

**NORTH COAST RAILROAD AUTHORITY (NCRA)
POLICIES AND PROCEDURES COMMITTEE MEETING**

Friday, November 2, 2007

3:00 p.m.

Conference Call

Various Locations

DRAFT Minutes

Public Participation Locations:

NCRA Office: 419 Talmage Road, Suite M, Ukiah, Ca

**Alternate Public Participation Locations – The Following Committee Members will have
Conference Call Availability:**

John Woolley: 825 5th Street, Room #111, Eureka, Ca

Allan Hemphill: 137 Porterfield, Cloverdale, Ca

Tom MacDonald: 500 Davidson Street, Novato, Ca

Bernie Meyers: 500 Davidson Street, Novato, Ca

A. CALL TO ORDER

Director Woolley called the meeting to order at 3:03

B. ROLL CALL

Directors Present: Woolley (Chair), Hemphill, MacDonald, Meyers.

Directors Absent: None

Also Present: *Executive* Director Mitch Stogner, Legal Counsel Chris Neary, Recording Secretary Heather Lindsteadt

C. AGENDA APPROVAL

Agenda Stood As Presented

D. CONDUCT OF BUSINESS

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

Executive Director Stogner said that NCRA needs to establish closed session teleconferencing policies and procedures and asked if any of the Committee Members had any questions regarding the policy that was included in their packet.

Section 2301 – Attendance at Closed Session

Director MacDonald asked whether the policy under consideration related to Committee Meetings as well as full Board meetings. Legal Counsel Neary said that it would only apply to NCRA Board meetings.

Section 2302 – Litigation Sessions

Director Meyers said that the section may want to be broadened because the Board may need to have additional people in Closed Session.

Legal Counsel said that the Brown Act specifically covers who can be present in Closed Sessions.

Director MacDonald said that the policy should state that if someone other than a Director or Staff is included in Closed Session for a specific reason, the person should be excused when that item is concluded.

Section 2303 - Real Estate Negotiations

Section 2303 stood as presented

Upon Motion by Director Hemphill, seconded by Director MacDonald, and carried unanimously (4-0-0) the heading for Section 2300 was changed to “Conduct of Closed Session for Closed Session Board Meetings and Standing Committee Meetings”, 2301 heading was changes to “Attendance at Closed Session Meetings of the Board and Committee Meetings”, and Sections 2302 and 2303 were approved as presented.

Section 2304 – Attendance by Teleconference

Legal Counsel Neary updated the committee on the reasons that the new Policies and Procedures were needed. He said that there is not assurance of confidentiality during teleconference Closed Session and also there have been instances of confusion resulting from Board Members attending a Closed Session meeting from a remote location. He added that this policy will help NCRA to have better control over the security of Closed Session.

Director Meyers said that all Board Members should be able to attend both Open Session and Closed Session by teleconference because some Directors would have to travel so far to attend a meeting. He said that because NCRA has jurisdiction through 4 Counties he may find it difficult to travel to Humboldt County and even Mendocino County because of the distance. He said that he understands that Closed Session is private and privileged and anyone who participates in Closed Session conversations will be in violation of the Brown Act if any confidential information is repeated to any member of the public. He suggested the language be changed to “all Board Members are automatically authorized unless they are disqualified under Section 2306.”

Director Woolley said that the proposed language in Section 2304 has not excluded Board Members from participating in Closed Session. He added that NCRA needs to have the flexibility to conduct a Closed Session meeting by teleconference if the need arises.

Director MacDonald said that he does not think that Section 2304 offers any flexibility in Board Member participation in Closed Session because the Board would have to meet to take action on

whether or not to allow participation during Closed Session by teleconference. He added that he does not agree that the policy is about security.

Legal Counsel said that the policy is written to provide flexibility. He added that there may be times that the Board has to meet because of emergencies and issues that require immediate attention. He said the policy is written so that, by majority vote, the Board can waive the policy in cases of emergencies.

Chairman Hemphill said that he has received comments from Directors who do not feel comfortable conducting Closed Session by teleconference. He said that when members are appointed to the Board of Directors they should know that NCRA covers a large geographic area and that every attempt is made to conduct meetings in each county so that the burden of travel does not fall unevenly upon select members. He also asked the Marin County Board Members if they planned to attend the Humboldt and Mendocino County NCRA Board meetings.

Director Meyers and Director MacDonald said that they hope to be able to physically attend all meetings at all locations.

Legal Counsel Neary said that the policy is written so that attendance to Closed Session by teleconference would be the exception rather than the rule. He added that the policy serves as advanced notice to the Board Members that if they would like to participate in Closed Session they can make arrangements to attend the meeting in person, or would have to depend on a majority vote of the Board authorizing them to attend the Closed Session by teleconference.

Upon Motion by Director MacDonald, seconded by Director Meyers, Section 2304 should be stricken from the Policy. Motion failed. (2-2, Hemphill, Woolley dissenting).

Director Woolley added that the Policy should be agendaized for full Board discussion at the next regularly scheduled Board Meeting.

Section 2305 – Minutes of Closed Session

Director Meyers asked if Section 2305 was the policy that NCRA currently followed.

Legal Counsel Neary said that it is the decision of the Special District to audio tape Closed Sessions. He said that it is important to tape the meetings so that there is a record of the meeting in the event of a Brown Act violation. He said that many important decisions are made during Closed Session and the tape will always be an accurate record of the proceedings. Mr. Neary said that it also serves as an inducement for the Board to not deviate from the topic of agendaized items. He said that there are no written minutes of Closed Session meetings.

Director Woolley said that in his experience with the Humboldt County Board of Supervisors, Legal Counsel takes notes of the Closed Session and the minutes are only the action that is reported under announcement out of Closed Session. He said he prefers to have to taped minutes and the only minutes that should be taken are those needed for announcement out of Closed Session.

Director MacDonald asked if the Closed Session Minutes are destroyed after 120 days. He said that prior to the tapes being destroyed, limited minutes should be transcribed and approved.

Upon motion by Director Meyers, seconded by Chairman Hemphill, and carried (3-1, Woolley abstaining) Section 2305 was approved as presented.

Section 2306 - Exclusion of Members

Director Meyers expressed concern that the Policy, as written, does not offer protection to the Director against accusations of conflict of interest. He said that it would be beneficial to state in the policy that the Director may have the opportunity to refute the accusations.

Director MacDonald said that if such an instance arises, it may be necessary to add language that gives Directors the opportunity to challenge a conflict-of-interest claim made by the public or an individual Board Director.

Upon Motion by Director Meyers, seconded by Director Hemphill, and approved by roll (3-1), Woolley abstaining) Section 2306 was amended to read “In the event any member is stated by any person to have a conflict of interest, either in Open or Closed Session, and such member refuses to exercise voluntary recusal, the issue of recusal shall be determined, when the exigencies of the situation require it, by action of the Board of Directors, after the accused member has an opportunity to address alleged conflict, which action shall be announced in open session at the conclusion of the meeting and noted in the record. In such event, the excluded member shall have the sole responsibility for stating the nature of the conflict upon the record when the meeting reconvenes in open session, or at the commencement of the next meeting.”

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

Upon Motion by Director Meyers, seconded by Director MacDonald, and carried unanimously (4-0-0) New Policies and Procedures Section 0505.5-0505.5-9 Cal Card Usage and Policy was approved.

3. Consideration and Possible Action Regarding Board Meeting Locations

The Committee gave staff direction to schedule the locations of the meetings evenly between Marin, Sonoma, Mendocino, and Humboldt Counties.

E. STAFF REPORTS

1. Executive Director – Mitch Stogner

No Report

2. Legal Counsel - Chris Neary

No Report

F. ANNOUNCEMENT OF NEXT MEETING

November 14, 2007
Willits City Council Chambers

111 E. Commercial Street
Mendocino County

G. ADJOURNMENT

Director Woolley adjourned the meeting at 4:25 p.m.