



MEMO

To: NCRA Board of Directors
From: Executive Director Mitch Stogner
Date: May 13, 2009
Subject: Agenda Item F.7- Discussion and Possible Adoption of Resolution No. 2009-04
A Resolution Regarding Ukiah Station

The City of Ukiah, the Mendocino Council of Governments, Caltrans and NCRA have all been supportive of federal Transportation Enhancement grant funding for the restoration of the historic Ukiah Rail Station.

As explained in the attached memo from legal counsel, proposed Resolution No. 2009-04 establishes, as a matter of policy, that the Ukiah Station property will be used in perpetuity for public transportation purposes. This should resolve any concerns the City of Ukiah, the MCOG, or CalTrans may have regarding future use of the Ukiah Rail Station, and should preserve all federal grant funding for the restoration of this historic building.

Staff Recommendation:

Support Resolution No. 2009-04 which will ensure that the historic Ukiah Depot Rail Station will remain in public ownership in perpetuity, to be used for public transportation purposes. These assurances should preserve grant funding dedicated to the restoration of this historic building.

CHRISTOPHER J. NEARY

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MEMORANDUM OF OPINION

TO: Board of Directors, North Coast Railroad Authority
FROM: Christopher J. Neary, General Counsel
NO: 2009-04
DATE: May 5, 2009
RE: Ukiah Station Site

Attached is a Resolution relating to the Ukiah Station site to be considered by the Board at its meeting on May 13, 2009 in Ukiah.

In January, the Board considered a draft Resolution to declare the Ukiah Freight Depot Property surplus. Officials from the Mendocino Council of Governments ("MCOG") objected because it was administering a grant to the City of Ukiah. The grant contained an assurance that:

"Project Administering Agency will maintain and operate the property acquired, developed, rehabilitated, or restored for the life of the resultant facility(ies) or activity. With the approval of the California Department of Transportation, the Administering Agency or its successors in interest in the property may transfer the responsibility to maintain and operate the property."

Apparently, the City of Ukiah has expended some grant funds and determined that the cost of rehabilitation will require more than is available by the grant. Therefore, the City of Ukiah Redevelopment Agency is considering using Redevelopment Agency funds to supplement the grant to complete the restoration of the historic station property.

The attached Resolution is designed to establish a deed restriction to establish the policy for the use of the Ukiah Station.

The proposed Resolution establishes as a matter of policy that the Ukiah Station property will be used in perpetuity for public transportation purposes. This deed restriction, while being broader than the grant assurance, is also in conformity with the CalTrans position that the Ukiah Freight Depot Property consisting of approximately eleven acres, including the Ukiah Station, or some portion thereof, is encumbered by a public transportation use restriction by reason of a Fund Transfer Agreement executed by NCRA in February 1996.

This Fund Transfer Agreement and its applicability is questioned in a Draft Opinion dated May 4, 2009. However, the Draft Opinion does recognize the possibility of the validity of an argument that Transit Capital Improvements Funds were used to acquire the Ukiah Station.

Without attempting to resolve that issue, it is proposed that NCRA establish as a matter of policy that NCRA is holding the Ukiah Station in perpetuity for public transportation purposes. This will resolve the concerns of CalTrans as it applies to the Ukiah Station property, and conform with all grant assurances.

The Draft Resolution also incorporates a staff recommendation that the staff be authorized under the direction of the NCRA Property Committee to enter into negotiations with the City of Ukiah through a mechanism to be negotiated to ensure that the City of Ukiah has long term control over the Ukiah Station in return for its maintenance and operation of the facility, once restored.

This could take the form of a outright deed, without consideration, or a long term lease. NCRA would protect the right of NCRA or SMART, or a future NCRA excursion operator, or other operator, to utilize the Ukiah Station as sublessee, or lessee, as the case may be, of the City of Ukiah.

Mitch Stogner and myself recommend the adoption of the attached Resolution.

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RESOLUTION
of the
BOARD OF DIRECTORS
of
NORTH COAST RAILROAD AUTHORITY

IN THE MATTER OF:
A Resolution regarding Ukiah Station.

Resolution No. 2009-D-R-A-F-T

WHEREAS, NORTH COAST RAILROAD AUTHORITY ("NCRA") is the owner of the Ukiah Station located 309 Perkins Street, Ukiah, California 95482, which station is a portion of the property described in that certain Deed to the Cloverdale and Ukiah Railroad Company by Deed recorded April 15, 1888 in Book 43 of Deeds at Page 420, Mendocino County Records, an approximate depiction of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and hereinafter referred to as the "Ukiah Station.";

WHEREAS, in April 2001, the City of Ukiah acting as agent for NCRA applied for a grant to rehabilitate the Ukiah Station. In connection with such application, the City of Ukiah has made certain assurances to the granting agency. Furthermore, the City of Ukiah has incurred certain expenses and anticipates incurring additional expenses in connection with the administration of the Rehabilitation Project;

WHEREAS, NCRA is desirous of establishing an enforceable mechanism to govern the assurances made by the City of Ukiah to its granting agency;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTH COAST RAILROAD AUTHORITY as follows:

1. As a matter of policy it is reaffirmed that the Ukiah Station is and shall be perpetually dedicated to public transportation purposes;

- 1 2. As a matter of policy the NCRA shall ensure that the Ukiah Station will be maintained and
2 operated for public transportation purposes. In the event NCRA transfers the responsibility
3 to maintain and operate the Ukiah Station, it shall obtain the prior approval of the State of
4 California, Department of Transportation ("CalTrans") and the California Transportation
5 Commission ("CTC"). CalTrans and the CTC shall have access to and the right to examine
6 all NCRA records, books, papers or documents related to the maintenance or operations of
7 the Ukiah Station;
- 8 3. NCRA shall ensure that the foregoing policy determination shall be binding upon successors
9 and assigns and encumbrancers by causing a Deed Restriction in the form as that attached
10 hereto as Exhibit "B" to be recorded and adhere to the title of the Ukiah Station;
- 11 4. In implementation of the foregoing policy determinations, NCRA staff, under the direction
12 of the NCRA Property Committee and subject to final approval of the California
13 Transportation Commission, is authorized and directed to enter into negotiations with the City
14 of Ukiah to: (a) entitle the City of Ukiah and/or the Ukiah Redevelopment Agency to exercise
15 long-term control over the Ukiah Station by long term lease, including sufficient parking for
16 permitted uses of the Ukiah Station and access thereto from Perkins Street; (b) ensure that any
17 such transfer effectuates the foregoing policy determinations; (c) that such long term lease
18 of the Ukiah Station for either less than fair market value, or for no monetary consideration,
19 shall contain satisfactory reservation for use by the NCRA, its contractors, or the owners or
20 operators under that certain Passenger Commute Service Easement recorded August 19, 1997
21 in Book 2347 at Page 486, Mendocino County Records.
- 22 5. Resolution No. 2009-01 adopted January 14, 2009 relating to a preliminary determination that
23 any portion of the property owned by NCRA in Ukiah, California is or may be surplus is
24 rescinded.

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1 Introduced and adopted this 13th day of May, 2009 at a regular meeting of the Board
2 of Directors of North Coast Railroad Authority at Ukiah, California by the following vote:

3 AYES:

4 NOES:

5 ABSENT:

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ALLAN HEMPHILL
Chairman of the Board of Directors
NORTH COAST RAILROAD AUTHORITY

8 Attest:

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MITCH STOIGNER
Secretary to the Board of Directors
NORTH COAST RAILROAD AUTHORITY

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EXHIBIT A

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

NORTH COAST RAILROAD AUTHORITY
c/o CHRISTOPHER J. NEARY
Attorney at Law
110 S. Main St., Ste. C
Willits, CA 95490

DEED RESTRICTION

NORTH COAST RAILROAD AUTHORITY hereby restricts the Ukiah Station as described in Exhibit "A" attached hereto and incorporated herein by this reference, to public transportation purposes in perpetuity.

NORTH COAST RAILROAD AUTHORITY

DATED: May 13, 2009

ALLAN HEMPHILL
Chairman of the Board of Directors

Attest:

MITCH STOGNER
Secretary to the Board

EXHIBIT "B"
Resolution 2009-D-R-A-F-T