



North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, Ca 95482

NORTH COAST RAILROAD AUTHORITY (NCRA) BOARD OF DIRECTORS REGULAR BOARD MEETING

Wednesday, February 11, 2009~ **10:30**
Healdsburg City Council Chambers
401 Grove Street
Sonoma County

DRAFT MINUTES

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 10:35 a.m.

B. ROLL CALL

Directors Present: Simonson, Meyers, MacDonald, Kelley, Clendenen, Chairman Hemphill

Directors Absent: Colfax, Ollivier, Ziedrich

Also Present: Executive Director Mitch Stogner, Legal Counsel Christopher Neary, Project Manager Dave Anderson, Recording Secretary Heather Lindsteadt

C. AGENDA APPROVAL

Upon Motion by Director Meyers, seconded by Director Kelley the agenda was approved unanimously with the following change:

Item E. 3 was removed from the agenda.

D. PUBLIC COMMENT

No public comment

E. CONDUCT OF BUSINESS

1. Discussion and Possible Committee Appointments for Director Clendenen

Executive Director Stogner updated the Board on the vacancies left on the Policies and Procedures Committee and the Ad Hoc Port/Rail Committee with the resignation of John Woolley. He said that staff recommends appointing Director Clendenen to these two committees where vacancies currently exists.

Director Clendenen said he would accept the appointment to the vacant seats on the Ad Hoc Port/Rail Committee and the Policies and Procedures Committee.

Director Simonson motioned and Director Kelley seconded approval of appointment of Director Clendenen to the Policies and Procedures Committee and the Port/Rail Committee.

Director MacDonald asked for clarification of Ad Hoc and Standing Committees and asked if the Port/Rail Committee should be changed to Standing.

Legal Counsel said that the difference between the two designations is continuing jurisdiction over issues. He said that the designation of *Ad Hoc* is intended for a committee with a specific problem or task whereas the committees with the *Standing* designation are permanent committees specializing in the consideration of particular broad subjects and are required to follow requirements as outlined in the Brown Act. He also said that it is up to the committee to request designation of Standing vs. Ad Hoc.

Director Kelley requested that staff prepare a letter to the Harbor District communicating appointment of Director Clendenen and requesting reconfirmation of the designation of the Joint Port/Rail Committee.

Director MacDonald said that there was a preliminary discussion about the composition of the Operator Committee. He said that the Committee should be represented by one Director from each county. He recommended that the Board appoint Director Meyers to the Operator Committee. He also said that a Humboldt County member should be appointed to the Operator Committee.

Chairman Hemphill said that he is unsure of the need for the Operator Committee now that the Novato Lawsuit has been resolved. He said that he thinks the relationship between the NCRA and its Operator might be best served by involvement of the full Board and said the Board may want to consider dissolving the Operator Committee.

Director Meyers asked which entity would be involved in renegotiation of the NWP Lease Agreement and added that he thinks renegotiation of that agreement is the most important issue facing the NCRA.

Chairman Hemphill said that it should be a staff driven process with Board approval of the final amendments.

Director Kelley said that he thinks that the Operator Committee should continue to exist. He said that the Operator Committee may be of value to staff and could possibly handle some of the preliminary issues that may arise out of the discussions relative to the amendment of the agreement with NWP Co.

Director Meyers asked that the issue of the function of the Operator Committee be agendized for the March meeting and appointments to the Operator Committee be made at that time. He also reconfirmed his desire to be appointed to the committee.

Director Simonson motioned and Director Kelley seconded approval of appointment of Director Clendenen to the Policies and Procedures Committee and the Port/Rail Committee. Motion carried unanimously.

2. Discussion and Possible Action Regarding Recommendation to Sonoma County Mayors' and Councilmembers' Association for Selection of Cities' Representative Position on the NCRA Board of Directors.

Executive Director Stogner updated the Board on Director Ziedrich's term which will expire in March 2009. He said that the Sonoma County Mayors' and Councilmembers' association is scheduled to convene a meeting on February 12 at which time they will make a cities' representative appointment to NCRA's Board of Directors. He said that staff recommends that the Board advise the Mayors' and Councilmembers' Association of its desire to reappoint Director Ziedrich as the NCRA Cities' Representative.

Chairman Hemphill said that the process for selection of a cities' representative on the NCRA Board is not outlined in the bylaws or Government Code 93000. He said that Director Ziedrich is highly regarded and has an exceptional job filling the cities seat position left vacant by the departure of former Eureka Mayor, Peter LaValle.

Director Simonson said that under the normal rotation, it would be Mendocino County's turn to appoint a cities' representative but understands that NCRA is entering a crucial period with Operations resuming on the south end. He said that, under the circumstances, he thinks that Mendocino County would be amenable to allowing Sonoma County to make the selection.

Motion to approve the recommendation of Director Ziedrich as the Cities' Representative on the NCRA Board made by Director Simonson, seconded by Director Kelley.

Director MacDonald asked if there was any other interest in the position. He said that he wholeheartedly supports Director Ziedrich but said that he was disappointed that the Board was not continuing its rotation and added that he thought it was unusual that the Board would recommend or endorse anyone for a position on the Board.

Director Meyers said that he supports Director Ziedrich and appreciates his dedication to the Board. He said that he agreed with Director MacDonald that the appointment should be made by Mendocino County and said that NCRA's Government Code provision says that the Cities Representative is selected by the Cities being served by the rail line. He requested that the Bylaws be updated to clarify the process by which the appointment is made.

Director Kelley said that he agrees that the Bylaws should be amended to include the process by which the Cities' representative is appointed to the Board. He said that the Board should accept whatever appointment the Sonoma County Mayors' and Councilmembers' Association makes to the Board and not necessarily nominate a specific individual for that position.

Director Simonson motioned to amend the original motion to state that the Board supports the Sonoma County Mayors' and Councilmembers' Association appointment to the NCRA Board of Directors, seconded by Director Kelley approved by the following vote: **AYES: 5, NOES: 0, ABSTAIN: Meyers, ABSENT: Ziedrich, Colfax, Ollivier**

Chairman Hemphill requested that the issue relative to the process for selection of the Cities' Representative to the NCRA Board be a topic of future discussion by the Policies and Procedures Committee with the goal of a recommendation to the full Board.

4. Discussion and Possible Approval of Letter Reaffirming NCRA Adoption of City of Healdsburg's Beautification Lease (Foss Creek Trail) and Associated Amendment No.1.

Director Kelley updated the Board on the Property Committee's February 4, 2009 recommendation pertaining to the City of Healdsburg request for construction of Segment 5 of the Foss Creek Trail. He said that the Committee directed staff to prepare a letter addressed to the City of Healdsburg communicating the following:

1. NCRA reconfirmation of the lease agreement and associated amendments that expire in the year 2023 allowing construction of Segment 5 of the Foss Creek Trail ;
2. NCRA request that the City of Healdsburg work with NCRA Executive Director and Project Manager on construction and engineering issues;
3. that the City of Healdsburg be encourage to renegotiate the lease agreement if it desires at some point in the future;
4. that the City of Healdsburg seek PUC approval of the entire Foss Creek Trail;
5. and that NCRA will work with the City of Healdsburg to address any safety issues raised by the CPUC.

Director Kelley said that the draft letter fulfills the direction that the Property Committee gave to staff.

Director Meyers said that he wants the record to reflect that NCRA suggests that the City of Healdsburg seek approval of the Foss Creek Trail by the CPUC.

Director Kelley said that the sixth paragraph of the letter outlines NCRA's opinion on CPUC oversight of the trail.

Director MacDonald asked for clarification on the geographic area of the trail that NCRA has already approved, and asked if the City of Healdsburg planned extension of the trail beyond what the NCRA had already approved.

Legal Counsel Neary said that the Board approved the Foss Creek Trail in August 2006 and that the letter reconfirms that the Board has approved the lease. He added that the Eden Hosing application, which includes construction of Segment 5, can be approved administratively through the project engineer and executive director and there is no approval needed by the Board other than approval of the letter.

Public Comment on Agenda Item E.4

Bob Jehn – Mr. Jehn thanked the Board for its cooperative approach with the City of Healdsburg. He said that an integral part of the SMART plan is the pedestrian trail which will coincide with the Foss Creek Trail. He said that SMART recognizes that there may be safety issues with certain segments of the trail and those issues will be identified and addressed with the FRA and CPUC if necessary. He said that the FRA and CPUC were on the circulation list for the SMART EIR. He said the CPUC commented on the trail but only as it related to grade crossing safety along the line and the FRA did not comment.

John Williams – NWP Co. Mr. Williams said he attended the Property Committee meeting and said that the letter under consideration correctly relates the property Committee direction to staff. He said that his only issue is in paragraph 5 which deals with the future lease renegotiations. He said it is premature to discuss what may happen in 2023 because SMART is still in its planning stages and he is therefore unsure of the future capacity needs along the corridor.

Roger Grabber – Sebastopol Resident – he asked if SMART will assume all responsibility and liability in the event of an accident along the trail.

Paul Downing – Concerned Citizen – said he supports the NCRA’s mission and is anxiously awaiting the return of train service to the North Coast.

Mike Kirn – Public Works Director City of Healdsburg – Mr. Kirn thanked the Board and NCRA staff for preparing the letter. He said that the SMART EIR identified trail proximities of as close as 15 feet to the track. He said that the CPUC has had an opportunity to comment on the Foss Creek Trail and has raised no objections to date. He said that the City of Healdsburg will meet with the CPUC and discuss the safety of the trail. He requested that the Board not set a date that would limit the City from returning to the Board to renegotiate the lease agreement.

Director MacDonald asked if the City of Healdsburg understood that the CPUC may deny construction of the trail even after it is built. He also asked Mr. Kirn if the City has a plan in mind for renegotiation of the lease.

Mr. Kirn said that the City did not have any current plans to request lease renegotiation.

Director MacDonald asked if the language “at some time” could be inserted into paragraph 5 of the first paragraph so that it would read “Recognizing that a permanent commitment by the NCRA may *at some time* be desirable to Healdsburg,

Upon Motion by Director Kelley, seconded by Director Simonson the letter to the City of Healdsburg Council dated February 11, 2009 was approved with the wording change to paragraph 5 of “at some time” by the following vote: AYES: 6, NOES: 0, ABSTAIN: 0, ABSENT: Ziedrich, Colfax, Ollivier

F. CONSENT CALENDAR

1. Approval of Minutes - Regular Board Meeting – January 22, 2009
2. Acceptance of Property Committee Minutes – December 10, 2009
3. Acceptance of Financial Statements – January 2009
4. Approval of Warrants Issued - Agency 787010 – January 2009

5. Approval of Warrants Issued - TCRP 787101 – Janaruy2009
6. Approval of CalCard Statements - January 2009

Upon Motion by Director Meyers, seconded by Director Kelley, Consent Calendar items F.1 through F. 6 were approved with Director Myers amendments to the January 22 Regular Board Meeting Minutes as follows:

Page 2, last paragraph - strike "staff" and insert "the process", so that the sentence begins: Director MacDonald said that he feels that the process....

Page 3, Phil Dow - Similarly strike, in the 3rd line "staff", and replace it with "process", so the line begins: main issues is that the NCRA process did....

Page 3, 4th paragraph, regarding the Motion, please add, after "granted":
"in public by Mr. Williams"

Page 9 item K. There was no discussion of the possibility of NCRA initiating litigation, and so no announcement about it. Strike the words "and one issue of possible [sic] initiating of litigation"

John Williams provided the Board with a letter (hereby made part of these minutes by reference) prepared by his legal counsel Doug Bosco that disputed Director MacDonald's term "jointly and severally liable" for the costs associated with the Novato Settlement. Director MacDonald made his comments during the Board's discussion of the NWP Co. lease agreement on January 22.

Motion carried by the following vote: **AYES: 6, NOES: 0, ABSTAIN: 0, ABSENT:**
Ziedrich, Colfax, Ollivier

G. STAFF REPORTS

1. Executive Director – Mitch Stogner

A. Draft EIR Schedule

Executive Director Stogner said that release of the Draft EIR to the public will be March 9, 2009.

B. Draft Trail Guidelines

Mr. Stogner said that staff is targeting the April or May meeting to provide the revised draft guidelines to the Board. He added that NCRA is not in a rush to complete the guidelines.

C. SMART/NCRA Operating Agreement Meeting

Mr. Stogner said that NCRA will meet with SMART on February 18, 2009 to begin the discussions on the agreement.

D. Economic Stimulus Funding

Mr. Stogner said that the Senate Version of the bill included \$5.5 billion for infrastructure which includes funding for freight rail infrastructure. NCRA is requesting \$36 mil. to upgrade to Class II and III from Windsor to Willits.

Director MacDonald asked about the public meeting schedule for the comment period for the Draft EIR and also asked how long the comment period will be.

Executive Director Stogner said that there will be three public meetings over the course of the 45 day public comment period.

Public Comments for Agenda item G.1 - A through D

Mike Unis – Member of the Bicycle community in Sonoma County supported trail construction along the railroad right-of-way and suggested determining the set-back on a case by case basis rather than being a defined standard set-back.

Barbara Moulton – Friends of SMART – she said that there is a risk associated with everything we do in life and it is important to expand trails and bike paths so that we can continue to reduce green house gas emissions.

Kim Dow – she said that well designed rail with trails can dramatically reduce trespassing fatalities and reduce trespassing issues. She also requested that the Board adopt trail guidelines that will facilitate construction of trails.

Nadananda - She said that she is concerned that NCRA does not understand that it has to incorporate answers to the comments received by the public during the public comment period. She said she does not think that 45 days will be sufficient time to respond to comments. She also suggested conducting a meeting in Humboldt County even though the DEIR is for the Russian River Division.

Ray Holley – Voight Family Sculpture Foundation – He said that adopting guidelines that set a case-by case basis for a set-back would be preferable to adopting a restrictive set-back policy. He said that there is a growing concern that NCRA and NWP are anti trail. He said that SMART has supported the pathway as well as the municipalities that the rail line traverses. He requested that the Board discuss and adopt a pro trail policy at a future meeting.

Loretta Ellard reported that the MCOG Board voted to support the NCRA Economic Stimulus request for repair funds between Windsor and Willits.

Richard Peacock – Bicycle Shop owner – He thanked the Board for its continued efforts to resume freight service along the line. He said that in the event that there is an opportunity to approve trails along the right of way, NCRA should seriously consider it. He said that he looks forward to the adoption of less restrictive trail guidelines as well as the return of trains.

Christine Culver - Executive Director of the Sonoma County Bicycle Coalition - She said that CPUC staff attended the SMART working group regarding the trail guidelines and did not

raise any issues with the SMART trail. She said that it is important to the economic recovery of the area to get people out of their vehicles. She said that it will be difficult for NCRA to receive public support for the resumption of freight service if NCRA does not help the community with the trails. She requested a 30 day period for review of the revised draft guidelines that are scheduled to be released in May.

Gordon Neilson – Historical Society – thanked the Board for its efforts to resume freight service. He said that he was hopeful that freight service and trails could both be implemented.

Director Meyers said that he agrees with Christine Culver and said that the next guidelines should be provided at least 30 days in advance so that the Board and the public will have ample time for review and comment prior to adoption.

2. Project Manager – Dave Anderson

Dave Anderson presented the Board with a power point presentation updating the repair efforts along the right-of-way.

3. Legal Counsel - Chris Neary

No report

H. OPERATOR REPORT

1. NWP Co. – John Williams

No report

I. MATTERS FROM THE BOARD

Director Meyers requested copies of from other entities that entities that are similar to the lease agreement between NCRA and NWP Co.

The Board convened to Closed Session at 12:45 p.m.

J. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Government Code 54956.9 (a)(two cases)

- a. NWPY v. NCRA – Arbitration Pending Before Resolution Remedies
- b. Humboldt Baykeeper v. Union Pacific, CUE VI, NCRA; US District Court Case # 06-02560 JSW

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Government Code § 54956.8

Property: At-Grade Crossing MP 70.85

Negotiators: C.J. Neary, Mitch Stogner

Under Negotiation: Timing of negotiations, price, and terms.

K. ANNOUNCEMENT OUT OF CLOSED SESSION

The Board reconvened into Open Session at 1:50 p.m.

Legal Counsel Neary reported that the Board met in closed session on three items, received information and gave direction. No reportable action taken.

L. ANNOUNCEMENT OF NEXT MEETING

March 11, 2009 - 10:30 a.m.
Humboldt County Board of Supervisors Chambers
825 5th Street, Eureka

M. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 1:51 p.m.