

# Legal Issues and Feasibility of Construction Under Railroad Tracks at Cedar Creek Apartments

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This paper describes the impediments of initiating construction of a local tunnel underneath the railroad tracks approximately 50 yards South-West of the Foothill Blvd and California Blvd intersection. This tunnel is used by hundreds of students every day and acts as the primary route for these students to get to and from the Cal Poly campus. This tunnel has no lighting, is constantly flooded with water, and has multiple safety hazards. The author discusses the feasibility of starting construction to make this pathway a safe accessible route for all students. Throughout the paper, the author introduces the multiple parties with ownership and/or rights over the pathway and the feasibility of getting these parties to cooperate to acquire permits and eventually improve the tunnel construction. This paper is broken up into three components, the legal issues, the physical development issues and the perception issues.

**Key Words:** Construction, Tunnel, Railroad Tracks, Feasibility

## Background

The initiative for this case study was to solve a problem that the majority of Cal Poly students who live South-West of the Union Pacific railroad tracks deal with everyday commuting to and from campus. This highly trafficked tunnel is currently not considered a legal passageway for students; it is a storm water culvert. However, due to a large percentage of Cal Poly students living on the South-West side of the railroad tracks, it has become the primary route for students to get to and from campus. There are multiple reasons why students have resorted to this unsafe and illegal route to campus, the main one being the closest legal railroad crossing is approximately 0.7 mile detour by foot.

After walking the site with Steve Hicks, a retired code officer who worked for the City of San Luis Obispo, I concluded there were multiple parties who had the rights to this property. Therefore, I decided to analyze the land entitlement processes and assess the feasibility of this project eventually getting to the construction phase.

## Objectives

The overall goal of this project is to provide an outline for someone lobbying for construction in this tunnel. If he/she wanted to start improvements, they should be able to pick up this paper and understand every major component that they would need to address to pull permits. The listed objectives are as follows:

- Identify all parties with ownership/rights to tunnel property
- Identify if the tunnel is legally allowed to be used by the public
- Address the feasibility of construction improvements in the tunnel
- Ask city to consider construction in tunnel

## Analysis

### *Legal Issues*

The legal issues related to this project are who owns the land, whether or not the public is legally allowed to use the land, and is the land owner legally obligated to improve this tunnel to current code standards. First, the land is owned by the railroad company, Union Pacific Railroad, 50 feet of centerline on both sides of the track. Due to the railroad company owning the property, anyone crossing through the tunnel is trespassing, and could be cited by railroad police. But, does the public have a legal claim to this property? After speaking with Adam Gower, a Real Estate Developer in San Luis Obispo, he informed me that the property may be protected to the public by Prescriptive Right. Prescriptive Right says that if the public uses private property for long enough, without being cited or escorted off, the land owner is legally required to grant the public prescriptive right to the property. A good example of this right would be if you owned beachfront property and surfers constantly walked through your property to get to the beach. However, since you no longer wanted the surfers to pass through your property, you put up a fence. If the surfers continue to pass through your property for 5 years without you doing anything about it, and then you decide to build a house on this lot, the surfers have a legal claim to your property as a public easement. You could then be prevented from building a house on your own property.

#### *Prescriptive Right Requirements:*

- Possession must be held either under a claim of right or color of title
- Possession must be actual, open, and notorious occupation of the property in such a manner as to constitute reasonable notice of that occupation to the record owner
- The occupation must be both exclusive and hostile to the title of the true owner
- Possession must be continuous and uninterrupted for at least five years

Prescriptive Right likely applies to the Cedar Creek railroad tunnel case. For over five years, this tunnel has been heavily trafficked by students, Union Pacific railroad is aware of students using this tunnel as a shortcut, and the property is open and notorious to the public. Therefore, if Union Pacific were to build a fence in front of the tunnel, the public would have a legal claim to a public easement through the tunnel.

Although the tunnel conceivably falls under the Prescriptive Right law, does this mean the railroad company is obligated to improve this area so it is up to current construction code? The answer is no. Because the land is private property, Union Pacific Railroad Company has no legal obligation to improve the undercrossing because the purpose of the undercrossing is strictly for drainage. If, the purpose of the undercrossing was for walking, they may be liable to improve it; however, in this case they are not liable.

#### *Case:*

In San Diego County a case occurred in the City of Encinitas. The local railroad company added an extra track which led to a lawsuit by the city. This settlement required that if the railroad company was going to add tracks, they needed to provide extra railroad crossings. However, unless a legal complaint were to force Union Pacific Railroad to improve construction of the undercrossing, it is unlikely it will ever happen.

### *Physical Development Issues*

Bryan Wheeler, Transportation Planner and Engineer for the city of San Luis Obispo stated the following regarding the physical development issues to the Cedar Creek railroad undercrossing:

- The need for the culvert to accommodate storm-water. High water in this culvert, as it is designed, would be problematic for pedestrians in a storm event. Accommodating access could create additional liability in such a storm event.
- For the design to be in compliance with ADA standards, both sides of the tunnel would require very large approach ramps. ADA requires a maximum rise of 1:12, with 5' landings every 30" of rise. For example, if

the ramps need to accommodate a tunnel 10' deep, that would be roughly 140' long. There is no suitable location for this ramp on the west side of the culvert. See guidelines here

- UPRR prohibits access on their property to keep people away from moving trains. Therefore, any access for pedestrians would need to be outside that area. The current Class I trail along the tracks is just outside this distance.

In addition to the three main physical impediments above, construction on the undercrossing is unlikely due to cost implications. In the San Diego County project, they excavated underneath the railroad tracks to create an ADA compliant undercrossing. The project cost was estimated to be \$5.5 million. The City of Encinitas paid for roughly 20% of the project, and San Diego County and State Government Grants took on the remaining 80% of the cost. Although this project is more extensive than what would be proposed at the Cedar Creek railroad undercrossing, it presents a valuable concern. A substantial amount of money would need to be raised, likely between \$1-\$3 million. Even if the cost impediments were overcome, it is very unlikely that Union Pacific Railroad would do any construction on because they don't have any incentive.

As stated, (Bryan Wheeler June 1, 2018), "Improvements to this culvert to bring it up to standards for pedestrian access make this option a non-starter. There is no incentive for UPRR to allow such additional access on their property, and it is unlikely they would approve additional access. The City and UPRR have focused on upgrading the current crossings at Foothill and adding an additional bridge crossing at Phillips Lane to the south to increase access across the UPRR tracks. Both of these projects are currently scheduled for construction in the summer of 2019."

#### *Parties Involved in Potential Construction:*

- Cedar Creek Apartments Association
  - Individually owned condos
- Union Pacific Railroad
- The City of San Luis Obispo
- Note: Caltrans is not an involved party because California Blvd is owned by The City of San Luis Obispo

Each separate entity would require permits for construction because construction would cross all three parties property lines. On the east side of the railroad tracks, the potential construction would connect with the bike bath, owned by the city, and on the west side of the railroad tracks, it would connect with the Cedar Creek parking lot. The other potential party involved would be the Pine Creek Apartment Complex, however, if designed correctly, the construction would never infringe on their property.

#### *Perception Issues*

Perception discusses the overall issue trying to be solved, which is developing a safe short route for students to go to and from campus. Cedar Creek Apartment residents, approximately 600 students, are the most directly affected by this shortcut, hundreds more students cross through this tunnel daily. When conducting an interview asking students at the Cedar Creek Apartments which route they took to school, 100% of students surveyed said they used the route that went through the railroad tunnel. If you compare the difference between the two routes, the route using the railroad tunnel is 0.2 miles to the Southwest corner of the Foothill Blvd and California Blvd intersection, where the alternative route takes 0.7 miles. By foot this is approximately a 10-15 minute detour, see appendix for visual.

#### *Potential Construction*

Adam Fukushima, a planner for The City of San Luis Obispo said, if San Luis Obispo received the right to pursue this the tunnel project, the way he would go about the project is by looking at the major constraints. The constraints he listed are as follows:

- Is the proposed location the best location, or is there a better area nearby to build a bridge or undercrossing that solves the same problem?

- After finalizing the location, develop a conceptual design and estimate
- Lastly, how would the project acquire sufficient funding?

## Conclusion and Future Research

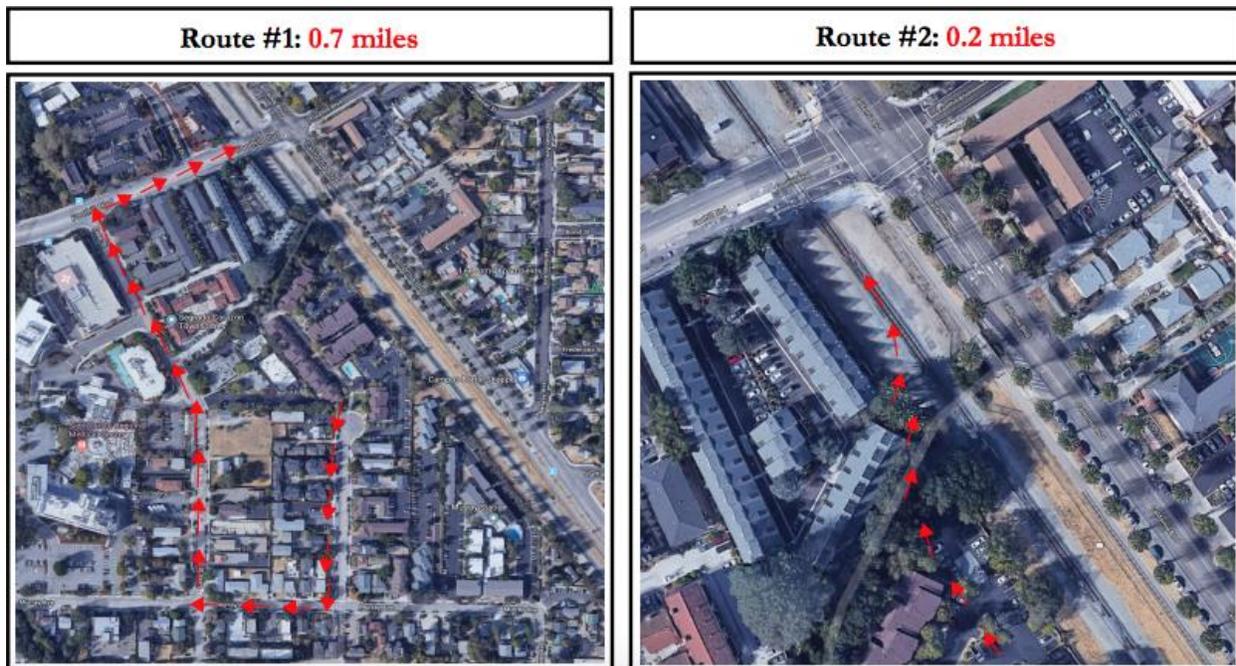
When taking into account the legal, physical development, and perception issues it is unlikely that construction improvements in the Cedar Creek railroad undercrossing will ever commence. Although, it is now known that the public likely has a legal right to use this route to cross underneath the railroad tracks, Union Pacific Railroad will probably prohibit any construction on the tunnel because there is no incentive for the company.

However, as seen in San Diego, the way to make a project like this happen is to get backing from a large entity. In the San Diego case, the city was the entity, in this case, Cal Poly should be the entity. As stated (Leah Castillo), this tunnel is known by the students of Cal Poly as “The Rape Tunnel,” something Cal Poly does not stand for. The University may be eager to get behind this project, and potentially help fund it. Cal Poly is an influential entity with the city, and likely Union Pacific Railroad. So, the next step in this project may be to develop University backing.

Future research may pursue Cal Poly’s Planning department to get an influential voice behind the project. It is probable that Cal Poly would get behind this project, as part of their goal as a university is to promote safety for its students.

## Appendix

### *Appendix A: The Two Routes to Cal Poly Campus*



## *Appendix B: Picture of Tunnel*



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