



North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, Ca 95482

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

Wednesday, August 12, 2009~ **10:30**
Humboldt County Board of Supervisors Chambers
825 Fifth Street, Room 111, Eureka
Humboldt County

Approved Minutes

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 10:30 a.m.

B. ROLL CALL

Directors Present: Kelley, MacDonald, Meyers, Wagenet, Atkins, Colfax, Chairman Hemphill
Directors Absent: Ziedrich, Clendenen

C. AGENDA APPROVAL

Upon Motion by Director Meyers, seconded by Director Kelly carried unanimously (7-0) by roll call vote, the following item was added to the Closed Session agenda:

Pending Litigation Government Code 54956.9 (a)
California Redwood Coast vs. NCRA
Mendocino Superior Court case 075012
and
Consideration of Resolution Establishing Installment Payments

D. RECOGNITION OF OUTGOING DIRECTORS

1. Charles Ollivier – Director 2004-2009

Chairman Hemphill presented Charles Ollivier with a “Golden Spike” and thanked him for his hard work and dedication to the Port of Humboldt and his service on the NCRA Board of Directors.

E. INTRODUCTION OF NEWLY APPOINTED DIRECTORS

Chairman Hemphill introduced Director Hal Wagenet from Mendocino County and Director Linda Atkins from Humboldt County as newly appointed members of the NCRA Board of Directors.

F. PUBLIC COMMENT

**Kaye Strickland
Pete Orringer
Dave Bergeson
Jessica Puccinelli
Sid Berg
Richard Tomlinson
Scott Grecian
Carlos Quilez
Bill Bertain**

There was a brief discussion about inclusion of public comments in the minutes and possible email or call-in public comments from other counties during the meetings.

G. PRESENTATIONS

1. Timber Heritage Association – Recent Speeder Excursions – Gerry Tomczac

Gerry Tomczac – Board Member of Timber Heritage Association (THA) - Mr. Tomczac presented the Board with a PowerPoint outlining the Timber Heritage Association’s efforts to provide speeder rides from Samoa to Manila, and efforts to get a tourist train operating around Humboldt Bay.

Mr. Tomczac said that THA is a volunteer organization. He said that the THA survives by fundraising donations, membership and community donations, and donations in-kind. He also said that THA is in negotiations with the Harbor District for a long term lease of the Samoa Complex. He said that THA volunteers have cleared 2 1/2 miles of track from Samoa to Manila Park. He said that volunteers have spent 500 hours clearing the track and 350 hours restoring the speeder that will be used to provide the speeder rides to the public.

Mr. Tomczac said that with the Samoa Cookhouse, the Maritime Museum, Timber Heritage Museum, and Humboldt’s rich history the county has the ability to develop into a world class tourist destination.

The Board thanked Mr. Tomczac for his presentation. Director MacDonald asked what NCRA’s liability is regarding the speeder rides on the NWP right-of-way. Chairman Hemphill said that the Timber Heritage Association has been working with NWP Co. on safety issues and best practices, and that the THA has provided NCRA with a certificate of liability naming NCRA as additionally insured.

Director Wagenet said that many people visit Willits when the Roots of Motive Power hold their “Steam Ups.” He commended THA for its efforts.

2. Karen Diemer – City of Arcata – Arcata Trail RFP

Karen Diemer updated the Board on the city's rail with trail connectivity project in Arcata. She said that the City sent out 140 requests for proposals and received 4 responses. She said that the city will be awarding a bid on August 18. She said that after award, she would provide NCRA with a scope of work and the first task would be to conduct a meeting with the consultant, the City of Arcata, Coastal Conservancy and NCRA.

H. CONDUCT OF BUSINESS

1. Discussion and Possible Approval of Contract between NCRA and Piseni & Brinker LLC. for Annual Financial and Compliance Auditor for Fiscal Years 2008-09 and 2009-10

Executive Director Stogner said that NCRA issued a request for proposals (RFP) for an Annual Financial and Compliance Auditor. He said that NCRA received one proposal from Piseni & Brinker.

Chairman Hemphill recused himself from the discussion.

Director Meyers asked for clarification on an indemnification clause, and also clarification on a paragraph in the engagement letter from Piseni & Brinker about reproduction of the documents that are prepared by Piseni & Brinker. Executive Director Stogner said that he would seek clarification on the issue.

There was a brief discussion about possible claims brought against NCRA because of inaccuracies in the reports created by Piseni & Brinker and how any fees associated with the claim would be handled.

Director MacDonald said that the paragraph about reproduction of documents should be removed pending clarification from Piseni & Brinker.

Upon Motion by Director Meyers, seconded by Director Colfax the Board approved the Contract between NCRA and Piseni & Brinker LLC. for Annual Financial and Compliance Auditor for Fiscal Years 2008-09 and 2009-10, and staff was directed to clarify with Piseni & Brinker the intent of the paragraph in the engagement letter regarding reproduction of documents. Motion carried. **AYES: 6, NOES: 0, ABSENT: 2, ABSTAIN: 1- Chairman Hemphill**

2. Discussion and Possible Approval of Updated Policies & Procedures Manual Section 1700 - Disadvantaged Business Enterprise (DBE) Program Plan

Executive Director Stogner summarized the Disadvantaged Business Enterprise (DBE) Program Plan. He said that in order for NCRA to receive any state or federal funds it has to approve and implement the Disadvantaged Business Enterprise (DBE) Program Plan.

Upon Motion by Director Meyers, seconded by Director Wagenet the Board approved the Updated Policies & Procedures Manual Section 1700 - Disadvantaged Business Enterprise (DBE) Program Plan. **AYES: 7, NOES: 0, ABSENT: 2, ABSTAIN: 0**

3. Discussion and Possible Approval of Amendment to NCRA Trail Policy

Executive Director Stogner said the Board codified the trail policy in June 2009. He said that there were three changes that were requested by the trail proponents in June as follows:

1. Removal of Section 0907.4.8.c.establishing fence height;
2. Amendment of Section 0907.4.11.b. to make decisions, regarding animals on the right-of-way, discretionary based on the Board's case-by-case evaluation of Trails Proposals;
3. Change the term "Trails on Rails" to "Rails with Trails"

Executive Director Stogner said that the document before the Board incorporates the three changes and that legal counsel has approved the changes.

A discussion ensued about NWP Co.'s approval of NCRA's trail policy and the letter that was submitted by NWP Co.'s legal counsel.

Legal Counsel Neary said that the document that is before the Board is a final document that was codified in June. He said that the Board is not being asked to negotiate the policy any further, and that the Board is being asked to approve three minor changes to the policy. He also said that the Board is not being asked to accept or approve the letter from NWP Co.'s legal counsel.

Upon Motion by Director Kelley, seconded by Director Meyers, the Board approved the Trail Guidelines with the three changes 1.) Removal of Section 0907.4.8.c.establishing fence height; 2.) Amendment of Section 0907.4.11.b. to make decisions, regarding animals on the right-of-way, discretionary based on the Board's case-by-case evaluation of Trails Proposals; 3.) Change the term "Trails on Rails" to "Rails with Trails." Motion carried **AYES: 7, NOES: 0, ABSENT: 2 ABSTAIN: 0**

Director Meyers said that he thinks that NCRA should get acknowledgment from the Operator that states that the Operator understands and agrees that NWP Co. is bound by the Trail Guidelines, anything to the contrary in the Operator's Lease not withstanding.

4. Discussion and Possible Approval of Ukiah Train Station Lease

Executive Director Stogner updated the Board on the Ukiah Depot Train Station Lease with the City of Ukiah. He thanked CalTrans District 1 and said that without its support, the City of Ukiah would have lost funding for the renovation of the Depot Station. He said that the lease agreement that the Board has before it will allow the City of Ukiah to renovate and maintain the Ukiah Depot for transportation purposes.

Legal Counsel Neary said that the lease is for a term of 50 years with a 25 year option to renew with no consideration to NCRA. He said that NCRA retains flexibility, in terms of future use of the Depot, if freight or passenger service returns to Ukiah. He said that the lease will be finalized in the next 60 days and that timeframe will allow NCRA to review the lease boundaries and parking area. He said he supports approval of the agreement.

Director Wagenet requested that the first sentence of Item C.1.a page 5 of the lease be corrected to read “the NCRA, its directors, officers, officials, and.....”

Director Meyers said that page 2 at the top states”Lessee (Ukiah) will maintain the premises until NCRA uses it as a passenger depot.....” He requested the following verbiage be added – “thereafter, to the extent the parties share the use of the depot each shall be responsible for their share of the maintenance.”

Director Meyers said that on Page 6 Section 8.01 states “lessee shall not assign this lease, without the prior written consent of the NCRA.” Director Meyers requested the following verbiage be added “, which NCRA may grant or withhold at its sole discretion.”

Director Meyers asked if NWP Co. needs to sign the lease agreement or provide NCRA with a letter stating its concurrence with the lease agreement.

Director Kelley said that NWP Co. has previously stated that it does not have any use for the Ukiah Depot Station, and that he does not see any necessity to request NWP Co.’s concurrence.

Legal Counsel Neary said that he did not see the benefit of adding language to page 2 as suggested by Director Meyers because page 2 paragraph C. states that, if at some time in the future NCRA wants to utilize the Depot, NCRA has the ability to renegotiate the lease to accomplish this.

Motion to approve the Ukiah Train Station Lease made by Director Wagenet, seconded by Director Kelley, with the following changes: 1.) on page 2”Lessee (Ukiah) will maintain the premises until NCRA uses it as a passenger depot.....” the following verbiage will be added – “thereafter, to the extent the parties share the use of the depot each shall be responsible for their share of the maintenance.” 2.) on age 6 Section 8.01 “Lessee shall not assign this lease, without the prior written consent of the NCRA.” add the following verbiage “, which NCRA may grant or withhold at its sole discretion.” 3.) Item C.1.a page 5 of the lease be corrected to read “the NCRA, its directors, officers, officials, and.....” Motion Carried **AYES: 7, NOES: 0 ABSENT: 0, ABSTAIN: 0**

5. Discussion and Possible Appointments to NCRA Committees

Upon Motion by Director Meyers, seconded by Director Kelley, Director Atkins was appointed to the Finance Committee and Director Wagenet was appointed to the Property Committee. Motion carried. **AYES: 7, NOES: 0, ABSENT: 2, ABSTAIN: 0**

Public Comment:

Carlos Quilez

I. CONSENT CALENDAR

1. Approval of Minutes - Regular Board Meeting – June 10, 2009
2. Acceptance of Financial Statements – Annual 2009
3. Acceptance of Financial Statements – July 2009
4. Approval of Warrants Issued - Agency 787010 – June - July 2009

5. Approval of Warrants Issued - TCRP 787101 – June - July 2009
6. Approval of CalCard Statement – June -July 2009

Upon Motion by Director Colfax, seconded by Director Kelley, Consent Calendar Items 1-6 were approved. **AYES:** 6, **NOES:** 0, **ABSENT:** 2, **ABSTAIN:**1-Wagenet

J. STAFF REPORTS

1. Executive Director – Mitch Stogner

a. SMART/NCRA Operating Agreement Meeting

Executive Director Stogner updated the Board on the most recent meeting between SMART and NCRA. He said that they agreed that, rather than deal with the Operating Agreement, Principals Agreement, and the Coordination Agreement, SMART will request that its outside counsel draft a single document that incorporates all issues. He said NCRA will be provided a copy of that agreement on August 21.

Chairman Hemphill said that SMART decided to use FRA compliant vehicles.

- b. Economic Stimulus Funding**
- c. Federal Transportation Reauthorization Bill**

Executive Director said that there is a September 15 deadline for submission of applications to USDOT for Stimulus funding and that NCRA will continue to pursue the Stimulus funding for repairs from Windsor North.

d. DEIR

Executive Director Stogner said that will recirculate the DEIR to address changes in the following areas: 1. Trail Guidelines; 2. Best Management Practices and Operations plans and technical corrections. He said that all the changes should be done by the end of September and that the Board should be able to certify the EIR in January 2010. Executive Director Stogner said that FRA needs to provide NCRA with certification of the repairs before NWP Co. can operate on the line.

There was a brief discussion about the budget for re-circulation of the DEIR, timeline for public comments to the DEIR, and the recent CalTrans Audit. Executive Director Stogner said that the Agency budget would be unaffected by recirculation of the DEIR, and that project expenses would be cut in order to provide for the expense of recirculation. He said that NCRA will respond to the letter received from CalTrans Audits.

Public Comment

Carlos Quilez

2. Project Manager – Dave Anderson

Mr. Anderson presented the Board with a PowerPoint presentation showing the repairs to the NWP rail line.

3. Legal Counsel – C.J. Neary

Legal Counsel Neary reported on the Environmental Consent Decree (ECD) and the Novato Consent Decree and recent progress made on both.

Director MacDonald requested a copy of the 6 month report that NCRA is required to submit to the City of Novato in advance of submittal to the City of Novato.

K. OPERATOR REPORT

1. NWP Co. – John Williams

No Report – Mr. Williams was not in attendance.

L. MATTERS FROM THE BOARD

Director Meyers requested staff look into Directors Liability Insurance. He also asked how the Board Workshop agenda will be structured and how Directors can submit items for possible discussion.

Chairman Hemphill said that he will work with staff on a draft agenda.

Director Meyers requested that a copy of the NWP Co. lease agreement be uploaded onto the NCRA website.

Director Atkins said that she would like to see the issue of the NWP Co. lease agreement being uploaded onto the NCRA website as an agenda item in the future.

Chairman Hemphill said that the issue of the NWP Co. lease agreement should be a Conduct of Business item at an upcoming meeting, if other Directors also feel that it is important.

Chairman Hemphill directed staff to add the issue to an upcoming agenda for discussion.

The Board convened into Closed Session at 1:33 p.m.

M. CLOSED SESSION

1. Conference with Legal Counsel-Existing Litigation. Govt. Code 54956.9(a) Humboldt Baykeeper v NCRA, Northern District C-06-2650;
2. Conference with Legal Counsel-Anticipated Litigation, Significant Exposure to litigation pursuant to Govt. Code 54956.9 (b) one case relates to threatened litigation re crossing contemplated with Noble;
- ;
3. Conference with Legal Counsel-Initiation of litigation, Govt Code 54956.9 (c) one case. Disclosure of party will jeopardize settlement discussions.

N. ANNOUNCEMENT OUT OF CLOSED SESSION

Legal Counsel reported that the Board met with Counsel received information and gave direction on one matter of existing litigation and one item of threatened litigation. The Board deleted Closed Session item 3. No action taken.

Legal Counsel also reported that the Board added an item regarding California Redwood Coast vs. NCRA no action taken. He said that the Board approved Resolution No. 2009-05, which authorizes a conversion of a \$165,000 judgment, to an installment judgment, with the approval of the court.

Upon Motion by Director Wagenet seconded by Director Kelley Resolution 2009-05 was approved: **AYES: 7, NOES: 0, ABSENT: 2, ABSTAIN: 0**

O. ANNOUNCEMENT OF NEXT MEETING

NCRA Property Committee Meeting
August 12, 2009 –Immediately following the August 12, 2009 NCRA Board Meeting
Humboldt County Board of Supervisors Chambers
825 Fifth Street, Room 111, Eureka
Humboldt County

P. ADJOURNMENT

Chairman Hemphill adjourned the meeting to the Property Committee meeting at 2:00 p.m.
