

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

Wednesday, December 10, 2008 ~ **10:30**
Petaluma Community Center
320 North McDowell Blvd, Petaluma

DRAFT MINUTES

A. CALL TO ORDER

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

B. ROLL CALL

Directors Present: Ollivier, Simonson, Colfax, Kelley, Meyers, MacDonald, Ziedrich,
Chairman Hemphill

Directors Absent: None (1 Vacancy)

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

C. AGENDA APPROVAL

Agenda stood as presented.

D. PUBLIC COMMENT

Steve Birdlebough – Mr. Birdlebough updated the board on the Operation Lifesaver project and requested that the Board and the Operator begin to touch bases with cities, counties, and schools so that there is ample opportunity to educate the public on safety issues surrounding operation of freight trains.

Mike Pechner – Advisory Council Metropolitan Transportation Commission – Mr. Pechner said that MTC supports NCRA/SMART/and NWP Co. He said that NCRA should begin seeking funds for infrastructure improvements now because the funding is available. He said that a minor amount of funding would create jobs. He said that he would be pleased to volunteer some time toward Operation Lifesaver when the opportunity presents itself.

Chairman Hemphill said that NCRA has made a request for “stimulus finding” through Congressman Thompson’s office and hopes to be included in any transportation/stimulus funding that become available.

John Diamante – Mr. Diamante acknowledged the spirit of Hanna Burkhart and said that her diligent efforts toward restoration of the NWP should not be forgotten. He also said that he supports Operation Lifesaver and that it is very important to inform the community about railroad safety. He said that he is pleased that Measure Q approving the SMART tax was adopted on November 4.

Lillian Hames - General Manager SMART – Ms. Hames said that SMART is looking forward to working with the NCRA Board and Staff as both agencies begin work on the NWP line. She said that she is willing to return to the Board and provide updates. She said that SMART and

NCRA are trying to schedule a meeting for the beginning of the year so that the agencies can begin to work together on issues such as trails, vehicle selection, and the NCRA Operating Agreement.

Craig Harrington – Mr. Harrington said that the Property Committee met prior to the Board meeting and he wanted to be sure that the Board was aware of a letter that was sent to the Property Committee by the City of Healdsburg.

Roger Graeber – Mr. Graber said that the Board needs to pay close attention to the safety issues surrounding operations of trains.

Arnold Riebli –Chairman of the Board of Directors for Dairyman’s Feed. He thanked NCRA for reaching a compromise with the City of Novato and is pleased that the repair work can begin. He said that the North Coast needs to be able to compete in terms of feed transport costs and that trucking has become prohibitive for dairymen, egg producers and ranchers.

Executive Director Stogner told the Board that he has received letters of support for resumption of freight service from Dominic Grossi, Pete Oringer, Dean Glassier, Paul Pellegrini and others. These letters are hereby made part of these minutes by reference.

E. CONDUCT OF BUSINESS

1. Adoption of Sonoma County Resolution of Appreciation for Assemblymember Jared Huffman

Vice Chairman Kelley updated the Board on a Resolution of Appreciation for Assemblymember Huffman which was approved earlier by the on behalf of Sonoma County and the MCRA Board, He thanked Assemblymember Huffman for forging the settlement with Novato and playing a crucial role in passage of the SMART measure November 4. Chairman Hemphill

2. Discussion and Possible Approval of First Amendment to Bridge Financing and Security Agreement

Executive Director Stogner said that NCRA Legal Counsel and NWP Co. Legal Counsel have proposed an amendment to the Security Agreement that will address the additional responsibility that the Operator has assumed with the NCRA settlement of the Novato lawsuit. He said that the NCRA will be required to install quiet zones at 13 crossings in Novato, continuously weld the track through the City of Novato to reduce noise, install landscaping and fencing. He said that NCRA is required to supply the City of Novato with a mitigation fund for further noise mitigation as well as payment of the Novato attorney fees. He said that NWP Co. is financing all of the improvements as well as advancing the funds to pay the attorney fees. He said that the Operator currently provides \$20,000 per month to the NCRA agency and also provides a bridge loan that enables NCRA to comply with the Caltrans TCRP reimbursement process.

Legal Counsel Neary said that the Board had been emailed an updated version of the agreement and hoped that the directors had an opportunity to review the most current version. Legal Counsel Neary said the first component of the draft agreement is to provide security for a loan of \$325,000 that NWP Co. has provided NCRA to pay the City of Novato attorney fees. He said that as soon as the fees are paid to the City of Novato, NCRA can issue the trackway repair contract. He said that NCRA estimates the Quiet Zone costs at \$1.25 million. He said that NWP

Co. has agreed to pay that amount if NCRA is unsuccessful in obtaining ISTEA funding or some other source of funding to complete the work outlined in the settlement. He said that the agreement also calls for repayment of the funds to NWP Co.

Legal Counsel Neary said that NCRA pledged the railcars as security for the Bridge Loan. He said the railcars are declining in value and will not be sufficient collateral security given the additional responsibilities that NWP co. has assumed. He said that there are two other options for collateral, one is the actual rail line and one is the Ukiah Depot property. He said that NCRA has used the property as security in the past and could possibly use it as collateral again with a third deed of trust on the Ukiah Depot. He said that the time period is 5 years, and before 5 years is up, NCRA will have to identify a source to repay NWP Co.

Chairman Hemphill thanked legal counsel for the update and said that NCRA has had to move very quickly on the issue because of the importance of settling the Novato Lawsuit. He said he supports approval of the agreement.

John Williams, NWP Co., said that in order for NCRA to run trains it was important to settle the Novato lawsuit. He said that running trains is also very important to him. He said that the Novato lawsuit delayed repair for a year. He said that NWP Co has transferred \$325,000 to the City of Novato and needs sufficient security to ensure repayment of this loan. Mr. Williams outlined the outstanding funds that NCRA owes NWP Co.

Motion by Director Kelley to approve the "Agreement for Financing of Obligations Incurred under Marin Consent Decree, Collateral Security for said Financing, Additional Collateral Security for Financing under the Bridge Financing and Security Agreement, Hereto Entered into and Other Provisions" as per staff recommendation which was seconded by Director Simonson.

Director MacDonald asked Mr. Williams if he was changing the amount of interest that he is charging NCRA on the Advance Lease Payments that total \$520,000. He also said that on page 2 paragraph 5 of the Bridge Financing and Security Agreement dated September 2007 it states that interest is being charged on any loans including loans made before this agreement and any Advance Lease Payments, and that he was pleased that NCRA was not being charged interest on the \$20,000 monthly payments. He also asked when the Advance Lease Payments are to be repaid. Director MacDonald asked if NCRA had the ability to repay the loans and said that if not, it might be a good time to restructure the agreement in the event that NCRA can't repay according to the agreement.

Mr. Williams said those advances are interest free and said that the 2006 agreement covers the \$20,000 per month Lease Payments and said that he made an error in not charging interest in the original agreement.

Doug Bosco said that \$20,000 is an offset against future Lease Payments once the railroad is operating. He said that no provisions have been made to repay the \$20,000 once operations begin and said that it assumes that once operations begin, the payments to NCRA would stop immediately. He said that the \$20,000 payment will have to be discussed under another agreement.

Chair Hemphill said that the main reason for the agreement that is before the Board is to compensate NWP Co. for costs associated with the Settlement of the Novato Lawsuit. He said that it is a separate agreement from the other agreements that NCRA has entered into with NWP Co.

Director MacDonald said that for NCRA to assume another financial obligation at the current time may be unwise and he asked when discussions regarding the renegotiations of the original Lease Agreement with the Operator would take place. He asked if the ISTEA funds would fall under the provisions of the original agreement with the operator or the one that the Board is reviewing today. He also asked why the interest rate has gone from 5% to 8% in the current agreement. He asked Mr. Williams why NCRA should pay NWP Co. 8% when his cost is only 5%.

Legal Counsel Neary said that within the next few months, NCRA and NWP Co. would begin discussions regarding the original Lease Agreement and said that the Board is only reviewing a document that relates to the costs incurred because of the Novato Settlement. He also said that NCRA is securing the \$2 mil bridge financing used for the TCRP projects and said that NCRA will be awarding the Timber Bridge contract and the Trackway contract in 2009 and those are additional costs that are included in the agreement that were not accounted for in the original Bridge Financing and Security Agreement.

Director MacDonald said that the interest should have been discussed in Closed Session. He said that a locked in 8% interest rate is excessive when the current prime rate is 4%. He said he is unconformable approving the agreement. Director MacDonald said that, nevertheless, he appreciates John Williams being a reluctant banker.

Chair Hemphill said that NCRA had to fashion a settlement with the City of Novato and NWP Co. assumed a great deal of responsibility so that NCRA could settle and repairs could resume in the rail line.

Director Meyers said that the agreement that the Board is reviewing is not the agreement that was uploaded to the website or provided in the mailing. He said that the public has not been accurately informed on the item. He said that Government Code 93000, NCRA's enacting legislation, says nothing about using real property as collateral and asked legal counsel if NCRA was able to use real property as collateral. He said he was also concerned about the 8% interest. He pointed out that the 8% interest is a new topic and should have been discussed prior to the meeting.

Legal Counsel Neary said NCRA is able to use real property as collateral and security and referred to an opinion that was provided to Sonoma County on the subject.

Director Meyers said that Item 3 in the agreement reads "all funds loaned by NWP Co. to NCRA." He also said that staff did not provide the notes or the proposed deed of trust and said that he would like to see both of those documents before any agreement is acted upon. He said that NCRA has given 34 railcars and other equipment. He said that losing real property because of default is a much more serious situation. He suggested that wording be inserted into the agreement that would make it possible for NCRA to purchase the property back from NWP Co, in the event of a default, plus interest.

Doug Bosco said that the proposed agreement could be changed to read "all funds loaned by NWP Co. to NCRA hereunder" to avoid any confusion regarding previous agreements negotiated between NCRA and NWP Co.

Chairman Hemphill said that the Ukiah Depot was declared surplus and that no portion of the operating railroad or any property needed for train operations would be used for collateral.

Legal Counsel Neary said that it is possible to include a provision that says that NCRA can repurchase the property in the event of default, but that there is some urgency to approve the agreement today because the City of Novato needs to be paid so that NCRA can move forward with the track repair contract. He said that that type of redrafting would significantly delay award of the repair contract and asked Director Meyers to seriously consider that request. He also said that the City of Novato is capped at \$1.25 million and that they cannot charge incur more. He said that the only other fees that may be incurred are standard permit fees and inspection fees.

Doug Bosco said that a Redemption Provision diminishes the collateral because it makes it less worthwhile. He said that if there was a provision for NCRA to someday get the property back, it would make the property useless for future development.

Director Meyers also said that the agreement says that "NWP Co. at its sole discretion will determine if there is alternative funding for the improvements" and asked what criteria NWP Co. will accept. He also said that the Depot property should be second behind the railcars as collateral. He also asked staff how NCRA would be able to repay the loan within 5 years from the date of the agreement.

Legal Counsel said that the rail cars are not being considered under the agreement, only the Ukiah depot is being considered. He also said that NCRA can repay the note in 5 years because it will sell the Ukiah Depot property and use the proceeds from the sale to repay the loan. He said that the property has no use for rail operations either by NCRA or the Operator.

Director MacDonald said that the way he reads the agreement the Ukiah Depot not only applies to the agreement that is before them today, but also paragraph 4 states "it is also additional security under the Bridge Financing Agreement" and said that it does include the box cars and the Depot property. He suggested the word "additional" be inserted into the agreement.

Doug Bosco said that he will add into the note that NWP Co. must first levy against the box cars and equipment and then the Ukiah Depot property.

Director Meyers said that he believes that the Original Security Agreement and the Agreement before the Board are tied and he is looking forward to the renegotiation of the original agreement. He also said that there is a requirement to automate the Black Point Bridge and put in a one mile interchange track. He said that he found that peculiar and said it seemed that it has nothing to do with additional security and is unsure if it is appropriate to include that. He asked what would happen if NCRA did not receive the ISTEA funds.

Legal Counsel Neary said that the agreement only requires NCRA to develop an ISTEA project description, not receive the funds.

The issue was opened to the Public for comment.

Leishara Ward – CalTrans District 01 – She said that CalTrans has a difference of opinion about use of the Depot as collateral or security. She said that it is CalTrans opinion that NCRA cannot use the property as collateral and she said she suspects that Caltrans will object to use of the Depot for collateral.

Chairman Hemphill suggested amending the motion to move forward subject to review with the federal and state agencies.

Legal Counsel said that if the Board wanted to delay the trackway contract that would be an option.

Roger Graeber – He said that the NCRA was given an unfunded mandate to run a railroad. He said that with John Williams help, NCRA can achieve that goal and if it were not for NWP Co., NCRA would not be able to restart rail service on the NWP line.

David Keller – Former Petaluma Council Member and Bay Area Representative for Friends of the Eel River- He asked if the document that is under consideration is the same document that was included in the packet and if it includes the same language. He also asked if a copy of the Ukiah appraisal is available for public viewing. He also asked if there was a legal description of the Depot property available for public viewing. He said that the Board is going to vote on something that involves public property and he would like to see everything handled appropriately so that the public can be informed. He asked if notice has been provided to the City of Ukiah about use of the Ukiah Depot as collateral because the property is included in Ukiah's general plan.

The Board Secretary made copies for the public of the document titled “Agreement for Financing of Obligations Incurred under Marin Consent Decree, Collateral Security for said Financing, Additional Collateral Security for Financing under the Bridge Financing and Security Agreement, Hereto Entered into and Other Provisions” that was under consideration by the Board.

Loretta Ellard – MCOG – she said that she agreed with Leishara Ward and added that NCRA does need CTC and Caltrans approval. She suggested that there was a Brown Act violation. She said that page 2 of the agreement was missing from the website and she had no idea that another agreement was being presented for Board action. She also said that the Agenda description was inadequate and that it did not include mention of the Ukiah Depot as collateral for the new security agreement. Mrs. Ellard said that under Closed Session the board could discuss litigation, real estate negotiations and personnel contracts.

Legal Counsel Neary said that the Resurrection Agreement is a separate agreement from use of real property as collateral, and it is appropriate to discuss the Resurrection Agreement in closed session. He also said that the City of Ukiah will be taking the lead on how this property will be developed during the 5 year period. He said that he was confident that CalTrans legal and NCRA can resolve the issues related to disposal of the Ukiah Depot site. He said that he suggests that before the Board executes the Deed of Trust that discussions be entered into with Caltrans legal.

Motion to amend original Motion made by Director Meyers and accepted by Director Kelley, seconded by Director Simonson as follows: include the word “hereunder” in paragraph 3 and make approval of the Agreement for Financing of Obligations Incurred under Marin Consent Decree, Collateral Security for said Financing, Additional Collateral Security for Financing under the Bridge Financing and Security Agreement, Hereto Entered into and Other Provisions contingent upon Board approval of the Deed of Trust for the Ukiah Depot. Motion carried by the following vote: AYES: 6 NOES: 2 ABSTAIN: 0, ABSENT 0

David Schonbrunn: He congratulated the Board on approving the agreement. He said that if the he appreciates the attention to detail by the Directors from Novato and wished that the same attention would have been given to the City of Novato while they were suing the NCRA.

3. Election of Officers: Board Chairman and Vice Chairman

Upon Motion by Director Kelley, seconded by Director Simonson, Director Allan Hemphill was Elected Chairman of the NCRA Board of Directors.

Motion approved unanimously (8-0)

Upon Motion by Director MacDonald, seconded by Director Ziedrich Paul Kelley was Elected Vice Chairman of the NCRA Board of Directors.

Motion approved unanimously (8-0)

F. CONSENT CALENDAR

1. Approval of Minutes - Regular Board Meeting – November 12, 2008
2. Acceptance of Financial Statements – November 2008
3. Approval of Warrants Issued - Agency 787010 – November 2008
4. Approval of Warrants Issued - TCRP 787101 – November 2008
5. Approval of CalCard Statements – November 2008
6. Approval of Lease Extension – 419 Talmage Road, Ste M, Ukiah
7. Continuation of Tyris Temporary License Agreement pending adoption of revised property policy

Upon Motion by Director Ollivier, seconded by Director Ziedrich the Consent Calendar Items F.1 thorough F. 7 were approved including Director Meyers requested changes to Item F.1. Motion carried unanimously (8-0).

The Board convened to a 5 minute break.

G. STAFF REPORTS

1. Executive Director – Mitch Stogner

A. Draft EIR Schedule

Executive Director Stogner told the Board that the Russian River Division Draft EIR is undergoing last minute edits and finalization and should be released for public review. NCRA wants to get input from Caltrans and FHWA before release.

B. Draft Trail Guidelines Schedule

All comments have been collected and when the comments have been reviewed and the appropriate changes have been made, the Guidelines will be presented to the Board again perhaps as early as March 2009.

C. SMART/NCRA Operating Agreement Meeting

A meeting was scheduled with SMART but due to a conflict on SMART's end, the meeting had to be postponed.

D. ISTE A Funds Project Description

The Project Description for the ISTE A funds has been assembled. He said that the document is posted on the website.

E. Economic Stimulus Funding

A letter has been sent to Congressman Thompson with a copy to Senator Feinstein and Senator Boxer requesting Stimulus Funding.

Director Meyers asked where the 20% Local match will come from. Executive Director Stogner said that if NCRA is fortunate enough to have to find the 20%, NCRA hopes to work with the Operator to attain the local match.

Philip Sales – Alta Planning and Design – Mr. Sales said that Alta Planning is the author of the Rails with Trails Lessons Learned report and said that he thinks the 100 foot separation is too restrictive. Chris Culver gave him a handout. Said handout is hereby made part of these minutes by reference.

Director MacDonald asked Mr. Sales if there are any studies showing that by putting in a trail, the ROW becomes safer as opposed to no trail on the ROW.

Philip Sales said that there is a statistical analysis of fatalities on rails with trails but that he is not aware of a document that compares rails with trails vs. no trails.

2. Project Manager – Dave Anderson

Dave Anderson reported that SMART has hired a new Property Manager, Rob Krantz, and said that that the ability to work cooperatively with SMART on outstanding property issues has greatly improved. He said JARPA permit has been submitted along with the letter from SMART.

Mr. Anderson said that the bridge contractor is fully mobilized. He said that NCRA is in consultation with John Williams and Belfour Beatty on cash flow issues. He said that Belfour Beatty is on the rail reviewing on how they will proceed relative to the cash flow restrictions. He said that he is confident that the notice to proceed (NTP) can be issued soon.

He said he has sent comments to Shannon & Wilson n regarding their geotechnical report in the Canyon. He said he hopes to get a release schedule from Shannon & Wilson soon.

3. Legal Counsel - Chris Neary

Legal Counsel Neary said that representatives of the Sierra Northern Railroad has contacted NCRA regarding revisiting the current trackage rights agreement and he said he would keep the Board updated.

Director Meyers asked if Legal Counsel had a Closed Session report.

Director Kelley said that the Property Meeting met prior to the Board meeting. He said that the Property Committee ran out of time and was unable to discuss any Closed Session items and

asked legal counsel if that item could be discussed under the regular Board meeting Closed Session.

Legal Counsel Neary said that the item should be discussed in the Property Committee Closed Session and that it would not be appropriate to add it to the Closed Session of the current meeting.

H. OPERATOR REPORT

1. NWP Co. – John Williams

John Williams thanked the Board for approving the agreement earlier.

He also reported that he attended a safety meeting with the school bus drivers in the NCRA territory. He said that the meeting was premature and said that the safety meetings need to be conducted closer to a confirmed operations date.

He said that NWP Co. is the answer for NCRA's current financial situation. He said if the operator is successful, NCRA is successful, and the sooner trains are running, the better.

I. MATTERS FROM THE BOARD

Director Meyers asked if the state runs out of constructions funds what impact will that have on NCRA.

Executive Director Stogner said that NCRA has \$17 mil in TCRP funds available and those funds are constitutionally protected and added that it would take a 2/3 vote of the legislature to take those funds from NCRA.

Director Meyers asked what steps have been taken to have a back up copy of NCRA records. Legal Counsel Neary said that a document retention policy will be presented to the Board in 2009.

Director Meyers also said that he requested that staff present a way to save money and said that the Board should begin thinking about ways to save money such as reducing the stipends. He also requested staff add to the website how NCRA has spent the TCRP funds to date. He said that NCRA is a high risk grantee and asked what steps NCRA needs to take so that it can be removed from that designation.

Leishara Ward said that NCRA would have to have a relatively clean audit that addresses the issues that have been raised in previous audits. She said NCRA has made progress in this regard.

Executive Director Stogner said that NCRA is the landlord of 316 mile rail line, that NCRA has to complete an Environmental Consent Decree, that NCRA oversee a \$50 million Capital repair project, and NCRA gets zero taxpayer money to accomplish these tasks.

Director Meyers asked when the Single Year Audit (SYA) would be presented to the Board.

Executive Director Stogner said Aycock and Edgmon has begun its preliminary work and that Mustola Management will be helping finalize some of the financial statements and that the SYA should be complete soon.

Director Meyers said that John Woolley has resigned effective December 2, 2008 and he will be missed. Chair Hemphill and other Directors agreed that Director Woolley's departure would be a major loss to the NCRA, but noted that his work with Assemblyman Chesbro will also be a major asset to NCRA.

The Board convened into Closed Session at 1:50 p.m.

J. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL-Existing Litigation

Government Code 54956.9(a): (3 items)
NWPY v. NCRA-Arbitration, Pending before Resolution Remedies;
Humboldt Baykeeper v Union Pacific, pending in the US District Court;
Hight v. NCRA, Mendocino Superior Court Case #CV 80240;

2. CONFERENCE WITH REAL ESTATE NEGOTIATORS

Property: NWP line
Property Negotiators: Mitch Stogner, C.J. Neary
Under Negotiation: Amendments to Resurrection Agreement relating to changed conditions, terms of lease; interagency relationships; enforcement of mitigation measures
Negotiators NWP Co.

The Board reconvened into Open Session at 2:40 p.m.

K. ANNOUNCEMENT OUT OF CLOSED SESSION

The Board met with Counsel on 3 matters of litigation received information and gave direction. Also, the Board met with Counsel on one matter of real estate negotiation received information and gave direction. No reportable actions were taken.

L. ANNOUNCEMENT OF NEXT MEETING

January 22, 2009 – 10:30 a.m.
Mendocino County
Ukiah Valley Conference Center
200 S. School Street, Ukiah

M. ADJOURNMENT

Chair Hemphill adjourned the meeting at 2:43 p.m.