

Attachment 5
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MEMORANDUM

To: Santa Cruz County Regional Transportation Commission

From: Kirk E. Trost,
Miller, Owen & Trost

Date: May 11, 2005

Re: *Santa Cruz Branch: Preliminary Title Report*

The following title reports were delivered by First American Title Company on May 3, 2005:

1. Preliminary Report (Amended 1), dated as of January 9, 2005. The Preliminary Report is organized as follows:
 - a. Exceptions to Title. (See pp. 2-31.) This section identifies and describes the various exceptions to the Railroad's title (e.g. easements and other third-party rights) in the Santa Cruz Branch.
 - b. Legal Description for each parcel. (See pp. 32-62.) This section identifies and describes the parcels to be insured.

2. Supplement to Title Report Dated January 9, 2005 (Amended 1) (See pp. S1-1 to S1-7). This Supplement encompasses industrial drill tracks and/or spurs not within the main right-of-way, and is organized as follows:
 - a. Description (This corresponds to the Legal Description section of the Preliminary Report.)
 - b. Defects and Encumbrances Affecting Title (This corresponds to the Exceptions to Title section of the Preliminary Report.)

Attached is a summary of First American's conclusions as to the state of the Railroad's title to the Santa Cruz Branch, prepared by this firm. The order of parcel numbers in this summary corresponds to the order used in the Legal Description sections of the Preliminary Report and the Supplement.

Also attached is a second Supplemental Report dated March 25, 2005, prepared by Mr. Jim Weller on behalf of First American Title Company (See pp. S2-1 to S2-10). This report lists unrecorded vesting instruments (see Items 1-5 of Part I) and conveyances to third parties (see Items 6-43 of Part I). The report also lists various parcels for which there exists no documentary evidence of title (see Part II). The matters covered in this report will not be part of the title insurance policy.

Due to a number of factors (including the length of time since the original conveyances were made to the Railroad), there are still a few remaining questions concerning title to various parcels and we are working with the title company to answer those questions. Also, with respect to the Preliminary Report (Amended 1), the numbering system for exceptions to title (set forth on pp. 2-31) has problems and will need to be corrected. The description of the various parcels begins on page 32 of the Preliminary Report. Please note that the parcel references in the Preliminary Report and Supplement correspond to the Railroad's valuation maps and are not references to Assessor's Parcel Numbers.

You will note two basic forms of title covered by the Preliminary Report and Supplement:

Fee Title: The majority of the Santa Cruz Branch is held by the Railroad in fee. This means that the Railroad is the owner of the property and can use the property for any purpose, subject to the rights of third parties holding easements, licenses, or other interests. Some of the fee parcels were granted to the Railroad subject to the condition that the Railroad continue to use the parcels for railroad purposes. Normally, such conditions would give the grantor the right to terminate the Railroad's interest in the property, should the Railroad cease to use the property for railroad purposes and use it for other purposes instead. However, the California Marketable Record Title Act (Civil Code section 880.020 *et seq.*) provides for the expiration of such powers of termination 30 years after (i) the date the deed is recorded, or (ii) the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded within the foregoing 30-year period. (Civil Code section 885.030.) All of the deeds containing the "railroad purposes" condition were recorded in the 19th Century and the title search has not turned up any recorded notices of intent to preserve the powers of termination. Therefore, it appears that any such powers of termination should have expired pursuant to the terms of the Marketable Record Title Act. We will explore with the title company the possibility of insuring title on that basis.

Easements: Some of the Santa Cruz Branch is held by the Railroad as easement for railroad purposes. Such easements will continue in effect as long as rail service is conducted over the Branch. The Railroad's interest in the easement parcels may be extinguished if and when the Railroad abandons rail service over the Branch. Federal law, however, provides a method by which such easement interests may be preserved, even after cessation of rail service. Section 8(d) of the National Trails System Act (16 U.S.C. section 1247(d) – otherwise known as the "Rails-to-Trails Act"), provides that such property interests will not be extinguished upon cessation of rail service if a public

agency assumes full ownership responsibility for the property, subject to potential future reactivation of rail service.

No Recorded Deeds: There are also a number of parcels for which the Railroad has only copies of unrecorded deeds, as well as parcels for which there is no documentary evidence of title. These parcels are listed at the end of the enclosed Summary and are discussed in greater detail in the second enclosed Supplemental Report dated March 25, 2005. These parcels will not be covered by the title insurance policy. However, given the Railroad's use of this right-of-way for more than a century, it appears that the Railroad should have at least a prescriptive easement over those parcels. As with the recorded easements discussed above, prescriptive easements are also subject to extinguishment upon abandonment of rail service. However, prescriptive easements also can be preserved under the Rails-to-Trails Act, as discussed above.

We look forward to discussing this with you further at the May 19, 2005 Transportation Policy Workshop meeting.