

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

Wednesday, October 8, 2008 ~ **10:30**
City of Healdsburg Council Chambers
401 Grove Street
Healdsburg
Sonoma County

Approved Minutes

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 10:32 a.m.

B. ROLL CALL

Directors present: Colfax, Simonson, Ziedrich, MacDonald, Meyers, Kelley, Ollivier, Woolley (arrives at 10:40), Chairman Hemphill

Directors Absent:

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

C. AGENDA APPROVAL

Agenda stood as presented.

D. PUBLIC COMMENT

No Public Comment

E. CONDUCT OF BUSINESS

Chairman Hemphill requested that agenda item E.6 be discussed before any other agenda items.

6. Discussion and Possible Action Regarding NCRA Draft Trail Guidelines

Director Ziedrich recused himself from the discussion and left the chambers.

Mike Kirn – City of Healdsburg – Public Works Director presented the Board with two handouts titled “City of Healdsburg Resolution No. 117-2008” and “Trails-on-Rail Typical Cross Section (Single Track).” Both documents are hereby made part of the minutes by reference.

Mr. Kirn reported to the Board that the Healdsburg City Council passed a resolution on Monday that opposes the NCRA proposed Guidelines as written because the Guidelines are overly restrictive. Mr. Kirn presented a PowerPoint presentation that outlined the dimensions of NCRA’s right-of-way in Healdsburg as well as the physical

separation of the tracks and the edge of a proposed trail. He said that as the trail moves closer to centerline of the NCRA right-of-way, the available space for a trail becomes reduced and will not provide sufficient setback under the proposed Guidelines. He said that the City of Healdsburg believes the proposed guidelines are overly restrictive and would create a situation where the city would have to come before the NCRA Board to request an exception to the guidelines for any trail to be constructed within the city limits.

Director Meyers said that the main issue is the available separation between center line and the outer edge of the trail. He also asked why there would be more of a restriction with a double track. Director Meyers asked Mr. Kirn for specific language he would suggest as adequate safety guidelines.

Mr. Kirn said that it would depend on the layout of the track within the right-of-way. He said that the separation may vary within the right-of-way and that the current lease agreement that the City of Healdsburg has with the NCRA for the existing trail and future trail varies with respect to setback from center line. He said that the City of Healdsburg has used that approved lease agreement to seek funding and develop planning and business decisions. Mr. Kirn said that he would suggest a reasonable and practical setback. He said that Healdsburg has been working closely with SMART on trail guidelines. He said that discussions have involved fencing, and speed of trains, and safety.

Chairman Hemphill said that NCRA has a legal obligation to its operator to ensure safe freight operations and requested that Mr. Kirn submit his thoughts in writing.

Director MacDonald asked where NCRA's right-of-way begins in the City of Healdsburg and asked Mr. Kirn to describe the location of the Foss Creek Pathway. He also asked if the City of Healdsburg would enhance the fencing if required, and whether there is funding for that purpose.

Mr. Kirn said that the NCRA property begins north of the 5 way intersection. He said that Foss Creek pathway follows along Foss Street which follows along the NCRA right-of-way through town. He said that the Beautification Lease the City of Healdsburg has with NCRA facilitates the construction of a trail within the right-of-way through the City limits. He also said that the City would be comfortable adhering to the SMART guidelines and would like to have continuity of those guidelines on NCRA right-of-way.

Director Simonson asked if SMART had discussed double track and said that any successful rail operation would want to include the possibility of double tracking for expansion purposes.

Ray Holley (SP) Voigt Family Sculpture Foundation – He said that the Voigt Family Sculpture Foundation wanted to thank NCRA for its efforts and said the foundation believes that the NCRA proposed trail guidelines would make it difficult for trails along the right-of-way. He requested that the Board investigate the possibility of smaller set-

backs to allow for safe walking and bicycle paths. He said the Board should feel free to contact him if they need any assistance in researching safe trail guideline examples. Mr. Holley presented the Board with a letter titled "Comments on proposed Trail Guidelines" dated October 8, 2008 which is hereby made part of these minutes by reference.

Director Meyers said he would like to see actual setback distances for existing trails along railroad right-of-ways.

Rogers Graeber –Private Citizen raised the issue of public safety. He said that a 200 ton locomotive is a potentially dangerous weapon. He said that municipalities are constructing trails without appropriate attention to potential safety issues. He said he supports the proposed guidelines and thinks the suggested setbacks are safe.

Christine Culver – Sonoma County Bicycle Coalition. She said that she respectfully requests the Board to adopt guidelines that would allow a trail along the entire NWP rail corridor. She said that the Rails to Trails Conservancy has documented and researched 61 trails. She said that trails provide an alternative to trespassing on railroad right-of-way. She said that NCRA's proposed guidelines are extremely restrictive and will eliminate the possibility for construction of any trails along the right-of-way. She said that the trail will be the backbone of the community. She said that it will be safer and also have economic benefits. She asked the Board to defer action on the proposed Guidelines until its December meeting.

Chairman Hemphill said that the NCRA Board has no intention of taking action on the guidelines at this meeting. He pointed out that the comment period ends on October 31 and the December NCRA meeting will be the soonest any action would be taken on the proposed guidelines.

Deb Hubsmith – Marin County Bicycle Coalition – She said she wanted to confirm that the SMART guidelines will apply to the SMART owned right-of-way. She asked if NCRA would have any control over a trail along the SMART owned right-of-way. She said that she served on the SMART Bicycle and Pathway Advisory Committee from 2002-2003 and said that the CPUC was involved in the meetings with SMART as well as cities and various organizations throughout the corridor. She said that they used the best practices guidelines as well as U.S. DOT policy the FRA study and the Rails-to-Trails Conservancy policies. She asked for confirmation that NCRA acknowledges that the SMART guidelines for a trail along the SMART owned corridor will be decided by SMART.

Chairman Hemphill asked Legal Counsel to summarize the issues.

Legal Counsel Neary said that SMART has discretion on which guidelines it adopts for SMART owned property as they are the property owners and that is a property right. He said that the entirety of the SMART corridor that is used by freight is subject to an easement which is also a property right. He said there is no simple answer and that unfortunately, SMART and NCRA have had very limited discussions on the issue.

Steve Birdbough – Friends of SMART – He said that he wanted to address some of the safety issues of a rail trail. He said that Friends wants the trail to be a safe operation but that it should

also be a practical operation. He said that the ALTA Planning Group completed a study in 2004 that covered the issues of safety near train tracks. He said they concluded that a trail that is next to a 90 mph train, the distance should be 22 feet away. He said that Friends of SMART is willing to assist NCRA in any way possible.

Director MacDonald observed that the alternatives are building a path with fencing and safety measures- or no path built- and then perhaps dealing with all of the problems associated with trespassing.

Deb Hubsmith said that there are many instances of trespassing on the right-of-way and that would create a hazard when trains are running. She said she is not aware of any studies done that relate to pedestrian deaths from trespassing versus use of a planned trail.

Director Simonson said that he is not in support of any trail along the right of way because he is concerned that a trail would prevent future expansion of the rail line.

Christine Culver referenced two examples of rails with trails and said that SMART researched other trail documents while planning its pathway design.

Willard Richards - He said that he supports passenger and freight rail. He said that the proposed Guidelines appear to be one-sided and do not adequately recognize that NCRA is a public agency established for the public good. He requested that the Guidelines be reworded and open to the public during the process. He also said that the Guidelines should be prepared in conjunction with SMART. He said he thinks that trail users, SMART, NCRA, and the Operator should all work together in the drafting of the final Guidelines.

Director Woolley asked staff to contact SDRMA Risk Management Division, and see if they can help NCRA better understand the risk to the agency of a trail. He said that the NCRA Operator carries risks as well as NCRA and it is important that he remain involved in the process.

John Williams – NWP Co. – He said that his four issues continue to be Safety, Liability, Capacity and Legality. He said all four issues need to be considered. He said that he used the Union Pacific and the Burlington Northern Santa Fe guidelines which do not allow trails on the right-of-way. Mr. Williams handed out 3 photos of train accidents. These documents are hereby made part of the minutes by reference. He said that if there had been any trail users along a path during any of the accidents, they would have been killed. Mr. Williams said the passenger train speed limit through Healdsburg is 55-60 MPH. He said that if the trains start and stop, they will be traveling at least 35 MPH. Mr. Williams said that final arbiter of rail safety on the NWP corridor will be the CPUC.

Chairman Hemphill thanked participants for their comments and said that the Guidelines will be further discussed at the November and December NCRA meetings.

1. Discussion and Possible Approval of Contract Amendment No. 2 American Rail Consultants

Mr. Stogner updated the Board on the American Rail Consultant (ARC) contract and said that the contract expires in November 2008. He outlined the various tasks that ARC has been responsible for and commended their hard work and dedication. He said the current contract would be extended until January 13, 2011.

Motion by Director Kelley to approve Amendment No. 2 to the Contract so that ARC will continue its exceptional project management and transportation planning services on behalf of the NCRA seconded by Director Meyers.

Director MacDonald said that he is supportive of extending the contract with American Rail Consultants and said that he is very appreciative of the hard work and expertise they have provided to NCRA.

Director Ziedrich asked if there were any constraints surrounding use of funds to pay the interest costs associated with ARC's outstanding agency invoices. Executive Director Stogner said that the interest would be paid out of the NCRA agency budget and that no state funds would be used to make interest payments to ARC for outstanding agency related invoices.

Director Woolley asked if NCRA had heard back from Fish and Game about the fish barrier work in the canyon.

Director Meyers said that he supports the extension and said that it is a true testament to their dedication to NCRA that they have allowed agency invoices to accumulate while the TCRP work is being competed.

Motion carried unanimously (9-0).

2. Discussion and Possible Action Adoption of Resolution 2008-18 Regarding Approval of Final Agency Budget for FY 2008-09

Executive Director Stogner presented the Board with an overview of the agency budget for fiscal year 08-09. He said that because of the veto of SB 861 NCRA is still desperately in need of additional agency revenue. He said that NCRA receives discretionary agency funding from the property lease revenue, rail car lease, and monthly operator payments. He said that it is challenging to oversee a \$50 million capital repair program with inadequate agency funding.

Director Woolley said that the agency budget deficit is not a new situation. He said that the agency has been plagued with inadequate funding since its creation.

Motion to approve Resolution No. 2008-18 adopting the NCRA Agency Budget for Fiscal Year 08-09 made by Director Woolley, seconded by Director Kelley.

Director Meyers asked what staff's recommendation was for rectifying the budget deficit. He also asked what the STB attorneys have been paid under line item 76610 – Legal and what items the STB attorneys have been tasked with.

Executive Director Stogner said that unfortunately ARC and Legal Counsel have had to forgo payment in some instances pending receipt of agency funding. He thanked John Williams and said that his monthly payments have been extremely important. He said that the STB attorneys have been researching interlocking bridge signal issues, federal preemption, and certificates of operation.

Director Ziedrich said that the Finance Committee supported the budget with a great deal of apprehension and said that the agency is underfunded by 20%. He said that in the next couple of quarters, staff needs to look at reducing expenses and increasing revenues.

Director MacDonald said that the budget is comprised of Operator payments and the fact that ARC and Legal Counsel are willing to forgo payment really serves as a loan to the agency. He said that when the Operator Lease is renegotiated the possibility of increased revenue from the operator should be discussed. He also suggested that Board members go to their respective counties and seek agency funding realizing that the counties are in the same budgetary situation as NCRA.

Motion to adopt Resolution 2008-18 approved unanimously (9-0).

3. Discussion and Possible Action Adoption of Resolution 2008-19 Regarding Approval of Final TCRP Budget for FY 2008-09

Upon Motion by Director Ziedrich, seconded by Director MacDonald, Resolution No. 2008-19 adopting the TCRP Budget for Fiscal Year 08-09 was approved unanimously (9-0).

4. Discussion and Possible Action Adoption of Resolution 2008-20 Regarding Approval of Final Fish and Game Budget for FY 2008-09

Upon Motion by Director Woolley, seconded by Director Ziedrich, Resolution No 2008-20 adopting the Fish & Game Budget for Fiscal year 08-09 was approved unanimously (9-0)

5. Discussion and Possible Action Regarding Roadway Agreement in Carlotta, Ca

Dave Anderson – NCRA Project Manger updated the Board on the discussions with Jack Noble for lease of a section of property along the Carlotta branch. He said that Mr. Noble will use the property for a roadway along the NCRA ROW for hauling his material out to Hwy 36 rather than using his current route.

Mr. Anderson said that John Williams is in support of the roadway and NCRA staff is in support of the roadway.

Motion to approve the private roadway lease agreement in principal made by Director Meyers, seconded by Director Simonson.

Director Meyers said that he reviewed the lease agreement and has provided the Board with his redline version that includes some changes. He said that staff should review the fee to be sure that it is adequate. He said that in the future, the Property Committee should review agreements before presentation to the full Board.

John Williams said that Jack Noble is a strong rail supporter and said that eventually Mr. Noble would be willing to ship his aggregate by rail. He said that he pays the county to haul his aggregate over county roads, and said that the fee structure is set-up so that the more tonnage that Mr. Noble hauls, the more money NCRA will receive. He said he supports the agreement.

Director Woolley said that the mining permit is provided by the Corps of Engineers and Humboldt County receives revenue from the mining operations. He said the mining operation requires permits and is heavily monitored.

Director Ziedrich asked if there is a projection pertaining to the tonnage that he will be hauling.

John Williams said that the projection is 100,000 yards per year. But his permit will allow up to 250,000 yards per year.

Director Ollivier said that the railroad is the key to hauling aggregate and if there was a way to get the aggregate to Humboldt Bay, it could be very profitable.

Director MacDonald asked if the new roadway needs to go before the planning departments or needs any permitting from the county. He asked if the roadway will extend beyond the NCRA property.

Mr. Anderson said that all permitting is the responsibility of Mr. Noble. He also said that the roadway will be entirely on NCRA owned property. He said that Mr. Noble will construct the roadway from NCRA's northern ROW to no more than 2 feet within the railroad ties.

Chairman Hemphill said that the lease agreement can be terminated upon 30 days notice by NCRA.

Motion to approve the private roadway lease agreement with Mr. Jack Noble including changes made by Director Meyers approved unanimously (9-0).

F. CONSENT CALENDAR

1. Approval of Minutes - Regular Board Meeting – September 10, 2008
2. Approval of Minutes – Special Board Meeting – October 1, 2008
3. Acceptance of Finance Committee Meeting Minutes – September 22, 2008
4. Acceptance of Financial Statements – September 2008
5. Approval of Warrants Issued - Agency 787010 – September 2008
6. Approval of Warrants Issued - TCRP 787101 – September 2008
7. Approval of CalCard Statement – September 2008

Motion to approve Consent Calendar Items F.1-F.7 made by Director Woolley, seconded by Director Meyers.

Director MacDonald asked when staff would be able to present the financial statements on an accrual basis each quarter.

Executive Director Stogner said that NCRA would discuss the issue with Sonoma County to research the preparation of quarterly accrual basis statements for review by the Board.

Scott Cantina Sonoma County Auditor's office said that Sonoma County is not currently under contract to provide accrual basis reports and that would have to be negotiated.

Chairman Hemphill said that the reports on a quarterly basis would be sufficient and directed staff to research the issue.

Director Meyers said that he submitted the following changes to staff for the September 10 minutes: Page 2, 2nd paragraph - Change the last sentence and then add a sentence: "He also said that it appears that it is a good program. He pointed out that the Resolution before the Board seemed to need a revision." Same page, 9 lines from the bottom: Change "her" to "he".

Motion to approve the consent calendar carried unanimously with Director Meyers abstaining from the Finance Committee Minutes (9-0).

G. OLD BUSINESS

1. Update – City of Arcata Trail Grant Request

Karen Diemer updated the Board on the grant proposal that the City of Arcata submitted to the Coastal Conservancy for funding for a study for a trail through the city of Arcata. She said the grant request was approved. She said there was one question about NCRA's legal right to grant easements along the entire railroad right-of-way or if there were some sections that NCRA only had an easement. Ms. Diemer said that she anticipated a draft contract from the Coastal Conservancy by mid December and said that she would forward it to Mitch Stogner and John Woolley for review.

Director Woolley said that members of the Coastal Conservancy Board wanted to see a wide range of options for placement of the trail.

H. STAFF REPORTS

1. Executive Director – Mitch Stogner

Executive Director Stogner said that staff will have a teleconference meeting with FHWA and Caltrans regarding NCRA's possible use of ISTEA funds on October 14. He also said that the Draft EIR on Operations on the Russian River Division is almost complete. He said that there may be a need for a Special Board meeting to award the contract for track repairs.

Legal Counsel said that after release of the Draft EIR there would be a 45 day comment period and at the end of the 45 days, there would be a period to respond to comments. He said that once that process is completed, the Draft EIR would be presented to the Board for certification as early as February 2009.

Executive Director Stogner said that there is a Property Committee Meeting scheduled for October 15 at 11:30 a.m. in Healdsburg at the City Council Chambers to discuss the issue of conversion of private crossings to public crossings.

Director Meyers asked if the committee members could get a copy of the proposed policy in advance of the Property Committee meeting.

2. Project Manager – Dave Anderson

Dave Anderson – NCRA Project Manager presented the board with a PowerPoint presentation on the repair work that is currently underway.

Director Meyers asked Mr. Anderson to report on the outcome of the meeting between HNTB and NWP Co.

Mr. Anderson said that the meeting was to discuss the draft track plans. He said that Mr. Williams had raised some concerns and that those issues have been resolved to the satisfaction of Mr. Williams. He said that HNTB incorporated Mr. Williams' and SMART's comments. He said the pre-bid walk was on October 1 and 15 contractors participated in the pre-bid walk. He said that he expected the Bid opening to take place on October 22.

3. Legal Counsel - Chris Neary

No report

I. OPERATOR REPORT

1. NWP Co. – John Williams

Mr. Williams introduced Judy Ahoe who is the Woodside Consulting Administrative Assistant to the Board and NCRA staff.

J. MATTERS FROM THE BOARD

Director Meyers said that he recently became aware of free office applications from Google and suggested staff research possible NCRA applications. He also recommended that the Board agendaize a public discussion regarding the Novato Settlement.

Chairman Hemphill said that there has been considerable public comment on the Novato Lawsuit already and questioned whether NCRA public discussion on the item was warranted.

Director Woolley said that the reason we announce closed session, is to facilitate public comment on any items listed on the Closed Session agenda.

Chairman Hemphill adjourned the meeting into Closed Session at 1:10 p.m.

K. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (2 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

L. ANNOUNCEMENT OUT OF CLOSED SESSION

Chairman Hemphill reconvened into Open Session at 2:00 p.m.

Legal Counsel reported that the Board met with Counsel received information and gave direction on two items of Existing Litigation and no action was taken.

M. ANNOUNCEMENT OF NEXT MEETING

Approved by NCRA Board of Directors
11/12/08

November 12, 2008 – 10:30 a.m.
Humboldt County
County of Humboldt Board of Supervisor Chambers
825 5th Street, Eureka

N. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 2:05 p.m.