

Circulation Element C-P10

April 22, 2013

I appreciate the continued discussion of this important policy.

There are two broad issues which are not discussed in the staff report. First is any discussion of the different types of rights which the Railroad might own. In many cases the railroad owner holds only an easement for railroad purposes. There are other cases in which they own fee title. In those circumstances in which fee title is held by the railroad owner, the proposed policies are more appropriate. In those cases in which the railroad owns only an easement for a railroad right of way, you must look at the creation document to determine exactly what rights the railroad owner has, and what rights the underlying fee owner has.

The second issue which is not discussed here is the issue of the "taking" when a railroad use is abandoned, and governmental entities decide to take the strip and convert it to a different public use. That is the purposes stated by staff as the reason for the public designation. In the event of such a taking, the landowner must be compensated. Substantial information about Federal court rulings on this issue was presented to staff through Supervisor Ryan, yet there is no mention of it here. It is a significant issue which must be addressed now, and also at the time that any such conversion might begin to be considered.

In option 1 there is an apparent clerical inconsistency. P10 uses the word "Road" while the IM uses the words "public road facilities". I believe the words in the IM are appropriate. "Road" can be interpreted to include Private Roads, which should not be designated as Public. Their land use designation should be that of the parcel they encumber. The word "Public" should be added to P10, should this version be adopted.

In Option 1 there is discussion of adding timber, agriculture and grazing to the allowed uses of Public Facility. There are railroad easements which cross all types of land including industrial, commercial and residential. All adjoining land uses should be recognized if this option were to be selected.

In those cases where the railroad owner holds only an easement for railroad purposes, and that use is abandoned, and the abandonment is approved by the National Transportation Safety Board (NTSB), the easement terminates, and the underlying fee ownership remains in the landowner. There is no right left which would appropriately be zoned as Public Facility. This designation would devalue the land, and the uses the landowner could choose would be limited.

As to Option 2, the Title still uses the words "Public Facilities"

The words "as long as the Railroad Right of Way exists." and the sentence "In the event the railroad right of way is abandoned, and the abandonment is approved by the NTSB,

this designation shall automatically be deleted and replaced with the land use designation of the balance of the ownership.” Should be added to the implementation measure.

Both Options provide for including additional uses within the Public Facility and Railroad land use designations. Neither option discloses all of the uses allowed in those designations. That language should also be determined as a part of your decision making process.

Option 3 is Delete. This is a good option, as Options 1 and 2 as written both add to the burden of railroad easements on the landowner.

I fully support protection of railroad easements for railroad purposes. The return of rail to Humboldt County, and the connection of Humboldt Bay and many of our local communities to the National Rail System would provide tremendous opportunity and prosperity to Humboldt County residents. If the changes I suggested to Option 2 were added to protect landowners as well, I could support Option 2.

I am providing staff with a list of many of the railroad acquisition Deeds to facilitate their review of railroad ownerships in Humboldt County. The list is attached to many railroad documents which have been recorded in the past. It is not an all inclusive list, but it is a great resource for such a review. In the interest of saving paper, I have provided only one copy.

Debbie Provolt