

**NORTH COAST RAILROAD AUTHORITY (NCRA)  
Property Committee Meeting**

Wednesday, October 15, 2008 ~ **11:30 a.m.**  
Healdsburg City Council Chambers  
401 Grove Street  
Sonoma County

**Approved Minutes**

**A. CALL TO ORDER**

Committee Chairman Kelley called the meeting to order at 11:35 a.m.

**B. ROLL CALL**

**Committee Members present:** Simonson, Ziedrich, Meyers, and Chairman Kelley

**Committee Members Absent:** None

**Also present:** Executive Director Stogner, Legal Counsel Neary, and Recording Secretary Lindsteadt.

**Present by Teleconference:** American Rail Consultants

**C. AGENDA APPROVAL**

The agenda stood as presented.

**D. PUBLIC COMMENT**

No Public Comment

*Committee Chairman Kelley adjourned the meeting into Closed Session at 11:45 p.m.*

**E. CLOSED SESSION**

CONFERENCE WITH REAL PROPERTY NEGOTIATORS.

Government Code § 54956.8

Property: At-Grade Crossing MPM 70.85

Negotiators: C.J. Neary, Mitch Stogner

Under Negotiation: Timing of negotiations, price and terms.

**F. ANNOUNCEMENT OUT OF CLOSED SESSION**

*Committee Chairman Kelley reconvened the meeting into Open Session at 12:20 p.m.*

Legal Counsel Neary reported that the Committee met with Counsel, received information and gave direction.

**G. CONDUCT OF BUSINESS**

**1. Consideration of Proposed Policy for Conversion of Licenses to Crossing Easements and Possible Recommendation to the Board of Directors.**

Committee Chair Kelley said that the NCRA has received requests from various parties to convert private crossings into public crossings. He said the Property Committee and Staff were directed to create a policy related to those types of permanent uses of railroad right-of-way. He said that the final draft will be presented to the full Board when the Property Committee review is complete and public comments have been considered. He referenced letters received from the City of Healdsburg, Tyriss, and Quaker Hill Development Corporation. Those letters are hereby made part of these minutes by reference.

Legal Counsel Neary said that the draft policy that the Committee is reviewing has incorporated comments that were received from three commenters. He said that the policy addresses conversion of crossing licenses to crossing easements. Mr. Neary pointed out that an easement is a property right in perpetuity, and a license is revocable.

Legal Counsel Neary summarized the draft policy.

- All conversions of crossing licenses to crossing easements or permanent lease agreements will be considered by the full Board after review and recommendation of the Property Committee;
- Private crossings converted to a public crossing require the approval of the CPUC. NCRA will not review a request for such a conversion until the applicant is prepared to submit said application to the CPUC; NCRA will make provision for prior consultation with NCRA engineering staff;
- Applicant would be required to consult with NCRA's Operator and receive consent from NCRA's Operator;
- Where crossing applications do not need the approval of the CPUC, the application will be considered by the NCRA Board at the time that the applicant has secured the "use approval" from the relevant municipality.
- The NCRA will make recommendation to the CPUC if the NCRA Operator is in support of the conversion;
- Proposed Policy prohibits NCRA administrative staff from considering applications for conversions until the Property Committee and the NCRA Board have given direction to staff;
- If an easement is granted it should be appurtenant to the property;
- Proposed Policy provides for a reimbursement mechanism in the event that there is staff involvement and an indemnification clause;

Legal Counsel said that the Committee should give direction as to whether applications should be considered while the final policy is being drafted.

Committee Chair Kelley said that the issue of consideration of new applications should be a decision by the committee and not necessarily included within the

provisions of the proposed policy.

Chairman Kelly said that NCRA may have to evaluate whether it's appropriate to give the Operator veto authority over conversion requests. He said he understands that the Lease Agreement with the Operator may be renegotiated and asked if it may be better to reword the policy so that the Operator will have an opportunity to review and comment on property easement requests rather than be the deciding entity.

Legal Counsel said that the Operator requirements can be inserted into the Policy or the language can be inserted into the Operator Agreement upon renegotiation of that agreement.

Committee Chair Kelley asked about the ownership of a public crossing and who would own the roadway once the conversion was approved by NCRA. He also asked if there are any other options besides the provision that the applicant submit its application to NCRA "upon final land use approval".

Legal Counsel Neary said that any roadway that is converted to a public crossing could be dedicated to a municipality and the appropriate wording could be inserted into the policy. He also said that approval of an at-grade crossing conversion would be made by the NCRA. He said the policy does not need to state "land use approval." He said it could state that NCRA will accept an application at the time the zoning is approved or once the General Plan Amendment is approved.

Director Meyers requested clarification on the term "railroad." He also asked about NCRA's involvement in a CPUC application for conversion of a roadway and requested clarification on which types of licenses are not subject to CPUC approval.

Legal Counsel said that "railroad" refers to NCRA until the Operator commences operations, at which time the Operator would be considered the "railroad". He also said that "railroad" involvement in the CPUC application is required so that the CPUC knows the "railroad's" position on the proposed crossing. Legal Counsel also pointed out that public crossings are under the jurisdiction of the CPUC and private crossings are under the jurisdiction of the FRA.

Director Meyers asked about NCRA consultation with the appropriate jurisdictions such as cities and counties and why that provision is not outlined in the policy. He also suggested that all expenses related to the application be paid by the applicant instead of the agency (NCRA).

Legal Counsel Neary said he may be able to insert language into the policy stating that there could be consultation with any agency that is in the sphere of influence of any proposed conversion.

Committee Chair Kelley said that there should be an application fee and schedule that would cover any costs that are associated with an application.

Director Meyers suggested several technical changes to the policy which were duly noted by staff.

Director Meyers pointed out that NCRA owns the right-of-way from Healdsburg to Cloverdale, which SMART has an easement over, and asked for clarification about how the policy will be applied to that section of right-of-way.

Committee Chair Kelley also requested that Section G state that the “Property Committee can make a recommendation to the NCRA Board of Directors to support or deny the application.” He also asked if SMART operates passenger trains between Healdsburg and Cloverdale, should SMART be involved in the application process or have the ability to comment.

Legal Counsel Neary said that the policy could include a provision for SMART notification. He said he would draft some language for review.

Director Ziedrich asked for clarification on Section B. He said it appears that eventually NWP Co. may have more authority than the NCRA Board. He asked if the same authority would go to SMART if it is operating on NCRA right-of-way. He also asked for clarification regarding the definition of “maintenance”. He said NCRA should receive full indemnification from the applicant or the municipality that takes ownership of any public crossing.

Legal Counsel said that it is possible that the CPUC may request comments from SMART if the proposed crossing is between Healdsburg and Cloverdale and said that he would research that issue. He also said that maintenance is either an arrangement between the applicant and the municipality or between the applicant/municipality and the operator. He said that the applicant or the municipality may not have access to the specialized railroad crossing contractors.

**Mike Kirn** – City of Healdsburg Public Works Department – He thanked staff for addressing some of the concerns that the City of Healdsburg expressed.

He stated that he had only a short time in which to prepare his comments and asked that the next version be circulated to the public. He suggested that there be an appeal process to the Board. He stated that NCRA, as a public agency, must justify its fees. He provided his letter of 10/3/08 which is incorporated by reference.

Director Kelley said that the Committee and the Board will not take action on the policy until all comments and suggestions are reviewed and the document is revised accordingly. He also said that there are many agreements that do not

require CPUC involvement such as a utility crossing or pipelines. He said that the first sentence in Section E should be removed.

Legal Counsel Neary said that the word “before” can be changed to “under consideration by”. He said that the business deal would not be negotiated until the Board has approved a proposal. That does not prevent staff from preparing the item for Board consideration.

*The Committee convened for 5 minute break.*

*NCRA Counsel Neary and Director Simonson left the meeting.*

### **Public Comment Continued**

**Craig Harrington** – Quaker Hill Development – Mr. Harrington said that he submitted his comments to the original proposed policy and he said that before a formal application is submitted to the CPUC for a conversion of a crossing, it is extremely important that the developer, NCRA, and NCRA’s operator are in consultation. He said that the design issues, maintenance issues and environmental issues should be resolved before the proposal is considered by the NCRA Property Committee. He said that NCRA should develop a reasonable fee structure and that he looked forward to reviewing the updated draft policy.

Director Meyers said that the Operator and the NCRA may not have the same concerns with respect to individual easement applications under the proposed policy. He also asked about the crossing maintenance requirements and said that Quaker Hill stated in its letter that there “are no measurable differences in the FRA annual maintenance requirements and related costs between private or public at-grade crossings” and asked if that is a correct statement.

Executive Director Stogner said that the CPUC gives the operator a formula for funding for each crossing and Mr. Williams will have access to these formula funds. He said that surface maintenance (roadway) is the responsibility of the municipality.

Nicholas Tibbetts – Tyris Corporation – He said that it seems that NCRA should have a reasonable fee structure and consultation with NCRA staff and Operator prior to submittal of an application to the PUC or the NCRA property Committee. He said this consultation was a crucial element of the process.

Committee Chair Kelley thanked participants for their comments. He requested that interested parties submit additional written comments to NCRA so that NCRA can review comments in preparation of its final draft policy. He said that NCRA will continue to consider individual applications while the policy is being drafted. He directed staff to incorporate comments and recommendations from the Committee and the public comments and present the revised policy to the

Committee within the next few weeks.

Director Ziedrich agreed with Director Meyers that the language requiring “formal written consent” from the Operator should be revised.

Director Meyers said that he will provide staff with his with his proposed changes to Section 801.2.

**H. MATTERS FROM THE COMMITTEE**

**No matters**

**I. ANNOUNCEMENT OF NEXT MEETING**

November 12, 2008 – 10:30 a.m.  
Humboldt County  
Humboldt County Supervisor Chambers  
825 5<sup>th</sup> Street, Eureka

**J. ADJOURNMENT**

Committee Chair Kelley adjourned the meeting at 2:15 p.m.