroad wants to use track to reposition locomotive from front to rear of train to turnaround.

"...the Board typically is reluctant to substitute its operational judgment for the railroad's."

Status of Ancillary track still in State Court over six years later.

Ancillary line lost in dirt



Portion of line removed



From: [REDACTED]
To: [Regional Transportation Commission](#)
Cc: [Gregory Becker](#)
Subject: Please support Agenda item 8, 2022-08-04
Date: Tuesday, August 2, 2022 12:40:21 PM

Dear Commissioners

I was delighted to see Item 8, "Deferred Maintenance MP 3 to MP 7 on Santa Cruz Branch Rail Line".

The last time I walked that stretch of track, I went from Buena Vista Drive until the track becomes impassable by pampas grass, and I had to retreat. On my walk back to Buena Vista I ran into a group of maybe six 8th or 9th grade girls. I was surprised, and asked them where they were going. They said that they were walking from Aptos to Watsonville.

I thought maybe they had the youthful exuberance and maybe better balance and courage to bushwhack the pampas grass and traverse the washout, so I didn't say anything to discourage them. But I doubt they made it to Watsonville.

I hope you will support the staff recommendation. The South County rail segment needs some love.

Thanks and regards,

Greg Becker