

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

Wednesday, December 12, 2007 ~ **11:00**
Healdsburg City Council Chambers
401 Grove Street
Sonoma County

DRAFT Minutes

The following Directors will be attending the Board Meeting by teleconference from the following locations:

Director Bernard Meyers: 15 Malbert Road, Boston, MA

A. *CALL TO ORDER*

Chairman Hemphill called the meeting to order at 11:07 p.m.

B. *ROLL CALL*

Directors Present: Simonson, Ollivier, MacDonald, Ziedrich, Woolley (Woolley arrived at 11:30 a.m.), Chairman Hemphill
Directors Present by Teleconference: Meyers
Directors Absent: Kelley, Colfax

C. *AGENDA APPROVAL*

Upon Motion by Director Ziedrich, seconded by Director Ollivier, approved unanimously (6-0 – Woolley, Kelley, and Colfax Absent) the following corrections were made to the agenda:

Agenda Items H. 6 and H.7 – date was changed in Item Description and Recommendation to January 2008, rather than January 2007.

Announcement of Next Meeting was clarified. The January meeting has been scheduled for January 9 beginning at 1:00 p.m. at the Humboldt County Board of Supervisors Chambers – 825 5th Street, Eureka

D. *MATTERS FROM THE BOARD*

Director MacDonald asked that the Board be updated concerning the ownership of NWP Co., NCRA's Operator. He said he would like the owner, Mr. John Williams, to name NWP Co.'s that Mr. Williams' ownership team because composition of the company has changed since NCRA made the operator selection in September 2006.

Director Ziedrich said that he, Mitch Stogner and Dave Anderson will be meeting with the representatives of the City of Healdsburg regarding the Foss Creek Pathway expansion, and added that the current agreement between NCRA and the City of Healdsburg, for the Foss Creek Pathway, may need to be amended to include additional encroachment rights.

Director Meyers suggested adding the NCRA meeting backup material to the NCRA website.

E. CONSENT CALENDAR

- 1. Approval of Minutes Regular Board Meeting – October 10, 2007**
- 2. Approval of Minutes Special Board Meeting – November 1, 2007**
- 3. Approval of Minutes Policies and Procedures Committee – November 2, 2007**
- 4. Approval of Minutes Special Board Meeting – November 7, 2007**
- 5. Approval of Financial Statements - October 2007**
- 6. Approval of Financial Statements – November 2007**
- 7. Approval of Warrants Issued –October 2007**
- 8. Approval of Warrants Issued - November 2007**
- 9. Approval of Executive Director Expenses – October/November 2007**
- 10. Approval of Lease Extension – 419 Talmage Road, Suite M, Ukiah**
- 11. Approval of Compensation Increase – Mustola Management**
- 12. Approval of Board Meeting Schedule and Locations - 2008**

Upon Motion by Director Ollivier, seconded by Director Meyers (6-0, with Meyers abstaining from E.4, E.6, and E.8 and MacDonald abstaining from Item No.'s E.1 and E.5, and E.7, and Woolley, Kelley, and Colfax absent) Consent Calendar items E.10-E.12 were removed for additional discussion and separate action, and Item E.3 Policies and Procedures Meeting Minutes were accepted.

Agenda Item E.10 – Approval of Lease Extension – 419 Talmage Road, Suite M, Ukiah

Director Meyers asked Executive Director Stogner to clarify the lease premises. Mr. Stogner said that the lease extension is for the lease of the NCRA office in Ukiah. He said the lease extension includes a \$25.00 increase per month.

Upon Motion by Director Simonson, seconded by Director Ziedrich, approved unanimously (7-0 Kelley, Colfax absent) the Board approved the one year lease extension for the NCRA office located at 419 Talmage Road, Ste M, Ukiah.

Agenda Item E. 11 – Approval of Compensation Increase – Mustola Management

Director Meyers asked why the compensation increase was necessary. Mr. Stogner said that Mr. Mustola has had to expand his work scope to address delays in the finalization of the Caltrans follow-up Audit.

Upon Motion by Director Simonson, seconded by Director Ollivier, carried unanimously (7-0 Kelley, Colfax absent) the compensation increase of \$17,000 for Mustola Management was approved.

Agenda item E. 12 - Approval of Board Meeting Schedule and Locations – 2008

Director Meyers suggested the Marin County Board of Supervisors Chambers for NCRA’s April 08 and December 08 Board meeting in Marin County. He asked that the Board consider moving the April and December meeting to Marin rather than Southern Sonoma County.

Upon Motion by Director Ziedrich, seconded by Director Oliver, and carried unanimously (7-0 Kelley, Colfax absent) the NCRA Board Meeting schedule was approved along with the changes to meet in Marin County suggested by Director Meyers.

F. PUBLIC COMMENT

No Public Comment

G. PRESENTATIONS

No presentations

H. CONDUCT OF BUSINESS

1. Election of Officers 2008

Upon Nomination by Director Meyers, seconded by Director Woolley, and carried unanimously (7-0 Kelley, Colfax absent) Allan Hemphill was named Chairman of the NCRA Board of Directors for calendar 2008

Upon nomination by Director Ziedrich, seconded by Director Ollivier, and carried unanimously (7-0 Kelly, Colfax absent) John Woolley was elected Vice Chair of the NCRA Board of Directors calendar 2008.

2. Consideration and Possible Action Adoption of Committee Assignments 2008-2009
Recommendation: Adopt Committee Assignments as presented

Director Meyers said that he wanted to be appointed to the Operator Committee and detailed the qualifications he could bring to the committee. He said that he thought it would be good to have a Board Member from each county represented on each committee.

Chairman Hemphill said that to protect the Marin County Directors from a possible conflict relative to the litigation with the City of Novato, it would be best to wait until the litigation is complete before appointing Marin County members to the Operator Committee. He said that when the litigation with Novato is complete, he would recommend appointment of Marin County Directors to the Operator Committee.

Director MacDonald said that he supports Director Meyers’ position and said that he thinks that it is important for a Marin County member to be represented on the Operator Committee because future rail service will operate through Marin County.

A brief discussion ensued about the possible creation of an Executive Committee to oversee the Novato litigation. Legal Counsel Neary said that a newly formed Committee should be a standing committee so that litigation matters could be discussed in Closed Session if necessary.

Director Meyers said that he was the Novato Mayor twice and said that it troubles him that he is on the other side of litigation with the City of Novato, and said that he thinks he can offer assistance in reaching accommodation with the City of Novato relative to the lawsuit. He said that he will always act in the best interest of the NCRA whether it be with the City of Novato or any other issues confronting the NCRA.

Director Woolley said that he agrees with Chairman Hemphill and said that that it would be best to defer appointment to the Operator Committee until the lawsuit is resolved.

Director Ziedrich suggested that if the litigation with Novato goes longer than expected the creation of a separate committee should be revisited.

Upon Motion by Director Simonson, Seconded by Director Ziedrich, approved (7-0 Kelley, Colfax absent) the Board Directed Staff to bring the committee assignments to the Board no later than February 2008 at which time the status of the litigation with Novato will be clearer, and possible appointments to the Operator Committee can be considered.

3. Consideration and Possible Action Regarding Policies and Procedures Section 2000 Governmental Operations –sections 2301-2306 (c)

Policies and Procedures Committee Recommendation: Approve New Policies and Procedures Section 2000-2006 as Amended by Committee

Legal Counsel Neary updated the Board on the Policies and Procedures Committee discussion regarding a possible new policy regarding Closed Session. He said that the committee made recommended changes which are now being referred to.

Director Woolley said that section 2306 subsection (c) was discussed at great length at the Policies and Procedures committee and asked Legal Counsel to read into the record the amended section under consideration. Legal Counsel said that the policy addresses the possible situation of a Board member who has been accused of having a conflict of interest. He said that when the Board has an agenda item where a Director has a possible conflict, but the Director does not believe he or she has a conflict, this is one approach to resolving the impasse.

Director Woolley said that he cannot support section 2306 (c) as written and asked legal Counsel to explain the intended purpose of the proposed language.

Legal Counsel said that the Board can dictate their own rules regarding Closed Session. He said that the Fair Political Practices Commission (FPPC) has the final say on Conflicts-of-Interest issues involving members of state agencies like the NCRA..

Chairman Hemphill said that if there is even a question about a possible conflict, the Board would have authority to make a decision which could later be appealed.

Director Meyers suggested changing to read “No person other than a Director shall attend Closed Session by teleconference.” He said the Brown Act already provides sanctions if a Director allows a member of the public into Closed Session. He said that Director teleconferencing for Closed Session should be allowed for logistical and environmental reasons.

Director MacDonald agreed with Director Meyers and said security should not be a concern since Directors participating by teleconference know that the public is not allowed to attend Closed Session under the Brown Act.

Upon Motion by Director MacDonald seconded by Director Meyers, request to strike Section 2304 from the policy, motion failed (2-5 Colfax, Kelley absent)

Upon Motion by Director Woolley, seconded by Director Meyers, and approved (5-2 Meyers, MacDonald voting nay, Colfax, Kelly absent) Conduct of Closed Session sections 2301 through 2306 were approved and section 2306 (c) was removed from the policy and staff was directed to bring Section 2306 (c) back to the Board at a later date for possible approval.

4. Consideration and Possible Action Regarding Policies and Procedures Section 0500 Internal Controls - sections 0505.5-0505.5-9

Policies and Procedures Committee Recommendation: Approve New Policies and procedures section 0505.5-0505.5-9

Director Ziedrich asked that a copy of the Cal-Card statement be included in the Agenda each month.

Upon Motion by Director Woolley, seconded by Director MacDonald, and carried unanimously (7-0 Kelley, Colfax absent) Policies and Procedures Section 0505.5-0505.5- 9 was approved.

5. Consideration and Possible Action Regarding Approval of Extension of Temporary License – Tyris Corporation

Recommendation: Approve Temporary License with Tyris Corp for one year, new expiration date January 1, 2009.

Executive Director Stogner said that Tyris Corporation has requested an additional extension, for 1 year, of its temporary license agreement for private crossing so that the company can continue the studies and plans and permitting for its development in Cloverdale. He said that the intent is to have Tyris Corp present to the Board its plans for expanded, permanent usage of NCRA property crossings required for the development after it has secured the necessary permits and construction activities.

Upon motion by Director Ziedrich, seconded by Director Ollivier, and carried unanimously (7-0 Kelley and Colfax absent) the Board approved a one year extension of the temporary license agreement with Tyris Cop for one temporary crossing. The temporary agreement is valid from January 1, 2008 to December 30, 2008 and the compensation associated with this temporary crossing license is \$3,000.

6. Consideration and Possible Action Regarding Approval of Resolution for January 2008 CTC Application for TCRP Project 32.3

Recommendation: Approve Resolution for January 2008 CTC Application for Project 32.3

Executive Director Stogner summarized the TCRP application for Project 32.3 that is under consideration.

Director Myers asked NCRA Staff to clarify the term “accelerated deterioration” that is used in the resolution. NCRA Project Manager Dave Anderson said that because of the December 2005/January 2006 storms, there were severe damages to the rail that were not included in the 2006 Capital Assessment Report.

Director Meyers asked about the status of the MOU’s with the City of Petaluma and the City of Santa Rosa. Mr. Anderson said that the City of Santa Rosa asked for additional signal preemption and that NCRA is working on getting the agreement in writing to outline the costs associated with the project. He said that NCRA has received Petaluma’s comments on the draft MOU.

Director Meyers asked a variety of questions related to the TCRP application relative to dollar amounts that are used in the application, environmental requirements, and also NCRA’s ability to obtain an advance of funds under the TCRP project.

Upon Motion by Director Woolley, seconded by Director Ollivier, approved (7-0 Kelley, Colfax absent) the Board approved resolution number 2007-A as presented.

7. Consideration and Possible Action Regarding Approval of Resolution for January 2008 CTC Application for TCRP Project 32.9

Recommendation: Approve Resolution for January 2008 CTC Application for Project 32.9

Executive Director Stogner summarized the TCRP application for Project 32.9 that is under consideration.

Upon Motion by Director Woolley, seconded by Director Ziedrich, approved 7-0 Kelley, Colfax absent) the Board approved resolution number 2007-B as presented.

8. Discussion and Possible Action Regarding Humboldt Bay Harbor, Recreation & Conservation District - Draft Redwood Marine Terminal Feasibility Study

Director Woolley updated staff and the Board on the recent Redwood Marin Terminal Feasibility Study that the Humboldt Bay Harbor, Recreation & Conservation District recently completed. He requested Staff to review the study and present comments to the Board of ratification at the January 9, 2008 NCRA Board meeting in Humboldt County.

Director MacDonald asked if Staff could contact Humboldt Bay Harbor, Recreation & Conservation District and possibly schedule a presentation on the Redwood Marine Terminal Feasibility Study for the January Board Meeting.

Upon Motion by Director Ollivier, seconded by Director Woolley, approved (7-0 Kelley, Colfax absent) the Board directed Staff to review the Draft Redwood Marin Terminal

Feasibility Study, prepare comments, and present comments to the Board for ratification at the January 9, 2008 NCRA Board meeting.

I. STAFF REPORTS

1. Executive Director – Mitch Stogner

a. Upcoming CTC Meetings

Executive Director Stogner said that NCRA will be attending the CTC meeting in Sacramento on December 13 to seek funding for the Schellville in-kind track rehabilitation project.

b. Signatures on Invoices

Mr. Stogner asked that two Directors make themselves available after each meeting to sign invoices in accordance with NCRA Policies and Procedures.

2. Project Manager – Dave Anderson

Mr. Anderson presented a power point presentation summarizing the construction efforts along the NWP to the Board.

3. Legal Counsel - Chris Neary

J. OPERATOR REPORT

1. NWP CO. - John H. Williams

No Report

Chairman Hemphill adjourned the meeting into Closed Session at 2:00 p.m. Director Meyers leaves the meeting at 2:02 p.m.

K. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (2 cases)

Government Code 54656.9(a)

(1) NWPY vs. NCRA

(2) City of Novato vs. NCRA; Superior Court of California, County of Marin; case # CV074645

2. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Initiation of Litigation, Government Code 54956.9 9 subdivision c; (one case)

L. ANNOUNCEMENT OUT OF CLOSED SESSION

The Board met with Legal Counsel, received information and gave direction on two items of existing litigation and one item of anticipated litigation. The Board took action, Director MacDonald abstaining, to reject the settlement proposal with the City of Novato.

M. ANNOUNCEMENT OF NEXT MEETING

January 9, 2008– 1:00 p.m.
Humboldt County Board of Supervisors Chambers
825 5th Street, Eureka

N. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 3:25