

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

Wednesday, August 13, 2008 ~ **10:00**  
Humboldt County Board of Supervisors Chambers  
825 5<sup>th</sup> Street  
Eureka

### Draft Minutes

**A. CALL TO ORDER**

Chairman Hemphill called the meeting to order at 10:03 a.m.

**B. ROLL CALL**

**Directors Present:** Simonson, Kelley, Ollivier, MacDonald, Meyers, Woolley, Chairman Hemphill

**Directors Absent:** Ziedrich, Colfax

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

**C. AGENDA APPROVAL**

Agenda stood as presented

**D. PUBLIC COMMENT**

**Marcus Brown - Timber Heritage Association** - Mr. Brown thanked the Board for its ongoing support of the Timber Heritage Association. He said that he is currently working with American Rail Consultants in an effort to get NCRA owned equipment to Humboldt County to get the vegetation and brush cleared off of the line.

Director Woolley said that funding still needs to be addressed because the equipment costs money to operate. He asked Mr. Brown to help in the fundraising efforts as well as to help organize volunteers to assist with the effort.

**Kaye Strickland – RAPIT** – Mrs. Strickland thanked Dave Hull for his continued support for the Redwood Dock and the Port. She said that Mr. Hull has prepared a PowerPoint presentation that is a good resource and she said that she hopes everyone has an opportunity to view the presentation. She also said that the Waste Management Authority is beginning discussions to possibly reopen the Cummins Landfill because the cost of shipping the waste out of Humboldt County is expensive and inefficient.

**Jeremy Mills** – Mr. Mills asked the Board to explain the plan for repair of the Eel River Canyon and the timeline for the repairs. He asked the Board to take into consideration the social economics as well as the environmental impacts with respect to repairs in the Eel River Canyon.

Chairman Hemphill said that NCRA was created with a mandate to restore rail service on the entire 316 mile rail line. He said the three hurdles that need to be overcome are economic viability, environmental studies, and identification of funds for the project.

**Chris Rawl – Greenwheels-** Mr. Rawl said that he attended a Port Development Meeting and said that some questions were posed that directly involved NCRA. He asked why NCRA did not participate in the forum and also why NCRA has not publicly stated its intentions for the Eel River Canyon and the timeline for resumption of rail service in Humboldt County.

**Melvin McKinney** – Mr. McKinney asked for a status update on the King Salmon Levee repair. He said that NCRA needs to make clear that it has been in regular communication with the Harbor District on this and other potential projects.

**Rondal Snodgrass** – Mr. Snodgrass expressed disappointment that the NCRA did not place the issue of Port Development on the agenda. He said that the Harbor District reported that it is taking the lead for NCRA in the negotiations with Goldman Sachs. He said that the rail is absolutely essential for the partnership to prosper. He encouraged the Board to have more public participation in the negotiations with Goldman Sachs. Mr. Snodgrass asked if NWP Co. Could negotiate directly with a corporate entity to transfer its lease, and asked if NCRA or the public would have any oversight of that process.

**Tom Brundage – Arcata Resident** – Mr. Brundage asked if Director MacDonald could report on the forum that was held the previous evening because he was in attendance.

*Verbatim upon request of NCRA Director*

**Maggie Herbelin** – Coordinator of the Humboldt Bay Stewarts and I put together the forum that everyone is speaking about last night. I wasn't going to speak today but one of the comments that was brought up I think is important to know that I did contact first Tom MacDonald and asked him if he would be willing to come and speak about what was going on with the NCRA and Port Development at our forum last night. He said he didn't think that was appropriate but that I should call Mitch Stogner. I called Mitch and his comment to me was "I do not know anything about this, the port has never contacted us" and so then he added "I will call Dave Hull and find out what he would like us to do." And then I got an email from him saying that he was going to be otherwise occupied and not to consider him for being at the forum. So we have tried in many ways to bring forward the issue and concern about how the NCRA's railroad is going to interface with this project and it is a very big thing for Humboldt Bay to take on so I think it is really important that if it is not on the agenda today that it starts to come forward. I am also very curious about the issue of the Operator being able to negotiate without the NCRA Board and the public being involved because I have also heard a rumor that that is what is going on. So please take all of this into consideration and let's go forward in an open manner so we are on the same page and everybody is working in the same direction.

**Patricia Daly** – Mrs. Daly said that the rail opponents are ignoring Humboldt County's transit needs. She said that the railroad would bring Humboldt County economic relief by providing jobs and alternate shipping opportunities.

**Lawrence Labranche** – Mr. Labranche said that Eureka is currently receiving shipments of gasoline via barge and said that he supports NCRA's efforts to restore rail service.

**Dave Spreen** – Mr. Spreen said that the Humboldt County Grand Jury decided that the Harbor District made inappropriate loans to the NCRA and he also said that he felt that the Harbor District had no right to loan NCRA money.

**Marcus Brown – Timber Heritage Association** – Mr. Brown said that he is tiring of the verbal tongue lashing that NCRA receives and said that NCRA was created with no funding and was destined to fail without adequate operational funding. He thanked the NCRA Board for its continued efforts and perseverance in light of all of the obstacles.

**Pete Oringer** – Mr. Oringer said that he completely agrees with Marcus Brown and Patricia Daly and thanked the Board and said that he supports NCRA's efforts.

Chairman Hemphill said that NCRA and the Harbor District have been strategic partners and will continue to be strategic partners. He said that the Harbor District has helped NCRA. He said that NCRA makes its own decisions and when NCRA needs to become involved with the development proposal by Goldman Sachs, it will. He said that these issues will be addressed openly when the harbor District makes its final decisions and invites NCRA input.

## **G. CONDUCT OF BUSINESS**

### **1. Consideration and Possible Action Regarding NCRA Trail Guidelines.**

Executive Director Stogner said that NWP Co. has authored proposed guidelines that deal with trails along the railroad right-of-way. He said that the goal of the guidelines was to ensure operational efficiency and safety. Mr. Stogner said that Mr. Williams has had discussions with the PUC related to the safety standards and guidelines. He suggested the adoption of a comment period so that organizations and individuals would have an opportunity to review and make suggestions.

John Williams said that the guidelines are an important step to in establishing trail standards for any trail proposed along the railroad right-of-way. He said that the proposed guidelines address safety, liability and capacity that the Board could effectively administer. Mr. Williams said that in developing his recommendations, he researched trail suggestions made by the FRA, PUC, and Rails-with-Trails Conservancy, Americantrails.org, Union Pacific and Burlington Northern Santa Fe. He said that BNSF and UP prohibit trails on any active right-of-way. He said he also reviewed the Metrolink rail trail design guidelines.

Mr. Williams said that after review of all of the aforementioned documents he compiled the information and prepared the trail guidelines. Mr. Williams said that the purpose of the guidelines is to provide minimum standards and general requirements for the Design, Safety, Construction, Operations, and Maintenance of trails on the NWP rail line in a manner that is compatible with the safe operation within NCRA owned and used right-of-way. Mr. Williams provided photos of railroad accidents. He said that when a train derailed, it can throw a railcar 75 feet or more away from the tracks. Mr. Williams said that the California Public Utilities Commission (PUC) has an interest in the safety implications of any trail proposal along the rail line. He provided a letter from the PUC which said that the PUC will carefully scrutinize all impacts including the safety of a trail project on the right-of-way.

Director Meyers requested that Mr. Williams list all the references used to create the trail guidelines. He requested that NCRA Legal Counsel review the documents. He also said that he will send additional suggestions to the Board Clerk for distribution to the Executive Director and Mr. Williams.

Director MacDonald asked if NCRA Legal Counsel and NWP CO. Legal Counsel and NCRA Project Manager had reviewed the guidelines. He said that in a letter that was sent from Lillian Hames, Executive Director of SMART, it stated that NCRA has no right to impose the guidelines on the SMART owned right-of-way. Director MacDonald asked Legal Counsel to clarify the issues cited in the letter from SMART to the Executive Director.

Legal Counsel Neary said that the issue will require more substantial analysis. Mr. Neary also said that the guidelines are basically an initial draft outline of how trails can be introduced in harmony with freight operations. He also said that the issue would be a discussion item in the SMART/NCRA Operating Agreement negotiations.

Director MacDonald said that he understands that NCRA has not finalized an opinion on the issue. He said that in Sonoma and Marin this issue is extremely important in the context of the SMART proposal which will appear on the November 4 ballot in Marin and Sonoma Counties. He also said that the guidelines mention areas where trains run at 80 miles an hour or more. He asked if NCRA was planning on running freight trains at 80 miles per hour.

Mr. Williams said that from Healdsburg to Cloverdale, SMART plans to operate trains at 80 mile per hour on NCRA owned property, which is why the guidelines are relevant for this section of track.

Director Woolley said that it is important that the public have an opportunity to comment on the proposed trail guidelines.

Director Kelley said that he agrees that public comment is important prior to Board approval of the trail guidelines.

Director Simonson said that he agrees that the required clearances increase with increases in speed. He also said that he has personally seen several instances where people try to hop onto slow moving trains, which he said is extremely dangerous. He said that anything that permits people to get close to a train is a serious issue.

Chairman Hemphill said that it is important that the guidelines address safety first and foremost.

Mr. Williams asked the Board not to approve future requests for public trails along NCRA right-of-way until safety guidelines have been adopted by the Board.

Chairman Hemphill agreed with Mr. Williams and asked if there was any public comment on the issue.

**John Schafer – Arcata Resident** – he said that he believed the proposed guidelines were overly restrictive and urged the Board to delay adoption until the public is given the opportunity to comment.

**Chris Rawl – Greenwheels** – he requested more time for review and he said that the set-back seemed to be extremely restrictive. He also requested that NCRA cooperate with SMART because Sonoma and Marin need rails as well. He said he understands the safety issues but that NCRA needs to analyze how often trains derail and carefully weigh the relative risks and benefits.

**Kaye Strickland – RAPIT** – she said that safety of a trail is paramount and she said that RAPIT has never opposed trails as long as the trail is properly located, safe, and multi-modal.

**Rondal Snodgrass – Bayside** – He asked for a definition of an “inactive line” under federal law. He said that there should be a definition inserted into the guidelines that covers that issue. He said he has not seen any trains for a long time and said that it is important that the issue of “active status vs. inactive status” be covered.

**Lawrence Labranch** – He said that the guidelines seem to be overly restrictive.

Director Kelley requested a 60 day review period so that NCRA can solicit comments.

Director Meyer said that he agreed with Director Kelley and said that the guidelines should be added to the NCRA website. He said that perhaps the experience of other short line railroads could give guidance to the NCRA in terms of appropriate setbacks.

Upon Motion by Director Kelley, seconded by Director Woolley, staff was directed to provide the guidelines to all interested agencies including bicycle coalitions, cities, and counties as well as adding the proposed guidelines to the website, requesting written comments. Staff was directed to collect comments, and return to the Board at a future date for possible approval after all comments have been received and reviewed. Motion approved unanimously (7-0).

## **2. Consideration and Possible Action Regarding Resolution No. 2008-10 to Railbank the Annie & Mary Railroad Line.**

Executive Director Stogner updated the Board on Resolution 2008-10 which will allow a pedestrian trail to be constructed along the Annie & Mary (A&M) rail line. He said that Mr. John Murray has made two presentations to the Board that have focused on railbanking the A&M rail line. He said the resolution reaffirms that the NCRA acquired the A&M while it was an operating railroad and establishes NCRA’s willingness to initiate the procedures necessary to railbank the line. He said that the proposed Resolution make it clear that another agency will be the trail manager and includes a provision to return the trail to NCRA or NCRA’s operator if the need arises.

Director Meyers recommended some minor changes to the proposed resolution. He said that the correct postmile should be inserted and the wording “the North side of West End Road” should be inserted in line 9.

Director Meyers said that it is important to clarify in the resolution that “NCRA did operate on the line, NCRA had no intention to abandon the line, and has not abandoned the line.” He also said that in line 27, the wording “and others” preceding “may have expressed an interest in ....” should be inserted. Also in Section 2 of the resolution Director Meyers suggested that a resolution “deadline date” should be included. He also said that Section 3 should state that the Executive Director or the “designee thereof,” is NCRA’s sole spokesman.

Legal Counsel Neary said that the Resolution adopts the standard that NCRA has never taken formal action to abandon the A&M line. He said that it is important to emphasize that NCRA's position is limited to those words. He said that there is some risk to the agency in stating that the line has not been abandoned.

Chairman Hemphill opened the discussion to the public.

**Rondal Snodgrass – Bayside** – He said that he is excited and he congratulated the Board on seeing the importance of the A&M trail.

**Scott Randal- resident along A&M railline.** He said he is concerned that NCRA is abdicating all of its responsibility for the A&M line and hopes that NCRA does not hand the responsibility over to a trail manager and said that he has issues with the trail.

**Chris Rawl – Greenwheels** – he said that he is supportive and excited and said that if the Board needed any assistance Greenwheels may be able to help.

**Pat Higgins – Commissioner – Humboldt bay Recreation and Conservation District** – He said that people in Blue lake are wildly excited about the prospect of a trail.

**Lawrence Labrance** – he said that he hopes that the Resolution is approved.

Director Woolley said that this is a crucial first step that is consistent with the procedures established by the FRA. He said that the final plan will need to be approved by the NCRA Board.

Upon Motion by Director Woolley, seconded by Director Kelley, Resolution 2008-11 as amended with above noted changes was approved unanimously (7-0).

John Murray thanked the Board.

### **3. Consideration and Possible approval of City of Eureka Request to Convert 4 Crossings to Exempt Status.**

Executive Director Stogner updated the Board on a request from the City of Eureka to exempt 4 crossings located at "T" Street at Waterfront Drive, "L" Street at Waterfront Drive, Waterfront and Commercial, and Washington and Waterfront. He said that staff is recommending approval of the crossing exemptions.

John Williams said that he has no opposition to the Exemptions as long as the City agrees to restore the signals to active status at the appropriate time.

Director Meyers said that the City should also agree to maintain the crossings while they are exempt. And the wording should state "City at its own cost and expense."

Upon Motion by Director Woolley, seconded by Director Meyers the City of Arcata Crossing Exemption request was approved. (7-0)

*Items G.4 and G.5 were switched.*

### **5. Consideration and Possible Approval of a Support Letter to the Coastal**

### **Conservancy Regarding Arcata Trail.**

Director Woolley said that the City of Arcata has requested a letter of support from NCRA to send to the Coastal Conservancy that would enable the City of Arcata to present its proposal to the Coastal Conservancy for a the planning of a trail from mile post 289.8 to 293.4.

Karen Diemer said that the trail would go through the City of Arcata. She said that she hoped that NCRA would partner with the City of Arcata to present a proposal that would meet the needs of NCRA and the Arcata community. She said that the Department of Fish and Wildlife Service would be the third partner because a large portion of the trail goes through its property. She said that the corridor is somewhat complicated and will be expensive to plan. She said that the City of Arcata proposal to the Coastal Commission would simply be to request funding for a feasibility study and the associated planning documents for the 3.7 mile trail which is from the City of Arcata Skate Park to Bracutt lumber.

Ms. Diemer said that the corridor is 50 feet wide and the city will review a number of options and hopefully bring back to the Board a trail alignment that will take into account NCRA's needs.

Director Woolley thanked Ms. Diemer for clarifying the City of Arcata request. He asked if the trail would eventually connect to the A&M Trail. He also asked if the City of Arcata was looking at city right-of-way as an alternative corridor for the trail.

Director MacDonald thanked Karen Diemer and said that the City of Arcata should review the Draft NCRA Tail Guidelines Section 2.2.2.

Ms. Diemer said that the city counts on the NCRA rail line returning to service. She said the city will have an alternative plan to restore the NCRA right-of-way when freight operations resume.

**Kaye Strickland** – She said that she is happy to hear that the City of Arcata understands that freight service will return. She said that the City of Arcata has made other modifications to the NCRA right-of-way and it is important to receive confirmation from the City that it will relinquish any trail that will interfere with freight operations.

**Marcus Brown – Arcata Resident** – He said that in Arcata there are two roadbeds, one of which is an old right-of-way that was never used and suggested that the old roadbed should be explored as an alternative. He said that he has some real concerns about a trail on the rail line through Arcata. He said that the City has ripped up the rail and destroyed the rail because of improper removal. He requested that NCRA pay close attention to any agreement it enters into with the City of Arcata.

**Chris Rawl – Greenwheels** – He said he supports the trail and asked the Board to seriously consider the support letter and the trail. He said that many residents would use the trail everyday.

John Williams said that he is opposed to NCRA's support of the proposal. He said that the proposal would take large sections of the rail line. He said that converting any portion of the mainline to a trail violates NCRA's state mandate to preserve and restore rail service.

Karen Diemer said that there was draft language for a letter and the only thing that the City of Arcata is requesting is funding for studies and planning. She said that staff has removed anything that could be construed as a commitment by NCRA to allow a trail. She said that the City of

Arcata would be the manager of the project and that the Hwy 101 possibility would be studied as well as the rail right-of-way.

Chairman Hemphill said that the final letter needs to state very clearly that NCRA is not supporting the trail at this time, and that NCRA is only supporting the City of Arcata going before the Coastal Commission to receive funding for a feasibility study and planning.

Director Woolley said that the letter that was included in the Board Packet is very preliminary and will be redrafted while keeping in mind all of NCRA's concerns.

**Rondal Snodgrass** – He suggested that wording be changed to “feasibility study” rather than planning and development.

Director Ollivier said that this may be a good time for the City of Arcata to fully commit to the return of rail and he said that he hopes that a new relationship can be formed.

John Williams said he is willing to work with staff on a draft letter that includes the wording “feasibility study.” He said that NCRA needs to get a letter from the Mayor and the Director of Public Works of the City of Arcata stating that there will be no more rail removed from the right-of-way by the City of Arcata. He said that a partnership should be formed between the City of Arcata and the NCRA that ensures preservation of NCRA's main line.

Upon Motion by Director Woolley, seconded by Director Meyers, the Board approved the concept of a possible NCRA support letter to the State Coastal Conservancy in support of Arcata's request for a trail feasibility study or panning a route for a trail from the Skate Park South to Bracut Lumber. Staff was directed to work with the Operator and others to redraft a support letter for possible approval by the Board at the September 10, 2008 Board meeting. Motion approved unanimously (7-0).

**4. Consideration and Possible Approval of an Amendment to the NCRA Policy Manual Relating to Public At-Grade Crossings Section 801.4(2).**

Legal Counsel Neary said that the proposed Policy would provide that any crossing conversion from a Private to Public Crossing would be considered by the NCRA Board once the project is fully defined. He said that he received some comments from members of the public and therefore was recommending that the issue be deferred for at least 30 days. He said that he needed to be sure that the new policy is consistent with local government permit and approval process.

Director Kelley said that he supports deferring the issue and he also said that the Property Committee should discuss the issue before the full Board takes it up for adoption.

Director Meyers asked if Caltrans or the PUC or any other agency will be consulted and should that be inserted in Paragraph “C” of the new policy. He said that it is important for the cities and counties to be consulted if the crossing falls within their jurisdiction. He also said that maintenance costs and penalties for failure to maintain the crossing should be inserted. He requested the following verbiage, “Any approval shall require applicant to pay to NCRA such compensation as shall, in NCRA's Board's reasonable estimation, reimburse NCRA and its operator for any and all delays, liability and other detriments caused by said at-grade crossing.” He said that in the first sentence of Paragraph “B” the wording “if at all” should be inserted following “shall be made.” Director Meyers also requested that at the end of Paragraph “C” of

the policy the following sentence should be added, “As to which there is no guarantee of approval.”

Chairman Hemphill said that the maintenance of the crossings should be covered in the policy.

Staff was directed to bring the Policy back to the Board at following Property Committee consideration and approval of the new policy.

## **H. CONSENT CALENDAR**

- a. Approval of Minutes - Regular Board Meeting – July 9, 2008
- b. Acceptance of Fiscal Year 07-08 Year End Financial Statements
- c. Acceptance of Financial Statements – July 2008
- d. Approval of Warrants Issued Agency 787010 – July 2008
- e. Approval of Warrants Issued TCRP 787101 – July 2008
- e. Approval of CalCard Statement – July 2008

Upon Motion by Director Ollivier, seconded by Director Meyers, Consent Calendar Items H.a through H.e were approved. Director Meyers abstaining from Item H.a (7-0).

## **I. STAFF REPORTS**

### **1. Executive Director – Mitch Stogner**

Executive Director Stogner said that NCRA’s Draft EIR on the Russian River Division including the segment from Lombard to Windsor should be ready for release in September.

### **2. Project Manager – Dave Anderson**

Project Manager Dave Anderson presented a PowerPoint presentation updating the Board on the repair activities along the right-of-way. He also reported on the vandalism and thefts of railroad property that have been occurring at an increased rate over the last few months. He said that there were some major rail thefts in McCann and that the suspects were apprehended. He said that NCRA is diligently prosecuting the vandals and thieves.

Executive Director Stogner thanked the public citizen that contacted NCRA to report the thefts. He said that it a valuable resource to have citizens along the right-of-way keeping a watchful eye on the right-of-way.

### **3. Legal Counsel - Chris Neary**

Legal Counsel Neary reported that the Hearing for the City of Novato’s request for Writ of Mandamus is scheduled for August 26. He also said that the clean-up of the Willits yard is complete and to the satisfaction of the City of Willits. He summarized what NCRA has done to secure the site.

## **J. OPERATOR REPORT**

### **1. NWP Co. – John Williams**

**K. MATTERS FROM THE BOARD**

Director Meyers reiterated that he would like staff to send all important correspondence to the Board. He also asked why NCRA spends \$21,000 on utilities. He asked if solar panels could be installed on any of the crossings to help defray the cost of utilities.

*The Board convened into Closed Session at 1:18 p.m.*

**L. CLOSED SESSION**

**1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (3 cases)**

Government Code 54656.9(a)

- (1) NWPY vs. NCRA, Arbitration Matter
- (2) City of Novato vs. NCRA; Superior Court of California, County of Marin; case # CV074645
- (3) Humboldt Baykeeper vs. Union Pacific, NCRA Case # 06-02560

**2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (one case)**

Government Code 54956.9 (c)

Based on existing facts and circumstances the governing board of the agency is meeting to decide whether or not to initiate litigation. Identification of the litigation to be discussed would jeopardize the agency's ability to conclude existing and scheduled negotiations to its advantage

*The Board reconvened into Open Session at 2:45 p.m.*

**M. ANNOUNCEMENT OUT OF CLOSED SESSION**

Legal Counsel Neary reported that the Board met with Counsel, received information and gave direction on three cases of Existing Litigation and one case of Anticipated Litigation, no action was taken.

**N. ANNOUNCEMENT OF NEXT MEETING**

September 10, 2008 – 10:00 a.m.  
Mendocino County  
Ukiah Valley Conference Center  
200 S. School Street

**O. ADJOURNMENT**

Chairman Hemphill adjourned the meeting at 2:50 p.m.