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June 17, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – MRY in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

Enclosed is MRY's Protest and Comments to the adverse abandonment application filed in the above proceeding. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Sincerely,

/s/ William A. Mullins

Attorney for MRY

Enclosure
cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
– ADVERSE ABANDONMENT –
MRY IN MENDOCINO COUNTY, CALIFORNIA

PROTEST AND COMMENTS TO GRTA ADVERSE ABANDONMENT APPLICATION

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BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
– ADVERSE ABANDONMENT –
MRY IN MENDOCINO COUNTY, CALIFORNIA

PROTEST AND COMMENTS TO GRTA ADVERSE ABANDONMENT APPLICATION

INTRODUCTION

On April 12, 2024, the Great Redwood Trail Agency ("GRTA/NCRA")[1] filed an Application for Adverse Abandonment ("Adverse Application") pursuant to 49 U.S.C. Section 10903(d) and 49 C.F.R. Section 1152.22. GRTA/NCRA, a common carrier subject to the jurisdiction of the Board,[2] seeks adverse abandonment of a line of railroad owned by Mendocino

[1] The Great Redwood Trail Authority is "the reorganized continuation of the same legal entity NCRA" (referring to the North Coast Railroad Authority ("NCRA")), Adverse Application at 6. Many of the decisions and actions discussed herein are attributable to the period of time when the Great Redwood Trail Authority was called the North Coast Railroad Authority, and as such MRY will refer to it as "GRTA/NCRA", given that the decisions and actions are attributable to the organization no matter what it is or was then called.

[2] Adverse Application at 14. ("GRTA is a common carrier by railroad") (citing N. Coast R.R. Authority – Acquis. and Operation Exemption – Eureka Southern Railroad, FD 32052 (ICC served Apr. 23, 1992; North Coast Railroad Authority – Purchase Exemption – Southern Pacific Transportation Company, FD 32788 (STB served Mar. 20, 1996); and North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company, FD 33115 (STB served Sept. 27, 1996)). See also, id. at 13 ("GRTA now owns and has residual common carrier responsibility for this approximately 175.84 miles of the GRTA Line north of Willits railbanked in AB-1305X, and [Sonoma-Marin Area Rail Transit ("SMART")] now owns the portion of the GRTA Line in Sonoma and Marin Counties on the southern end. The remainder of the GRTA Line from Willits to NWP milepost 89 is still owned by GRTA and is subject to the jurisdiction of the STB.") (internal citations omitted)). Indeed, its mission is, in part, to "discharge the duties of a rail common carrier before the Surface Transportation Board." Great Redwood Trail Agency website, https://thegreatredwoodtrail.org/about/, accessed on April 25, 2024.

Railway ("MRY"), a freight common carrier railroad subject to the jurisdiction of the Board.[3] The rail line segment that GRTA/NCRA seeks to have abandoned is the Mendocino Line, a line of railroad subject to the Board's jurisdiction.[4]

The Mendocino Line connects with a portion of a line of railroad, also subject to the jurisdiction of the Board[5] and currently owned by GRTA/NCRA (the "Middle Segment")[6] and, through that GRTA/NCRA Middle Segment, to the rest of the interstate freight rail system. GRTA/NCRA, however, wants to divest MRY of its common carrier rights so GRTA/NCRA can

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[3] See, Mendocino Ry. – Acquisition Exemption – Assets of the Cal. W.R.R., FD 34465, slip op. at 1 (STB served April 9, 2004). See also, Adverse Application at 16 ("MR, as a rail carrier subject to the Board's jurisdiction…."). See also, FRA RRIF Express Environmental Review Letter at 1 (identifying MRY as "a Class III Surface Transportation Board licensed carrier" entitled to access USDOT RRIF Program funds), appended as Attachment 14 to the Verified Statement of Robert Jason Pinoli, President, MRY, attached hereto as Appendix A ("VS Pinoli"). MRY is owned by Sierra Railroad Company, which also owns the Sierra Northern Railway, another common carrier Class III railroad subject to the STB's jurisdiction. See, Sierra Northern Railway – Lease and Operation Exemption – Ventura County Transportation Commission, FD 36570, (STB served December 17, 2021). MRY maintains and offers to move traffic pursuant to published tariffs. See, MRY, Freight Tariff CWR 9500, effective January 1, 2022, published online at MENDOCINO-2021-FREIGHT-TARIFF-FINAL.pdf (skunktrain.com), and appended to the VS Pinoli as Attachment 4.

[4] MRY acquired the Mendocino Line from the bankruptcy estate of the California Western Railroad in a transaction covered by the STB's acquisition exemption process. See, Mendocino Ry. – Acquisition Exemption – Assets of the Cal. W.R.R., FD 34465, slip op. at 1 (STB served April 9, 2004).

[5] Adverse Application at 6. See also, Verified Statement of Elaine Hogan, attached to the Adverse Application, at paragraph 8 (noting that the GRTA/NCRA Middle Segment "is subject to the jurisdiction of the STB").

[6] This Protest and Response will reference the GRTA/NCRA Middle Segment and the GRTA/NCRA Northern Segment. The GRTA/NCRA Middle Segment is the line of railroad south of Willits, California (MP 139.5) to Healdsburg, CA (MP 68.2). The Southern Segment from MP 68.2 to MP 63.4 at Lombard Station, Napa County, CA was sold to the Sonoma-Marin Area Transit District ("SMART"). Sonoma-Marin Area Rail Transit District— Acquisition Exemption— Northwestern Pacific Railroad Authority, FD 34400 (STB served Mar. 10, 2004). The GRTA/NCRA Northern Segment consists of a line between Willits and Eureka, California (approximately MP 284.1), together with a number of branches off the main Northern Segment. The Northern Segment is currently railbanked pursuant to 16 U.S.C. 1247(d) for interim rail use subject to rail reactivation. Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity and Humboldt Counties, CAL., AB 1305X, Decision and Notice of Interim Trail Use or Abandonment (STB served October 24, 2022).

more easily build a hiking trail on its own property. GRTA/NCRA also wants to shortly file for an abandonment of its own Middle Segment in hopes of creating a speculative, extremely expensive, and unnecessary trail for which it – by its own admission – lacks funding. "Specifically, for purposes of this proceeding, GRTA must file for abandonment of the GRTA Line [including the Middle Segment] and seek to railbank it as part of GRTA's statutory mandate."[7] Pursuant to 49 CFR 1152.25, Mendocino Lines hereby files this protest and reply opposing the Adverse Application.[8]

SUMMARY OF ARGUMENT

This proceeding is not about the GRTA/NCRA Northern Segment, which is railbanked. This is not about the GRTA/NCRA's own Middle Segment and the costs to rehabilitate that segment. Instead, this is an adverse abandonment proceeding whereby GRTA/NCRA seeks to force the abandonment of MRY's Mendocino Line against the desires of MRY, its owner and operator.[9] The primary question in an adverse abandonment really is whether the public convenience and necessity ("PN&C") require or permit the proposed abandonment. To determine this, the Board performs a balance of interest test to determine whether there is a Congressional and federal interest in the

[7] Adverse Application at 6. As noted in the discussion at pp. 16, *infra*, and Footnote 38, the idea that GRTA/NCRA "must" remove MRY common carrier rights in order for GRTA/NCRA to obtain abandonment authority is not legally accurate.

[8] 49 CFR 1152.25 is directed specifically at shippers and users of the line and was designed for users to oppose abandonments filed by railroads (and communities who oppose abandonments filed by railroads). Technically, MRY is not a "user" of the Mendocino Line; MRY is the line's owner and operator. As such, many of the sections are not applicable in an adverse abandonment situation. Nonetheless, this protest and reply includes all of the applicable information, including that referenced in Sections 1152.25(a)(i) - (iv) and (2)(iii).

[9] In filing its Adverse Application, GRTA/NCRA has fulfilled its statutory mandate to file this adverse abandonment application, but the Board is not under a statutory mandate to grant it. As will be demonstrated herein, the application is not necessary in order for GRTA/NCRA to achieve the overall statutory goal of creating a hiking trail, and the Board should deny the application under the facts and applicable law.

continuation of freight rail (in this case there is) and, if there is, whether any valid other interest outweighs that interest (in this case it does not).

In applying that PN&C test here, the Adverse Application must be denied. Indeed, granting the Adverse Application would: (1) be directly contrary to Congressional policy (indeed, the policy of all levels of government including many in California favors maintaining rail service and rail infrastructure whenever possible); (2) fly in the face of the Board's numerous precedents denying adverse abandonment applications when shippers use the line or there is potential for future use of the line; (3) undermine the U.S. Department of Transportation's recent action in granting a loan for the specific purpose of rehabilitating the Mendocino Line to support the continued availability of freight; and (4) have the potential to adversely affect essential services provided over the line. In addition, and notwithstanding GRTA/NCRA's assertions and misapplication of the law, granting the Adverse Application would not be necessary for GRTA/NCRA to add a trail to its Middle Segment, especially if it develops a a rail-*with*-trail..[10]

The Board should not sanction the GRTA/NCRA's behavior and arguments in this proceeding, including its failure over the past quarter century to even attempt to remove the embargo on its own line; which such embargo created a direct barrier to MRY's ability to interchange with other freight rail carriers.[11] Granting the Adverse Application would be

[10] Indeed, this rails-*with*-trails approach is entirely consistent with both the past actions and policies of GRTA/NCRA. But GRTA/NCRA inexplicably does not want to have rails *with* trails on the Middle Segment, notwithstanding that there are rails *with* trails already on, and planned for, other portions of the GRTA/NCRA line.

[11] GRTA/NCRA makes several irrelevant pejorative statements in support of its Adverse Application. Those statements do not address any cognizable legal standard to be applied by the Board in this proceeding. They are inappropriate for a pleading submitted for the Board to consider in this particular proceeding. As a result, rather than address each of those irrelevant and salacious comments as part of this submission, MRY has filed a corresponding motion to strike the offensive material. In the event the motion is denied, MRY requests the opportunity to address the offensive, inaccurate, and irrelevant comments.

tantamount to the STB placing its imprimatur stamp of approval for a policy that allows one carrier to embargo its line for 25+ years and then use that action to force an abandonment of another connecting carrier's line. The Board should not sanction such bad faith actions, especially when the other carrier (MRY in this case) has provided essential rail services and has consistently taken steps to rehabilitate its own line in order to provide needed freight services.

ARGUMENT

In essence, this case really should prove to be an easy one for the Board. The legal standard is fairly clear. There is an overriding Congressional (indeed, multi-governmental) interest in protecting current and future freight rail service. That overriding interest must be overcome in order to permit an adverse abandonment. That interest can be overcome, and an adverse abandonment granted, *if and only if* the present or future public convenience and necessity require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, that test is applied by the Board, first, considering whether there is a present or future public need for rail service over the line and, second, whether that need is outweighed by other interests. The Board will balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally. The Board will also preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken *reasonable* steps to acquire traffic: both factors that apply to MRY. When the carrier opposes the abandonment, as is also the case here, the burden is on the non-carrier petitioner. Here, all factors point to denying the Adverse Application.[12]

[12] As discussed *supra*, the entire premise asserted by GRTA/NCRA, i.e., that the MRY's STB jurisdictional status must be removed for GRTA/NCRA to develop a trail, is simply incorrect. MRY can be an "island railroad" and still remain "part of" the interstate rail system.

I. THE POLICY OF CONGRESS AND GOVERNMENTAL ENTITIES AT ALL LEVELS IS TO PRESERVE RAILROAD INFRASTRUCTURE WHEREVER POSSIBLE

It is important to note up front that there is an indisputable overriding Congressional (national) interest in protecting current, and the potential for future, freight rail service, and to preserve that whenever possible. Indeed, the goal of preserving potential rail service is so strong that the STB once stated that "Neither the Board, nor the Interstate Commerce Commission before it, has *ever* granted an adverse abandonment application when the carrier was operating over the line,"[13] as Mendocino does here.

The STB has reiterated this underlying sentiment as recently as in the first step of this multistep Great Redwood Trail process when it cited "the strong congressional intent to preserve rail service whenever possible" as the primary reason for ensuring that an OFA takes priority over a trail use proposal.[14] In that case, concerning the proposed abandonment of the GRTA/NCRA Northern Segment, the Board was echoing oft-repeated language that it is ever "mindful of Congress' intent, as expressed in many statutory provisions, that lines be kept within the rail system where possible."[15] The Board has recognized this important Congressional intent by noting that the Board has "exclusive and plenary jurisdiction over abandonments, including adverse abandonments,

[13] Salt Lake City Corp. – Adverse Abandonment – in Salt Lake City, UT, AB-33 (Sub-No. 183) (STB served March 8, 2002) slip op. at 7 (emphasis added), *cited with approval* in New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177, 1182 (D.C. Cir. 2004). MRY operates over the Mendocino Line that is the subject of the current GRTA/NCRA adverse abandonment application.

[14] North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CAL., AB 1305X (STB served May 17, 2022) slip op. at 8.

[15] Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, AB-290 (Sub-No. 286)(STB served February 14, 2008) slip op. at 5 and at n. 15 (citing the Interstate Commerce Act, and the Trails Act).

in order to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service."[16]

GRTA and its predecessors, as well as other California state agencies, recognize the importance of freight rail service as well, especially in the environmental sphere. As GRTA/NCRA itself once put it:[17]

> One freight car removes 4 big rigs from Highway 101. One gallon of diesel can move 1 ton of freight over 400 miles. Trains are good for the environment, good energy policy, and good for the economy. A public/private partnership, in which the public sector invests in a rail corridor the public owns, and the private sector operates the trains and maintains the line, is a model that works throughout the United States. This Public/Private rail partnership has been touted by the Obama Administration in Washington, DC as one of the most cost-effective and efficient methods of promoting environmentally friendly goods movements throughout the United States.

The California State Rail Plan, March 2023, prepared for the California Department of Transportation, speaks to the fact that "California's economic, environmental, and equity goals demand a fully integrated zero-emission, modern passenger and freight rail network that safely and reliably delivers more service to more destinations more often and attracts significant demand away from highway and air travel."[18]

Fort Bragg, a community at the end of the Mendocino Line, has as recently as 2018 also been unequivocal about the importance of a robust rail service to its community. A "successful[] and vibrant Mendocino Railroad (sic)" and its freight and passenger rail service will be the catalyst

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[16] Seminole Gulf Railway, L.P. North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CAL. AB 1305X (STB served May 17, 2022), slip op. at 8.

[17] Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update, https://northcoastrailroad.org/Acrobat/Frequently_Asked_Questions.pdf, accessed on May 1, 2024 at 5.

[18] California State Rail Plan, https://dot.ca.gov/-/media/dot-media/programs/rail-mass-transportation/documents/california-state-rail-plan/20230309-casrp-public-dor-guidance.pdf, accessed on June 17, 2024, at 10.

to economic growth and development of the local economy.[19] And again in 2019, Fort Bragg stated that preservation and rehabilitation of the Mendocino Line, and the restoration of the services provided over it, "would be a significant economic benefit to the Fort Bragg and the surrounding rural economy of Mendocino County…."[20]

The overriding policy of government agencies of all levels is to preserve and expand freight rail service in general, and the Mendocino Line in particular. Congressional and other federal interests, including the FRA and this Board, have made preservation and expansion of freight rail service a priority. California state interests have made preservation and expansion of freight rail service a priority. The City of Fort Bragg recognizes the importance of the preservation and expansion of freight rail service to the local economy. Mendocino County and the Mendocino Council of Governments have expressed the same. GRTA/NCRA's efforts to facilitate an adverse abandonment of MRY's line is directly contrary to these policies. Any STB decision approving this adverse abandonment application so as to facilitate the development of a trail would be directly contrary to these policy goals and as discussed below, numerous ICC and STB precedents.

II. APPLICABLE LEGAL STANDARD

GRTA/NCRA states that "[t]he standard governing abandonment, including adverse abandonment, 'is whether the present or future [public convenience and necessity] require or permit the proposed abandonment."[21] MRY does not disagree with that fairly broad statement, but believes that a more fulsome authority to cite for the standard involving adverse abandonment would be a

[19] See "Economic Impact Analysis of the MRY (Skunk Train), City of Fort Bragg, 2018" at 5, attached as Appendix B.

[20] Resolution of the Fort Bragg City Council to Submit a Department of Transportation ("DOT") Build Grant for the MRY to Repair its Tunnel and Rehabilitate its Track, Resolution No. 4181-2019, passed June 24, 2019, appended to the VS Pinoli as Attachment 18.

[21] Adverse Application at 34 (citing The Western Stock Show Ass'n – Abandonment Exemption – In Denver, CO., AB-452 (Sub-No. IX), 1 S.T.B. 113 (served July 3, 1996)).

case from 2012 that discusses in more detail the applicable legal standard in the context of an actual adverse abandonment proceeding:[22]

> Legal standard. Under 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, we consider whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests. As part of our PC&N analysis, we must consider whether the proposed abandonment would have a serious, adverse impact on rural and community development. 49 U.S.C. § 10903(d). We also consider the environmental impacts of the proposed abandonment, and, pursuant to 49 U.S.C. § 10903(b)(2), we must ensure that affected rail employees will be adequately protected.
>
> The Board has exclusive and plenary jurisdiction over rail abandonments to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Accordingly, we typically preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. On the other hand, we do not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding federal interest exists. If we grant an adverse abandonment, our decision removes the shield of our jurisdiction, enabling the applicant to pursue other legal remedies to force the carrier off a line and sell or dispose of railroad property that would otherwise be protected as part of the national rail transportation system.

"In implementing this standard, [the Board] must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally."[23] "[T]he Board

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[22] Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071, Decision and Certificate of Interim Trail Use or Abandonment (STB served November 16, 2012), slip op. at 4 (footnotes omitted), subsequently dismissed and vacated, Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071 (STB served November 14, 2013). See also, Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO, AB-1014 (STB served May 23, 2008), ("DRGR Historical Foundation"), slip op. at 5 ("Under 49 U.S.C. 10903(d), the standard governing any application for authority to abandon a line of rail is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, we must consider whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.").

[23] Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, AB-400 (Sub-No. 4) (STB served November 18, 2004)(decision denying application for adverse abandonment), slip op.

weighs the relative burdens that continuing or ceasing rail service would have on all of the potential interests, including the railroad, the owners of the property (if different from the carrier), shippers, the national rail network, and the broader public."[24] The Board must take care not to ignore the interests of any constituent parties.[25]

"And [the Board] must take the goals of the Rail Transportation Policy (RTP), set forth at 49 U.S.C. 10101, into consideration in making our public interest determinations."[26] Among other things, that RTC speaks to promoting the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the general public.

The Board will act to "preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken *reasonable* steps to acquire traffic."[27] The Board has recognized that current operations on a line segment generally equates to the presumption that there is a potential for continued rail service on that line segment.[28] The Board takes seriously

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at 4 ("Seminole Gulf") (citations omitted in the text) (citing New York Cross Harbor R.R. v. STB, 374 F.3d 1177, 1180 (2004) and City of Cherokee v. ICC, 727 F.2d 748, 751 (8th Cir. 1984)).

[24] New York Economic Development Corp. – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY, AB-596, (STB served August 28, 2003), slip op. at 3, *cited with approval* in New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177, 1183 (D.C. Cir. 2004).

[25] New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177 (D.C. Cir. 2004).

[26] Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, AB-400 (Sub-No. 4) (STB served November 18, 2004)(decision denying application for adverse abandonment), slip op. at 4 ("Seminole Gulf") (citations omitted in the text) (citing New York Cross Harbor R.R. v. STB, 374 F.3d 1177, 1180 (2004) and City of Cherokee v. ICC, 727 F.2d 748, 751 (8th Cir. 1984)).

[27] Seminole Gulf at id. (emphasis added).

[28] Salt Lake City Corp. – Adverse Abandonment – in Salt Lake City, UT, AB-33 (Sub-No. 183)(STB Served March 8, 2002) slip op. at 8, *cited with approval* in New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177, 1182 (D.C. Cir. 2004). In the Salt Lake City proceeding, UP had not operated over the line for more than 2 years but had recently begun to use the line again. That use of the line was sufficient for the Board to determine that "there clearly is a potential for continued rail freight service here." Here, MRY not only currently operates over the line, and has the current financial wherewithal to continue to operate over the line, MRY has received federal

its obligation "to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Accordingly, [the Board will] typically preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic."[29]

The applicant (in this case, GRTA/NCRA) has the burden of proof in the balancing test.[30] That burden of proof is "to show that the carrier has no likelihood of success in preserving the line for rail service."[31] This is a "heavy burden" to meet.[32] And in this case, the applicant clearly has not met that heavy burden.

The presence of current freight rail service is important, but not a necessary prerequisite, to a finding that there is an overriding federal interest in the rail segment in question. "[T]he lack of current freight operations alone is not grounds for granting an adverse abandonment application."[33] In fact, the Board has "historically denied adverse abandonment applications if there is a *potential*

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funds to further enhance its operations over the line for future rail service. As such, MRY is in a much more robust situation than UP.

[29] DRGR Historical Foundation, slip op. at 6.

[30] Seminole Gulf, slip op. at 5.

[31] DRGR Historical Foundation, slip op. at 13.

[32] Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, AB-290 (Sub-No. 286)(STB served August 27, 2008), slip op. at 4, petition for reopening granted, Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IND, AB 290 (Sub-No. 286) (STB served April 17, 2012) (granting the petition for adverse abandonment). As discussed further herein, several aspects of the applicant's case fail, either because it based on flawed legal assumptions (such as the assertion that the Middle Segment embargo completely cuts off the Mendocino Line from the remainder of the interstate freight rail market), and flawed analysis (such as performing a financial analysis omitting existing sources of revenues) based on faulty data (such as performing an analysis that cites monthly freight carloads and omitting any intermodal traffic while asserting that the numbers discussed represent annual freight movement). The applicant's case simply does not meet its heavy burden in overcoming Board precedent and Congressional, Executive, and State Policy favoring the preservation of freight rail service whenever possible.

[33] DRGR Historical Foundation, slip op. at 6.

for continued operations and the carrier has taken reasonable steps to attract traffic."[34] As is shown in the Pinoli Verified Statement, here, on the Mendocino Line, there is not only existing traffic but the real potential for even more traffic.

Just because there is evidence that attracting new shippers to the line has been difficult thus far[35] does not permit the STB to find that there is no potential for continued rail service over the line.[36] In fact, when a carrier opposes an application for adverse abandonment of its freight common carrier obligation over its rail line, the Board will preserve and promote continued rail service when that carrier has taken steps to acquire traffic, steps that are reasonable in the totality of circumstances it faces. In this case, MRY has taken more than "reasonable steps" to maintain and enhance freight rail service. It has invested millions of dollars in the line and the region and spent over four years seeking a RRIF loan so as to improve and rehabilitate its rail line.[37]

GRTA/NCRA presents the Board with a few cherry-picked cases in its adverse abandonment application, but even those cases do not really support the argument that adverse abandonment is justified here. For example, GRTA/NCRA cites Alloy Property Company for the

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[34] Seminole Gulf, slip op. at 5 (citing Salt Lake City Corp. – Adverse Abandonment – in Salt Lake City, UT, AB-33 (Sub-No. 183), slip op. at 8 (STB served Mar. 8, 2002)) (emphasis added). Here there is existing service and the potential for even more future rail service once the line has been rehabilitated.

[35] As discussed *infra*, it has been difficult due to GRTA/NCRA's 20-year likely unlawful embargo of the Middle Sagemont.

[36] Seminole Gulf, slip op. at id.

[37] "Over the last decade alone (despite the economic downturn caused by COVID-19), MRY has invested more than half of its annual revenues into the Mendocino Line each year. Prior to the collapse of Tunnel No. 1, MRY carried out full freight service on the line, serving several shippers. Following the collapse of its Tunnel No. 1 in 2015, which severed the line, MRY became incapable of providing through freight service over the entirety of its line. But freight service on the line continued, despite the line being bifurcated into operating segments, as MRY worked and invested millions to prepare for the repair of partially collapsed Tunnel No. 1. VS Pinoli 10. See also, id. at 11 (noting that MRY and Sierra Northern Railway spent over $1.3m and four years to obtain a $31.4 million federal RRIF loan, $21.5 million of which will be used for projects on the Mendocino Line).

proposition that "the Board granted an adverse abandonment application for a line that had not been used for freight for three years." But there, the rail carrier with the common carrier obligation over the Alloy Property Company adverse abandonment line segment *withdrew its opposition* and supported the alternative use proposed for the property. Adverse Abandonment at 47 (citing Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal R.R. in Chicago, Ill., AB-1258 (STB served April 30, 2018)). GRTA/NCRA cites for the same proposition a Norfolk Southern Railway Company Adverse Abandonment at 48 (citing Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County IND., AB-290 (Sub-No. 286) (STB served April 17, 2012)). Of course, as to that case, GRTA/NCRA fails to note that the adverse abandonment had previously been *denied* by the Board in the Norfolk Southern proceeding when Norfolk Southern opposed the abandonment because of the potential for future rail service and the Board agreed with Norfolk Southern that the potential for future rail service justified denying the adverse abandonment. GRTA/NCRA also fails to note that when the case was reopened years later and the Board granted the adverse abandonment, Norfolk Southern at that time no longer opposed the adverse abandonment and *concurred* with it.

GRTA/NCRA could have just as easily cited City of Rochelle, in which the STB only granted an adverse discontinuance petition where the rail carrier both *ceased operations* on the line and *did not oppose* the adverse discontinuance application. City of Rochelle, Illinois – Adverse Discontinuance – Rochelle Railroad Company, AB-549, served May 27, 1999. See also, Minnesota Commercial Railway Co. – Adverse Discontinuance – in Ramsey County, MN, AB-882, with associated proceedings, STB served July 16, 2008, at 4 (adverse abandonment approval granted over a segment of line that has not seen traffic for over a year and both the owner and the operator of the line do not oppose the requested abandonment and discontinuance). None of the cases cited by GRTA/NCRA apply here where MRY opposes the abandonment, there has been traffic over the

line, and there is the potential for even more future rail traffic once the line has been rehabilitated and through service fully restored.[38] Indeed, GRTA/NCRA cannot cite one single case that supports the grant of an adverse abandonment under the factual circumstances present here.

III. THE FACTS ARE CLEAR, THE ANALYSIS UNDISPUTABLE: ADVERSE ABANDONMENT IS NOT JUSTIFIED IN THIS PROCEEDING

Application of the facts to this legal standard shows that abandonment is not justified as to the Mendocino Line, particularly in the face of the overriding Congressional, state, and local interest in protecting current and the potential for future freight rail service, and to preserve that whenever possible.

A. Applying the Legal Standard to the Facts Demonstrates that a Public Convenience and Necessity Balance Weighs in Favor of Denial of the Adverse Abandonment Request.

There is no dispute between the parties as to a great preponderance of the facts.[39] MRY is a freight common carrier railroad, and the Mendocino Line is a "line of railroad," subject to the jurisdiction of the Board. GRTA/NCRA also is a freight common carrier railroad, and the GRTA/NCRA Middle Segment is a "line of railroad," subject to the jurisdiction of the Board. The

[38] GRTA/NCRA also argues that that the "'primary question' in an adverse abandonment case is whether 'removal of [the Board's] jurisdiction as a shield against state law is in the public interest.'" Adverse Application at 2. This is an incorrect statement of the law. Whether or not the Board's jurisdiction is being used as a shield against state law is simply one factor for the Board to consider, and only for consideration in certain PN&C evaluations not applicable here. Here, GRTA/NCRA claims that federal jurisdiction should be removed as a shield to the establishment of a trail over the GRTA/NCRA-owned line segment. Not only is federal jurisdiction over the Mendocino Line not a shield to the potential abandonment of federal jurisdiction over the GRTA/NCRA-owned line segment, a state law requiring the same would be directly contrary to the STB precedents favoring continued rail service and federal, state, and local policies favoring the same. The Board has never held that the desire to facilitate trail use should take precedent over the desire to maintain and preserve freight rail service.

[39] There are, however, several "facts" cited by GRTA/NCRA in its application and supporting material that are simply incorrect. These throw into serious question the validity of the analysis based upon those asserted facts. These questionable facts are directly contradicted in (1) Appendix A: the Verified Statements of Robert Jason Pinoli (and the various attachments to that statement); and (2) Appendix C the Verified Statement of Matt Gedney.

motive behind the adverse abandonment application is to permit GRTA/NCRA to more easily initiate and prosecute an abandonment of its own Middle Segment line to facilitate the development of a hiking trail, a legally inaccurate and faulty premise and motive. But even if GRTA/NCRA was correct that it could not develop its trail without removing MRY's STB jurisdictional status (and it is not correct in that view), the desire to facilitate a trail is only one element in the Board's analysis, and a disfavored one at that. Balanced on one end of the scale, GRTA/NCRA argues that the public interest in the creation of the Great Redwood Trail – already a project embracing a rail-with-trail philosophy on its Southern Segment and its Middle Segment[40] – demands the elimination – now – of the freight rail common carrier service on the Mendocino Line in order to more easily effectuate an abandonment of GRTA/NCRA's active freight common carrier obligation over the Middle Segment. But such a policy goal has never been a basis for granting an adverse abandonment. Nor should it be here when it is possible for GRTA/NCRA to accomplish its speculative goals without forcing an adverse abandonment upon MRY against its wishes, especially if GRTA/NCRA desired to pursue a rails-*with*-trails program. In fact, the Great Redwood Trail already consists of many segments that already are, and other segments that soon will be, rail-*with*-trail. [41]

The STB has never held that the desire to establish a trail justifies an adverse abandonment, especially in this case where the creation of the Great Redwood Trail literally could take decades to

[40] See, Governor's Office of Planning and Research, State of California, California Environmental Quality Act Willits Rail with Trail Project website. ceqanet.opr.ca.gov/2022030663/5. See also, The Great Redwood Trail Master Plan, April 2024 Draft, Great Redwood Trail Draft Master Plan_Accessible (greatredwoodtrailplan.org), accessed on April 25, 2024, at 41 (noting the rail with trail system planned for Marin and Sonoma counties).

[41] Given that GRTA is doing rails-with-trails at many other locations, it is not clear why GRTA is not willing to do rails-with-trails over the Middle Segment. Given that the Chairperson of the California Coastal Commission ("CCC"), is the former Chair of GRTA, it appears that GRTA and the CCC want the STB's jurisdiction to go away so that the CCC can have carte blanche authority to regulated MRY's operations. .

complete.[42] The plan is extraordinarily expensive.[43] GRTA/NCRA lacks the funding for it and is not even sure how it will obtain that funding. Under those circumstances, there is no reason a trail, if it can even be built, cannot coexist with the continuation of freight rail service. In this case, a rail-with-rail can coexist with the goal of preserving rail service. They are not mutually exclusive polar opposite goals.[44]

B. GRTA/NCRA Ignores Several Important Constituencies that the Board Must Protect.

The action that GRTA/NCRA asks the Board to approve, on the other hand, would negatively impact several important constituencies - especially past, current, and future shippers[45] - not to mention the fact that the DOT has awarded MRY a loan to rehabilitate and restore the rail line for service to these shippers. Besides shippers, who are the primary constituency the Board's precedents care about, there are other public safety constituencies that would be adversely impacted here as well, from firefighters, first responders, police enforcement, the delivery of water to an already water-starved area during droughts, and the day-to-day access of residents along the line to reach their homes, retrieve mail, obtain groceries, and acquire needed fuel, among other essential

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[42] See, The Great Redwood Trail Master Plan, April 2024 Draft, Great Redwood Trail Draft Master Plan_Accessible (greatredwoodtrailplan.org), accessed on April 25, 2024, at 19.

[43] The cost to complete the Great Redwood Trail is over $900 million in 2025 dollars, and over $1 billion in 2030 dollars. The Great Redwood Trail, Feasibility, Governance, and Railbanking Report, Component of SB 1029 Task Force Assessment, July 2020, Great Redwood Trail Feasibility, Governance, and Railbanking Report (ca.gov), at page 5-3, accessed on April 25, 2024.

[44] Portions of the Southern Segment operated by the Sonoma – Marin Area Rail Transit ("SMART") are already rail-with-trail. Portions of the Middle Segment that are in the process of being rail-with-trail. One example is the Willits Rail Trail, a rail-with-trail segment recently (in February 2024) reaffirmed by GRTA/NCRA and sought to be under construction this year. See, The Great Redwood Trail Master Plan, April 2024 Draft, at 82 (identifying the Willits Rail-Trail as a rail-with-trail segment that is planned, designed, and with "construction estimated to begin in Spring 2024"). See also, id. (concerning the Arcata Rail-with-Trail, already under construction).

[45] See Section I, *supra*.

services provided over the Mendocino Line.[46] All of these constituencies have used, and continue to use, the line and have depended upon, and continue to depend upon, the line.[47] The Board must balance the competing benefits and burdens of abandonment or discontinuance on *all* interested parties, including the shippers and the communities involved.[48] The Board must weigh the relative burdens that continuing or ceasing rail service would have on all of the potential interests, including the broader public.[49] The Board must take care not to ignore the interests of any constituent parties.[50]

And those parties are not alone. U.S. Representative Doug LaMalfa from the 1st District of California, not only believes that MRY has "proven a vitally important method of freight and passenger transportation for Northern California," he supports the continuation of freight service over the Mendocino Line because "[m]oving freight over MR is far more efficient and environmentally sound than trucking these materials over the region's mountainous and fragile

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[46] The Mendocino Land Trust, owner of the Noyo River Redwoods property through which the Mendocino Line winds, considered a couple of years ago housing a caretaker on its property, "but that will depend in large part on delivery of goods and services via the train." See, the letter of Mendocino Land Trust in support of a 2019 BUILD Grant request, appended as part of Attachment 5 to the VS Pinoli. That 2019 BUILD Grant request was made by the City of Fort Bragg seeking funding to rehabilitate the Mendocino Line. Also in support of that 2019 BUILD Grant request, the managing partner of Camp Noyo, a remote wilderness summer camp frequented by the Boy Scouts of America, noted that passenger services over the Mendocino Line provided the only safe route to and from the camp, and that rehabilitation of the Mendocino Line (as is anticipated pursuant to the recently awarded 2024 FRA RIFF Express Loan) was necessary in order to save rail service to the camp and save it from needing to close. See, Letter from Camp Noyo LLC, attached as part of Attachment 11 to the VS Pinoli.

[47] See VS Pinoli at 7.

[48] Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, AB-400 (Sub-No. 4) (STB served November 18, 2004) (decision denying application for adverse abandonment), slip op. at 4 ("Seminole Gulf") (citations omitted in the text) (citing New York Cross Harbor R.R. v. STB, 374 F.3d 1177, 1180 (2004) and City of Cherokee v. ICC, 727 F.2d 748, 751 (8th Cir. 1984)).

[49] New York Economic Development Corp. – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY, AB-596 (STB served August 28, 2003), slip op. at 3, *cited with approval* in New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177, 1183 (D.C. Cir. 2004).

[50] New York Cross Harbor Railroad v. STB, et al., 374 F.3d 1177 (D.C. Cir. 2004).

roads."[51] Tom Allman, a former, four-term sheriff of Mendocino County, notes that he has personally witnessed the significant repairs that MRY has made over the years, as well as noting that MRY has "become an economic engine for the rural region."[52] MRY attaches to this Protest a variety of letters of that have been shared with it – letters that recognize one immutable fact, well enunciated by Jason Bezis. Mr. Bezis notes that "[a]bandonment likely would be forever," and that this "would be unfair to future generations."[53]

These constituent interests, when combined with the very strong federal, state, regional and local interest in maintaining a freight rail service over the Mendocino Line, simply outweigh the desire of GRTA/NCRA to remove rail from its Middle Segment corridor so that it (GRTA/NCRA) can have a trail *without* rail rather than a trail *with* rail (especially given that an adverse abandonment of the Mendocino Line is both opposed by its current operator and unnecessary to allow GRTA/NCRA to create the Great Redwood Trail).

C. GRTA/NCRA is alone in claiming that freight service by truck should be favored over that by rail.

GRTA/NCRA's answer to how freight would move if MRY's STB jurisdiction is removed is to assert that movement of freight by trucks on the highway is significantly more economic and environmentally superior to movements of freight by rail. GRTA/NCRA's consultant claims that, nationwide, trucks move more than trains measured by the dollar value of shipments, by weight, by ton miles traveled, and that the overall result of these demonstrates the fact that rail as a freight mode is, and should be, in decline.

But many, including the federal government, would not agree. The U.S. Department of Transportation Freight Railroad Administration has observed that the freight railroad network

[51] See Appendix E.

[52] See Appendix E.

[53] See Appendix E.

"offers ancillary benefits that other modes of transportation cannot, including reduction in road congestion, highway fatalities, fuel consumption, greenhouse gases, cost of logistics, and public infrastructure maintenance costs. Unlike roadways, U.S. freight railroads are owned by private organizations who are responsible for their own maintenance and improvement projects."[54]

The federal government is not alone in this view. The California State Rail Plan, March 2023, prepared for the California Department of Transportation ("Caltrans"), speaks to the fact that "California's economic, environmental, and equity goals demand a fully integrated zero-emission, modern passenger and freight rail network that safely and reliably delivers more service to more destinations more often and attracts significant demand away from highway and air travel."[55] Caltrans notes that freight rail service is directly correlated with trucks not on the highway network.[56] Not only is support for the freight rail network "a key strategy for mitigating the need for highway expansion,"[57] it plays a significant role in mitigating air quality impacts, given that "freight rail is the most energy efficient mode for shipping goods over land."[58]

MRY will demonstrate past, and potential future, interstate freight rail service over the Mendocino Line. It will demonstrate that it has the funding to perform freight rail service over the Mendocino Line. It will demonstrate that it provides an essential passenger rail service that affects the day-to-day ability of people along the Mendocino Line to obtain the goods and services vital to them. And, in doing so, MRY will demonstrate that freight rail service over the Mendocino Line is not in decline, but ready to move forward.

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[54] U.S. Department of Transportation, The Freight Rail Network, https://railroads.dot.gov/rail-network-development/freight-rail-overview, accessed on April 28, 2024.

[55] State Rail Plan at 10.

[56] Id at 33.

[57] Id at 34.

[58] Id.

D. **The Mendocino Line is part of the interstate freight rail network that has moved, and will continue to move, traffic in the intra- and interstate freight rail network.**

As discussed above, the "standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, "[the Board will] consider whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests."[59]

In fact, the STB "may grant adverse abandonments only in limited circumstances."[60] The STB not only notes the need "to ensure the development and continuation of a sound rail transportation system," but also the concern that the grant of adverse abandonment applications … could present a serious threat to the long-term viability of the national rail infrastructure, by gradually chipping away pieces of the nation's rail system and threatening shortlines."[61]

One element of this analysis is the current rail operations, and the potential for future expansion of the current rail operations, particularly as it relates to the interstate freight rail market. In that vein, GRTA/NCRA repeatedly, and erroneously, state that the Mendocino Line is, and has been for years, severed from the interstate freight rail network.

It is correct to state that the only way that the Mendocino Line is currently physically connected *by rail* to the remainder of the instate freight rail system is via the GRTA/NCRA Middle Segment. But throughout the history of railroading, the Surface Transportation Board and the Interstate Commerce Commission have recognized that a line of rail, temporarily or permanently physically isolated from a direct track access to the remainder of the interstate freight rail system,

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[59] Stewartstown Railroad Company, slip op. at 4.

[60] Seminole Gulf, slip op. at 6.

[61] Id.

can nonetheless be an active line of railroad under federal jurisdiction, and remain "part of" (which is the statutory language used in 49 U.S.C. § 10501) the interstate freight rail system via such things as truck transload or car float. We are not aware that either the STB or the ICC before it has ever determined that a line of railroad was disconnected from and no longer a part of the interstate rail system, for the purpose of application of federal law, because the line was physically connected to an embargoed line and thus unable to physically interchange with an active railroad. The statute does not require a railroad to have a physical connection with the interstate rail network to be "part of" the interstate railroad system. Here, MRY can remain part of the interstate rail system via local movements of commodities that have had a prior or subsequent movements on other STB regulated carriers, via the connection to the Middle Segment and the Southern Segment, whether railbanked, embargoed, or active, and via transloads to/from other parts of the interstate rail system, whether existing or potential. In any of those circumstances, the Mendocino Line remains connected to the remainder of the interstate freight rail network.[62]

And the Mendocino Line has been a participant in that interstate freight rail network for well over a century. Allegations to the contrary notwithstanding,[63] which allegations are based upon a

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[62] In this legal framework, GRTA/NCRA could abandon and railbank its Middle Segment and MRY would still be part of the interstate rail system and an STB regulated carrier because MRY itself would remain connected to the Southern Segment via the trail. Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY Inc., FD 35692, Ballard Terminal Railroad Company, LLC – Lease Exemption – Eastside Community Rail, LLC, FD 35730, GNP RLY, Inc. – Abandonment Exemption in King County, Wash., AB 1316X (unconsolidated proceedings addressed in the same decision), (STB served April 24, 2023) ("Eastside Community Rail"), slip op. at 8. Indeed, if GRTA/NCRA's "severance" theory is correct then the abandonment of the Middle Segment would not only strand MRY but similarly strand the GRTA/NCRA's Northern Segment, which was recently railbanked in a proceeding before the Board. If the Northern Segment remains under the Board's jurisdiction and connected to and "part of" the interstate rail system through a connection to a railbanked Middle Segment, that itself connects to an active rail line, then surely the same rationale applies to the Mendocino Line. It can remain "part of" the interstate rail system via a railbanked Middle Segment.

[63] See, e.g., Adverse Application at 2 ("No interstate rail shipments have originated or terminated on the MR Line since it was purchased out of bankruptcy by MR in 2004"), and at 16 ("The MR Line

fundamental (and surprising) misunderstanding of federal law, MRY not only can trace this participation back to the early 1900s, but it can also do so by referencing recent examples of interstate freight moved over the Mendocino Line. For example, MRY has moved "bolted steel plates and preformed concrete structures, as well as other materials that originate[d] outside the state of California, arriving in Willits, California by truck, where it was transloaded to [the Mendocino Line] for delivery to its final destination."[64] As long as the rail movement is but one part of a more extensive, interstate movement of traffic, the one portion of the operation that may take place over a line of rail that lies entirely in one state does not remove that operation from the jurisdiction of the STB.[65]

Two statutory provisions are most on point here: 49 USC 10501(a)(1)(A) and 49 USC 10501(a)(2)(A) which provide that the STB has jurisdiction over transportation by a rail carrier that is provided by a railroad between a place in a state and a place in the same state as part of the interstate rail network. The railroad does not need to be physically connected to another STB regulated railroad to be part of the interstate rail system and subject to the STB's jurisdiction. A living example of this is the Alaska Railroad, which is an STB regulated railroad, but it is connected to the rest of the nation's physical rail network through ferry, transloading, air freight, the movement of commodities that have had a prior or subsequent move on another STB regulated rail

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has not been used for freight transportation for more than twenty years."). These are just blatantly unsupported statements. There has been freight transportation over the line for the past twenty years, albeit local moves, which is not abnormal for a short line, and those movements were for commodities that themselves had been previously part of an interstate rail movement. VS Pinoli at 9.

[64] VS Pinoli at 9.

[65] See, *infra*, footnote 59.

carrier, and by being part of the Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines.[66]

While the intra- and interstate moves are not as numerous on the MRY as the Alaska Railroad, they do exist.[67] MRY has used the Mendocino Line to move aggregate, concrete blocks and other materials for streambed restoration.[68] "MRY has transported equipment and materials for utility improvements for AT&T, lumber, construction equipment, and supplies for Camp Noyo."[69]

That freight is not the only freight to move over the Mendocino Line. MRY has "moved a milling machine for the Mendocino Land Trust, a non-profit organization that works to restore and preserve habitat, scenic areas, and working land, while also preserving public access to the same."[70] In a world that is used to discussing miles-long unit trains of crude oil, these spot moves may seem minor, but that does not diminish the fact that many railroads – even the big Class I railroads – engage in these spot moves and that those moves are the movement of freight in the interstate freight rail marketplace.[71] The Board normally will not, in the context of an adverse abandonment

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[66] See, Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines, 2023 Edition, published by the Military Surface Deployment and Distribution Command Transportation Engineering Agency at https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/RND%20Publications/STRACNET%202023.pdf, at 1 (identifying "civil rail lines most important to national defense").

[67] And if GRTA/NCRA had not unlawfully embargoed the Middle Segment for the past 20 years, MRY would likely have moved a significant amount of additional freight.

[68] See VS Pinoli at 10.

[69] Id.

[70] Id at 9.

[71] See, e.g., Seminole Gulf at 3 (mention of traffic involving the movement of traffic for Ringling Bros. and Barnum & Bailey to support using the line for winter engagements). See also, Union Pacific Railroad Company – Abandonment – in Harris, Fort Bend, Austin, Wharton and Colorado Counties, Tx, AB-33 (Sub-No. 156) (STB served Nov. 8, 2000), slip op. at 3 (describing the existing five shippers and traffic on the line as consisting of spot movements consisting of lumber, boards, clay, chemical waste, circus equipment and animal stock).

proceeding, second-guess decisions of a carrier on how it will perform freight rail operations,[72] but in this case, the Board certainly would recognize the wisdom of MRY to move freight in spot moves rather than in dedicated freight rail operations, the only approach envisioned by the analysis conducted by GRTA/NCRA and its consultant, Marie Jones Consulting.

In any event, even while recognizing the fact that many of these spot moves take place, GRTA/NCRA fundamentally errs in arguing that there is nothing jurisdictional about them.[73] Just because one portion of the operation may take place over a line of rail that lies entirely in one state, and just because no traffic has moved in interchange with the connecting carrier (in this case due to an embargo due to the actions of GRTA/NCRA itself), does not mean that the carrier (MRY) is not "part of" the interstate rail system. GRTA/NCRA's argument flies in the face of 49 USC 10501(a)(1)(A) and 49 USC 10501(a)(2)(A) which provide that the STB has jurisdiction over transportation by a rail carrier that is provided by a railroad between a place in a state and a place in the same state as "part of" the interstate rail network. MRY is "part of" the interstate rail system and has transported commodities which themselves have had prior interstate movements.[74]

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[72] Hartwell First United Methodist Church – Adverse Abandonment and Discontinuance – The Great Walton Railroad Company, Inc. – in Hart County, GA, AB 1242, (STB served January 31, 2018), slip op. at 5.

[73] See Adverse Application at pages 26-28.

[74] Indeed, "part of" is not defined. The statutory language does not say "directly connected to" or even use the word "connected." If a commodity has been transported via rail, then transloaded and delivered to another location, and then put back on a short line railroad (even an "intrastate only" short line), the short line's intrastate only movement is and should be considered "part of" the interstate rail system even if not connected via a trail. See e.g., Diana Del Gross, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba -- Petition for Declaratory Order, FD 35652 (STB served July 31, 2017) (finding that certain disputed activities at a transload facility - the vacuuming, screening, bagging, and palletizing of the wood pellets - constituted transportation-related activities on behalf of G&U that came within the Board's jurisdiction); Texas v. United States, 866 F.2d 1546 (5th Cir. 1989)(storing carpet at warehouse for two to three months, during which time some of the carpet was cut, did not break the continuity, and hence the interstate nature, of a movement), aff'g Armstrong World Indus., Inc.--Transp. Within Tex.--Pet for Declaratory Order, 2 I.C.C.2d 63, 74 (1986) ("Nor does cutting the carpet at the

The Mendocino Line is operated by a freight common carrier subject to the jurisdiction of the Board. It maintains an effective rail tariff. It holds itself out to the public to provide common carrier freight services. It maintains its lines in compliance with federal law. It is an eligible applicant for federal railroad grants and indeed is a recipient of a federal loan based on the fact that it is a federal common carrier operating a line of rail subject to the jurisdiction of the Board. It moves commodities that have had a prior or subsequent movement in interstate commerce (even if those commodities have come to rest before being transported on MRY). As such, MRY may not be the largest of freight common carriers, but it does not have to be.

E. MRY has reasonable expectations not only to continue the freight rail service over its line but also to expand it.

Even should the Board somehow determine that there have been no current freight operations over MRY's line (a finding that would not be supported by the facts), "the lack of current freight operations alone is not grounds for granting an adverse abandonment application. Under the PC&N test, the Board must also consider the potential for future freight rail traffic."[76] When faced with a rail segment that had no recent freight rail traffic, the Board found that the reasonable potential for renewed rail operations was sufficient to deny requested adverse abandonment, especially when the owner of the rail segment involved opposed the abandonment, as is the case here with regard to the Mendocino Line.[77] MRY opposes the proposed abandonment. MRY is in the

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service center alter the character of the commerce. The carpet moving from the service center is the identical carpet moving to it from out-of-State.").

[76] Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO, AB-1014, (STB served May 23, 2008), slip op. at 6. See also, Hartwell First United Methodist Church – Adverse Abandonment and Discontinuance – the Great Walton Railroad Company, Inc. – in Hart County, GA., AB-1242 (STB served January 31, 2018), slip op. at 6 ("extended disuse is not sufficient reason to remove rail assets from the interstate rail network when the carrier intends to use those assets to provide freight rail service in a non-speculative manner").

[77] For example, in denying the requested adverse abandonment in the case before it, the STB noted that the owner-carrier opposed the proposed adverse abandonment, and that, notwithstanding the

midst of a project funded in part by a $31.4 million loan from the Federal Railroad Administration to restore and rehabilitate damaged sections of its line, has a commitment to move hundreds of carloads of aggregate once that line is restored,[78] is in the midst of creating a raw log and lumber transload, and has the support of several shippers, residents, and others interested in the continuation of its essential railroad services. The finding is clear that there is a very real potential for future freight rail traffic on the Mendocino Line.

As explained above, the Mendocino Line currently handles freight traffic moving in interstate commerce. But that does not mean that MRY is satisfied with the current levels of freight traffic, and MRY has taken reasonable steps not only to solicit additional traffic but to acquire additional funds to further rehabilitate the line to handle more and a greater variety of freight rail traffic.

MRY, together with Sierra Northern Railway ("SNR"), applied for a $31.4 million federal loan, which in part will help to rehabilitate the Mendocino Line, including restoring Tunnel No. 1 on the Mendocino Line for through rail service. That is a loan, not a grant. MRY believes that rehabilitating the line will enable expansion of the services provided by MRY over the Mendocino Line sufficient to service that loan. And it is not alone in that belief. The United States Department of Transportation's Federal Railroad Administration ("FRA") believes that rehabilitation of the

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failure of any recent freight rail service, that "[t]he record, however, shows that there is a potential for renewed rail operations. There is traffic suitable for rail that could move over the Lines, there is a railroad willing to carry that traffic, and there is at least one shipper capable of receiving that traffic." Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, AB-290 (Sub-No. 286) (STB served February 14, 2008), slip op. at 4, petition to reopen and grant the adverse abandonment petition, Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, AB-290 (Sub-No. 286) (STB served April 17, 2012) (petition to reopen, granting the adverse abandonment, upon a determination of Norfolk Southern Railway to no longer to oppose the request for adverse abandonment).

[78] See VS Pinoli at 17 (discussing the commitment of Grist Creek Aggregates to move a substantial amount of new traffic once the line is rehabilitated and Tunnel No. 1 is restored).

Mendocino Line is sufficiently in the public interest to provide that RRIF Express loan.[79] National and State level legislative representatives have recognized the importance of the Mendocino Line as a major economic engine in the region.[80]

Although GRTA/NCRA repeatedly claims that MRY has no reasonable prospects for obtaining future freight business on its line,[82] those assertions are similarly false. MRY has received requests for further freight rail service from the Mendocino Land Trust, Trout Unlimited, and

[79] See, Federal Railroad Administration Announces More than $326 Million in Grants to Support Railroad Infrastructure," FRA Press Release, dated June 12, 2019, Federal Railroad Administration Announces More Than $326 Million in Grants to Support Railroad Infrastructure | FRA (dot.gov) (accessed on April 24, 2024) (award of the 2019 Consolidated Rail Infrastructure and Safety Improvements ("CRISI") Program award of $17,415,000 to the Sierra Northern Railway to rehabilitate 55 miles of the Mendocino Line), appended as Attachment 13 to the VS Pinoli.

[80] See the letters of support for federal financial support for the clearing of the Mendocino Line Tunnel No. 1, appended as Attachment 11 to the VS Pinoli, from U.S. Senator (California) Dianne Feinstein (to "facilitate efficient and safe freight and passenger transportation, reduce truck traffic, and further all aspects of the public interest"), U.S. Congressman Jared Huffman (2nd District California) (allowing MRY to provide "a crucial secondary access route between the geographically-isolated City of Fort Bragg and the rest of Mendocino County"), U.S. Congressman Mike Thompson (5th District California) (noting that rehabilitating the Mendocino Line and Tunnel No. 1 is "intended to bolster the regional economy, create jobs, reduce greenhouse gas emissions, improve railway safety, and strengthen wildfire response capacities in the region"), State Senator Mike McGuire (Northern California's Second Senate District) (noting that rehabilitating the Mendocino Line and Tunnel No. 1 "will not only promote economic development in the region, but it will improve the quality of life for the region's residents, result in environmental benefits, improve the safety of railroad operations, take trucks off the region's roads, create jobs, and could even help save lives") and California Assembly Member Jim Wood (California State Assembly Second District) (noting that, in addition to providing important freight and passenger services, the Mendocino Line is extremely important to access this remote section of California, accessible only by a difficult road system, for vital forest fighting, law enforcement and drought mitigation purposes).

[82] See, e.g., Adverse Application at 3 ("MR has no reasonable prospects for future business along the MR Line as there is no need for rail service in this area and the MR Line is no longer connected to the interstate freight rail system"), and at 16 (MR's actions demonstrate that there are no current or future prospects for restoring consistent and ongoing freight service over the MR Line).

others.[83] There is no reason to believe that these customers will suddenly stop using MRY in the future.[84]

In 2019, the City of Fort Bragg sought a US DOT BUILD grant to finance much of the same work that will be financed by the recently announced FRA RIFF Express Loan. At that time, Wylatti Enterprises LLC (dba Geo Aggregates) explained that it had, at that time, no option but to use trucks for their freight transportation needs but that "if freight rail services over the entire Line were restored we would happily consider switching to freight."[85] Flobeds, another local Fort Bragg enterprise, echoed similar sentiments.[86] These are not huge shippers. Movement of freight for these customers, both intra- and interstate in nature, will contribute to the overall viability of the combined MRY service provided over the Mendocino Line.

MRY has also taken reasonable steps to expand its rail service offerings. MRY has been collaborating with Grist Creek Aggregates, LLC in order to capture a significant freight move. Restoration of Tunnel No. 1, to be financed through the RIFF Express Loan just discussed, is necessary to providing that service and Grist Creek has indicated that it will begin using the Mendocino Line once the work is done.[87] Reasonable efforts to obtaining further freight service is evidenced by both the work that MRY has done to reach agreement with Grist Creek Aggregates for the movement of at least 400 rail carloads annually (which would take approximately 1,200-1600

[83] See the VS Pinoli at 9.

[84] Id.

[85] Id. at 14. See the Wylatti Enterprises LLC letter, appended to the VS Pinoli as Attachment 11, at 2.

[86] Id. See the Flobed letter, appended to the VS Pinoli, as Attachment 11, at 2.

[87] See the letter from Grist Creek Aggregates, LLC to MRY dated January 3, 2024, appended as Attachment 15 to the VS Pinoli, expressing a preliminary agreement for future moves contingent upon timely completion of repairs to Tunnel No. 1.

truckloads off the area roadway system),[88] as well as to finance the efforts necessary to perform the work covered by that agreement.

Further, MRY anticipates constructing a lumber transload facility on the former Georgia-Pacific property – an effort that not only would continue the Mendocino Line's connection with the interstate freight network but also would expand the potential market for additional freight, as well as being beneficial in taking trucks off the roads and increasing the safety of transportation within the region.[89] Robert Jason Pinoli, the president of MRY, puts it this way:

> We intend to construct a lumber transload facility on the former Georgia Pacific property in Fort Bragg. This has a very real potential to not only expand our freight service, but also help to take trucks off the local roads. Willits is connected by highway to Fort Bragg by California State Route 20 ("Highway 20"). GRTA/NCRA's consultant, Marie Jones, correctly characterizes Highway 20 in her Feasibility & Marketing Analysis by stating that it "has many tight curves and can accommodate only shorter trucks…." This does create significant dangers for truck traffic in that corridor, with the very real corresponding danger for the general public who need and want to use the line for their day-to-day essential and non-essential purposes. I see reports like that described in the Redheaded Blackbelt report about lumber truck accidents in the area, and it gives us great pause. That report, attached as Attachment 16 to VS Pinoli, describes an incident on Highway 101, which connects to Highway 20 just south of Willits, but it could have just as easily happened on Highway 20. In fact, again as recognized by Marie Jones, the Highway 20 connection between Fort Bragg and Willits is so difficult to transit that the average speed on the highway is low. Once the RRIF loan proceeds have been deployed and the Mendocino Line restored for through service between Fort Bragg and Willits, we will provide an alternative route for the general public to transit the route, via our passenger rail service. When the lumber transload service comes on line we will hopefully be able to take additional truck traffic off of Highway 20, making it safer for all involved.

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[88] VS Pinoli at 18.

[89] See, e.g., "Lumber Truck Overturns on Hwy 101 North of Geyers Rd in Southern Mendocino County," published online at Redheaded Blackbelt, April 19, 2024, appended to the VS Pinoli as Attachment 16. See also, Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update, https://northcoastrailroad.org/Acrobat/Frequently_Asked_Questions.pdf, at 5, accessed on April 24, 2024 ("One freight car removes 4 big rigs from Highway 101") (describing one of the benefits of continued freight operations over the GRTA/NCRA Line), appended to the VS Pinoli as Attachment 7.

This interstate freight service network model element is mirrored on the Southern Segment of the rails-*with*-trails Great Redwood Trail now operated by Sonoma-Marin Area Rail Transit ("SMART").[90]

The reasonable efforts that MRY has taken to preserve and enhance the rail system encapsulated by the Mendocino Line is attested to by others. For example, in a letter of support for a 2019 City of Fort Bragg BUILD grant request (for funding rehabilitation of the Mendocino Line), the Mendocino Land Trust noted that it "knows MR and the Skunk Train well. [The Mendocino Land Trust] is aware that MR has invested heavily in the railroad for the good of the region and has partnered with the region's industries and businesses."[91] The GRTA/NCRA claim that there is no chance of further freight rail service over the Mendocino Line is shown by this evidence to simply be false.

F. The movement of freight rail over the Mendocino Line, and the potential for future expansion of that service, are reasonable under the circumstances.

The circumstances limiting the amount of freight rail traffic available for movement over the Mendocino Line, and the potential for future freight rail traffic on the same, are both unique and relevant to the Board's analysis. First, the Mendocino Line is, and always has been, a remote line of railroad serving several constituencies, in the backwoods of Northern California. Second, it is connected to the rest of the interstate rail network by highway and otherwise by a rail line that

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[90] See, e.g., "SMART Freight Information" Smart Freight Services | Sonoma-Marin Area Rail Transit (sonomamarintrain.org), ("If your business does not have a rail spur connecting to the SMART mainline, contact Jon for information on how to develop a rail connection for your business. SMART also offers transload and rail car storage…."). See also, The Great Redwood Trail Master Plan, April 2024 Draft, at 30 ("The SMART Pathway will serve as the southern segment of the GRT when fully built.").

[91] See, e.g., Mendocino Land Trust letter appended as Attachment 5 to the VS Pinoli, page 2. Mendocino Land Trust noted that the project to reopen Tunnel No. 1 was "[n]ot only … critically linked to Mendocino Land Trust's ability to maintain and provide public access to one of its important nature preserves, but collectively the [rehabilitation] Project is imperative for future economic growth in the region." Id.

GRTA/NCRA – the proponent of this very abandonment – has permitted to become increasingly dilapidated over time, contrary to GRTA/NCRA's common carrier obligations. What is a reasonable amount of freight rail traffic, and what efforts to expand that freight rail traffic base are reasonable, must be viewed in light of those circumstances.

The Mendocino Line, unlike other lines involved in other adverse abandonment cases, is not a rail segment in Brooklyn, served by the New York Cross Harbor Railroad. It is not a Norfolk Southern line segment that could be used to move coal to a university power plant. It originally was a line that grew up to provide transportation for a remote lumber mill, its workers, and others who lived in the region. It stretches between two towns that are otherwise connected only by Highway 20, a windy narrow road that regular dump trucks and heavy trucks have a difficult time operating over.[92] The City of Fort Bragg, recognizing that its only other access to the outside world is this Highway 20, understands the importance of a rail link to the local economy and has supported MRY's efforts to maintain and restore rail service, twice.[93]

Importantly, MRY's only physical direct rail connection with the rest of the interstate freight rail network is controlled by the very entity that seeks abandonment of the Mendocino Line. This is the same party with the expressed motivation to remove the Mendocino Line from the national freight rail network under a mistaken belief that this is required so that it can progress its own efforts to remove its own line from that same national freight rail network. And why? So that it can

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[92] VS Pinoli at 17.

[93] See, Economic Impact Analysis of the Mendocino Railway (Skunk Train), City of Fort Bragg, 2018, attached as Appendix B, at 2 (noting that the anticipated "rehabilitation of the MR will assist with the redevelopment" of the former Georgia-Pacific mill site, a site that the City of Fort Bragg has worked to foster and encourage for the location of "a mix of industrial, manufacturing, retail and housing"), and 3 (noting the anticipated increase in economic contributions to the City of Fort Bragg directly tied to the anticipated expansion of passenger and tourist operations over the Mendocino Line), and 3-5 (discussing the potential impact that freight service on "new opportunities for working class manufacturing jobs especially if the Mendocino Railroad (sic) resumes freight services" through Tunnel No. 1).

develop an unfunded and highly speculative hiking trail, without rail, even though it is building rails-*with*-trails at other locations on the Great Redwood Trail route, and even though removing MRY's STB jurisdiction is not necessary for GRTA/NCRA to attempt to achieve its goal.[94]

It is fairly clear that GRTA/NCRA has made limited, if any, effort during its decades-long tenure as a common carrier railroad to create conditions on its own rail line that would permit freight rail service over the GRTA/NCRA Line, or any line of railroad connected to the GRTA/NCRA Line (including the Mendocino Line that is the subject of this proceeding). For example, GRTA/NCRA admits that "[r]ail operations on the FTA Line were ordered shut down by the FRA via Emergency Order issued on November 25, 1998."[95] The referenced FRA Emergency Order makes it clear that the horrendous track conditions on the GRTA/NCRA Line, and even more so the failure of the railroad to address those track conditions, dated from a period long before even 1998.[96]

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[94] Indeed, because MRY can remain "part of" the interstate rail network through the connection via the GRTA trail, a transload operation, and/or and the local movement of commodities that were part of a continuous stream of interstate commerce, this entire proceeding is unnecessary. The Board could deny the Adverse Abandonment Application and, if submitted, process an abandonment request concerning the GRTA/NCRA Middle Segment. In doing so, should the Board agree to permit abandonment of the Middle Segment, the Board could distinguish its precedent in R.J. Corman R.R. Property, LLL – Aban. Exemption – in Scott, Campbell, and Anderson Counties, Tenn., AB-1296X, slip op. at 3 (STB served Nov. 17, 2022) (and the cases cited therein) and make it clear that a segment is not considered stranded if it remains "part of" the interstate rail network through either a trail connection, a transload operation, and/or via the local intrastate movement of transporting commodities that are part of a continuous stream in interstate commerce. Indeed, as discussed *infra* and *supra*, there are several other examples of "island" railroads cut off from a direct physical connection to a larger, interstate railroad but nonetheless remain under STB's jurisdiction because they remain "part of" the interstate rail system via transloading, connections with barges and ports, and/or move commodities as part of a continuous stream of interstate commerce. The Alaska Railroad and the former New York Cross Harbor Line are prime examples.

[95] Adverse Application, at 6 (citing FRA Emergency Order No. 21, Notice No. 1, 63 Fed. Reg. 67,976 (Dec. 9, 1998) ("FRA Emergency Order No. 21")).

[96] FRA Emergency Order No. 21 at 63 Fed. Reg. 67,976 (citing restrictions imposed in 1990 due to the track posing "immediate threat of death or injury to persons") and 67,977 ("a past pattern of failure by NWP to comply with federal railroad safety laws and regulations persuades FRA that

Rather than work to address these track conditions in compliance with FRA orders and its common carrier obligation, GRTA/NCRA has permitted track conditions to worsen,[97] ensuring that the universe of potential interstate freight service over the connecting Mendocino Line is extremely limited, essentially restricting that universe to a subset of interstate freight rail traffic that can reach the Mendocino Line via a direct truck transload operation or via truck to a storage or retail site and then later transloaded onto the MRY. Indeed, GRTA/NCRA admits that the condition of its own line, subject to an unaddressed embargo for so many years, is in fact the basis for making a claim that MRY has no direct *physical* access to the interstate rail system.[98] Given the circumstances imposed on MRY by GRTA/NCRA's actions, MRY's efforts to maintain and build its interstate freight rail service, described above and below, have been, and continue to be, more than reasonable under the circumstances. Indeed, they should be lauded and welcomed, especially in light of state, federal, and STB policy encouraging the retention of rail service whenever feasible. And the fact that MRY has not been able to do more in light of GRTA/NCRA's own failure to maintain its own line certainly should not form the predicate for granting the GRTA/NCRA's effort to obtain its adverse abandonment of MRY's Mendocino Line and have it declared to no longer be "part of" the interstate rail network. Removing MRY's STB status would not only be contrary to precedent but it would also result in the ultimate elimination of any freight service by MRY, as MRY would then be

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reliance upon the cooperation of the NWP to make necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety").

[97] See, e.g., Great Redwood Trail Agency FAQs ("GRTA's rail line was closed for safety reasons 25 years ago, and the conditions of the rails have only gotten worse since then.") https://thegreatredwoodtrail.org/wp-content/uploads/2023/04/STB-FAQ-Final-Clean-4-24-23.pdf (accessed April 17, 2024) ("GRTA FAQs").

[98] Adverse Application at 13.

subject to overzealous state environmental and local zoning laws that would result in the elimination of freight rail service.[99]

Because "the only location where the MR Line at issue [physically] connects to the interstate rail network is in Willits, California on the GRTA Line,"[100] the ability of MRY to move traffic in a direct connection with the interstate rail network is tied to the condition of the GRTA/NCRA Line.[101] It is undisputed that "[t]he GRTA Line, MR's only possible [all-rail] access to the interstate rail network, has been embargoed by the FRA for public safety reasons since 1998."[102] According to GRTA/NCRA, "*[a]s a result of this embargo [on the GRTA Line]*, MR has absolutely no physical access to the interstate rail network. No freight traffic of any kind has passed along the relevant section of the GRTA Line in 25 years…"[103] This is true - but not because of MRY's actions. Nor is it true that moving commodities in a direct physical interchange with

[99] Make no mistake about it. Removing MRY from STB jurisdiction will result in the elimination of freight service on the Mendocino Line. The various court cases included in the Adverse Abandonment Application and the California Coastal Commission's filings with the Federal Railroad Administration in the RRIF Express loan process and in this proceeding clearly establish that certain state and some local environmental groups, whose real objection is the STB's preemption authority, do not desire any continued freight service. If the STB grants the GRTA's Adverse Abandonment Application and withdraws MRY's common carrier status and the right to assert preemption, these groups will directly regulate every aspect of MRY's operations, via building and design requirements, prohibiting transload, imposing fines, fees, costly demands, and onerous permitting requirements. In doing so, MRY will be forced to cease any operations. VS Pinoli at 7.

[100] Adverse Application at 13.

[101] The fact that the Mendocino Line is "part of" the national interstate freight rail network through transload or through being the last step in a continuous stream of interstate commerce (in addition via the common carrier obligation that continues to exist over the GRTA/NCRA line, temporarily in suspension due to the embargo) should not be in dispute.

[102] Abandonment Application at 13 (citations omitted) (emphasis added).

[103] GRTA Adverse Abandonment Application at 13 (citations omitted) (emphasis added). MRY takes issue with the assertion that no freight movements have occurred over the Mendocino Line for 25 years.

GRTA/NCRA over the Middle Segment is a necessary predicate for MRY to maintain its STB status.

MRY should not be punished for GRTA/NCRA's own unlawful action in failing to undertake the required efforts to restore rail service, especially when GRTA/NCRA has essentially maintained an unlawful embargo for a quarter century now. GRTA/NCRA is a common carrier railroad subject to the jurisdiction of the Board.[104] "The common carrier obligation 'reflects the well-established principle that railroads are held to a higher standard of responsibility than most private enterprises.' An embargo can relieve a carrier of its common carrier obligation; however, an embargo is generally temporary and issued under emergency conditions, and it must be reasonable, both at the time it is issued and while it is maintained."[105] The Board has recently reiterated that "a railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable" and "if the carrier is financially able to remedy the disability [that prevented the carrier from performing its duty], the embargo becomes unreasonable and will no longer be valid."[106]

Under this standard, GRTA/NCRA's over 20-year embargo was likely unlawful under ICCTA. It never obtained discontinuance authority or abandonment authority. It should have undertaken efforts to restore service within a year and, if that was not feasible, it had an obligation to seek either discontinuance or abandonment authority.[107] Instead GRTA/NCRA did nothing;

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[104] See, *supra*, Section III (D) and accompanying text.

[105] Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes, EP 772 (STB served April 17, 2024) ("UP Embargo Oversight Hearings") slip op. at 5.

[106] UP Embargo Oversight Hearings, slip op. at 5, n.9 (quoting GS Roofing Prods. Co. v. STB, 143 F.3d 387 (8th Cir. 1998)).

[107] It is highly likely that GRTA/NCRA decided not to seek abandonment or discontinuance authority of its own line so as to avoid the opportunity for MRY to acquire the line through an OFA. Instead choosing to allow the line to deteriorate for 20 years, while at the same time ensuring that an OFA would become more expensive when and if GRTA/NCRA ever did seek abandonment authority.

causing the substantial deterioration of the line that has directly led to the excessive costs associated with restoring rail service. Due to its action (or more appropriately, lack of action), GRTA/NCRA should not be able to then use its own potentially illegal act as an excuse as to why MRY, a lawful common carrier actively providing intra- and interstate freight rail common carrier service, does not and could not move traffic in direct connection with other railroads.

But that is not the end of that analysis. GRTA/NCRA asserts that GRTA/NCRA's embargo on its Middle Segment line is sufficient to also condemn MRY's freight rail operations over the Mendocino Line to the trash bin of history. GRTA/NCRA asserts, largely on the basis of its consultant, Marie Jones Consulting, that MRY is destined for bankruptcy because the freight rail service alone is not sufficient to maintain its rail facilities and operations over the Mendocino Line. That economic analysis is simply wrong.[109]

G. The Marie Jones Consulting economic analysis is so fundamentally flawed that it should be given little, if any, weight whatsoever.

The entirety of the economic analysis submitted by GRTA/NCRA misses the mark. It is a fundamentally flawed analysis, based on incorrect inputs, and so should be given no weight whatsoever. It certainly does not rebut the very simple proposition that there is existing freight service on the line and that there is a very reasonable anticipation that there continues to be a demand for that service and that MRY will be around to provide that service. It further does not

[109] GRTA/NCRA wants the Board to view the Mendocino Line and the Middle Segment as, in effect, one continuous line of railroad. In doing so, GRTA/NCRA focuses on how financially infeasible and expensive it would be to restore the Middle Segment and to move freight on both the Mendocino Line and over the Middle Segment to a direct connection with SMART and the rest of the interstate rail system. While the Middle Segment rehabilitation costs and financial factors may be relevant to an abandonment of the Middle Segment, they are not relevant to the Mendocino Line's ability to operate profitably so as to provide essential freight movements as "part of" the interstate rail system via transloading or the movement of commodities as "part of" a continuous stream of interstate commerce. A review of any adverse abandonment application here should focus solely on MRY's operations and the essential public service the Mendocino Line provides in the isolated and rural area it serves. The costs associated with the Middle Segment are irrelevant to that analysis.

permit a finding that GRTA/NCRA has carried its heavy burden of proof sufficient to remove the possibility of interstate freight rail service from the Northern California region.

GRTA/NCRA relies heavily on the Feasibility & Market Analysis report of Marie Jones Consulting ("MJC") in supporting the argument that the MRY has no reasonable prospects of developing additional business on the Line.[110] But the validity of the entire underlying report is thrown into question when one realizes that the information relied upon by MJC fails so greatly to understand the nature of railroads that it (for example) fails to consider that a railroad – any and almost every railroad – supports its viability through a variety of enterprises, not just one. MJC bizarrely seems to believe that each part of an enterprise must be self-supporting, an argument that would translate into a claim that each business in a shopping center would have to be able to independently support all costs for parking, maintenance, and utilities. She fails to understand that an enterprise can have shared expenses and that the viability of the whole enterprise needs to be looked at as a whole. In the railroad context, and especially in the context of the Mendocino Line, a remote rail line that meanders through the Northern California mountains, that means *all* revenues and expenses from the use of the rail corridor.

In some cases, additional revenues available to a rail enterprise can be garnered through passive uses of the rail corridor. The Class I rail corridors, for example, "have uses beyond moving freight along the rails. One important example of this is the railroad right-of-way being used for installations of long-haul, single-mode fiber optic cable."[111] That is but one example, present not only on Class I rail corridors, but throughout the rail industry, including on the MRY. For the Mendocino Line, the revenue sources are both numerous and wide-ranging in nature.

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[110] Adverse Application at 37.

[111] Fiber Optic Availability and Opportunity Analysis for North American Railroads, U.S. Department of Transportation, Federal Railroad Administration, DOT/FRA/ORD-18/23, Final Report July 2018, at 16.

Robert Jason Pinoli, president of MRY, puts it this way, discussing the business enterprise surrounding the Mendocino Line:[112]

> Today, the railroad's business has many facets, each of which reflects the line's history and diverse users in the region. We are first and foremost a freight railroad subject to the jurisdiction of the U.S. Surface Transportation Board ("STB" or "Board"). But, using those same tracks and facilities, we have been able to underwrite our freight services by also providing excursion rail trips over our line, becoming the region's top tourist enterprise and helping bring visitors who also benefit dozens, if not hundreds, of other local businesses. We also use our rail corridor to provide a route for hiking, transporting passengers to and from hiking trails in the forest. And we transport police and fire personnel to and from the forest to help them perform their duties. We also provide a very real and essential transportation service to the residents of this remote region, allowing them to live and thrive. And also generate additional revenue through grants of easements and licenses to use our tracks and right of way, not only to other public utilities (such as telephone companies) but also to environmental organizations seeking to ensure the continued survival of the local flora and fauna, including migrating salmon. Before turning to a discussion of our freight services, I would like to address the services we provide to these important constituencies.

The GRTA/NCRA's consultant cannot claim to be ignorant of this mixed enterprise including the passenger rail services provided by MRY.[113] When she worked for the City of Fort Bragg a report bearing her name discusses at length the passenger rail services provided by MRY and the fact that rehabilitation of Tunnel No. 1 would only serve to increase those services and the attendant

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[112] VS Pinoli at 4-5.

[113] The GRTA/NCRA consultant is not experienced in railroad operations, financing, or the regulatory environment. She has never been a consultant regarding any railroad matters other than the GRTA/NCRA abandonment of the Northern Segment and the current proceeding. She has never worked as a consultant or an employee for a railroad or for a rail shipper and has never studied or analyzed transloading operations. Deposition of Marie Jones, page 27, line 11, through page 28, line 10. Attached at Appendix D. She is not even knowledgeable as to the nature of a tariff or how much (or even if) traffic moved via contract rates rather than via tariff rates. Id. at page 119, line 8, through page 120, line 9. She does not know the purpose behind the STB's cost of capital. Id. at page 141, line 16, through page 143, line 1. Likewise, she could not point to any other study analyzing the rail industry using the per capita approach that she used. Id. at page 94, line 11, through page 95, line 5.

important contribution of those services to the economic viability of those services to the local economy.[114]

Even in the Feasibility & Marketing Study submitted in this proceeding, the consultant speaks to the "tourist excursion train operation on the MR Line"[115] but then proceeds to ignore the fact that the costs and revenues from passenger and excursion operations over a line even *might be* relevant in determining the viability of the line and its operator, claiming that her job was "not to look at the entire Skunk Train business organization, but to answer the question, does this project pay for itself."[116] According to MJC, "the way you do a feasibility analysis is to determine if a project can pay for operating costs, acquisition costs, and debt service" on its own, and to ignore the circumstances in which the feasibility analysis is set.[117] But it is not appropriate to be so narrowly focused.

In MRY's case, the revenues from MRY's various excursion trains, non-excursion trains, holiday trains, and from other sources, such as easements and rental payments, essentially cover all fixed and variable costs for the line, *i.e.,* maintenance, overhead, fuel, labor, and contributions to profit (which to the extent that profits were generated have, for over 20 years, been reinvested back into the company). MRY's expected rehabilitation costs (significantly over-stated in the GRTA/NCRA's Adverse Abandonment application) will be covered by MRY's RRIF loan, with payments on that loan being factored into MRY's operations. As such, MRY's freight operations only need to cover their variable costs in order to be financially viable.[118] And even if each freight

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[114] See, Economic Impact Analysis of the MRY (Skunk Train), City of Fort Bragg, 2018, attached as Appendix B.

[115] Verified Statement of Marie Jones, at 1.

[116] Deposition of Marie Jones, page 135, line 17, through page 135, line 19.

[117] Id. at page 141, line 3, through page 141, line 7.

[118] VS Pinoli at 19.

movement did not cover such variable costs, there is nothing wrong with other revenues from other operations subsidizing freight services so that shippers and the community can have freight services available to them.

MJC stands alone in ignoring the fact that revenues from other operations can and do contribute to a financially viable freight system. The State of California, for example, recognized the interrelated nature of freight and passenger rail services, observing that the "freight rail network operates on privately owned infrastructure that hosts freight and passenger service on the same tracks."[119] MJC nevertheless conveniently ignores this important revenue source in order to reach the erroneous conclusion that the MRY "rail lines, if rehabilitated for freight, would not be able to recover their capitalization costs with earned income. They would presumably go bankrupt, as California Western did before its assets were acquired by MRY in bankruptcy."[120] As such, in the adverse abandonment context, and especially in the context (as is the case here) of a mixed passenger/freight operation, any study that ignores that other sources of revenues that can be used to subsidize freight operations (which should be seen as a good thing and in the public interest in helping to preserve freight rail service) and focuses solely on whether the revenue from freight operations covers both variable and fixed costs and capital improvements (and purposefully ignoring any other sources of revenues that utilize those costs and improvements) must be disregarded as not even being meaningful or in any way relevant. It is certainly not relevant to MRY, where the passenger operations essentially fund the fixed costs of the Mendocino Line. MRY's portion of the RRIF Express Loan will fund MRY's rehabilitation costs. Therefore, revenue from MRY's freight moves need only cover variable costs of the provision of those freight moves to

[119] State Rail Plan at page 27.

[120] Marie Jones Consulting, "Feasibility & Market Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor" (Exhibit H to the Adverse Application) ("GRTA/NCRA Market Analysis"), at page 24.

avoid any form of losses. Here, MRY variable costs can be covered by existing and potential future freight movements.[121] And those revenues will generate profits which will be used, in part, to pay MRY's share of the RRIF loan and to reinvest into the Mendocino Line.

The MJC consultant also seems to base her analysis on faulty inputs, apparently reporting *monthly* carload transportation figures for *annual* carload transportation figures, for example, and further failing to count as relevant any intermodal volumes whatsoever.[122] Her economic analysis supported by a rehabilitation study that is, itself based, on such things as "an interview of a former train crew member that worked this [Mendocino Line] segment *40 years ago,*"[123] decades before MRY acquired and began operating the line, is simply flawed, as discussed in the attached verified statement of Mr. Gedney.

As explained by Mr. Gedney, MJC nalyzes potential rail freight demand based on a variety of basis, including national per capita demand, GDP per capita, and on interviews with area businesses. Each of these will be dealt with separately below, but it is important to note that in each case the analysis only looks to *local* freight rail traffic – freight rail traffic that would both originate

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[121] VS Pinoli at 19.

[122] MJC, in supporting its GRTA/NCRA Market Analysis unequivocally states that "Overall rail carloads declined from 1.5 million in 2000 to less than a million in 2022." (GRTA/NCRA Market Analysis at 22). See also, id. at 35 (citing a U.S. Department of Transportation report as the source of the numbers). The claimed annual carload numbers are absolute numbers of carloads. It is not clear, but the numbers may be monthly carloads, not annual carloads, and even then, the numbers reported failed to include intermodal units moved by rail. The consultant juxtaposes those against truck tonnage, not annual truck movements. In any event, the claimed volumes are simply wrong – overall rail carloads and intermodal units reported by the Association of American Railroads was 25,428,763, which was a 2% decline over the prior year. For a more complete discussion of the numbers, see "North American rail volumes fell nearly 2 percent in 2022", Progressive Railroading, published January 5, 2023, https://www.progressiverailroading.com/rail_industry_trends/news/North-American-rail-volumes-fell-nearly-2-percent-in-2022--68293#:~:text=Total%20U.S.%20freight-rail%20traffic%20in%202022%20fell%202.8%25,trailers%20dropped%204.9%25%20to%2013%2C452%2C480%20year%20over%20year, accessed on April 27, 2024.

[123] Railroad Rehabilitation Assessment MRY Fort Bragg to Willits, November 30, 2023, attached to the Adverse Application as Appendix A, at page 9 (emphasis added).

and terminate on the local line between Willits and Fort Bragg or, in another scenario, between Cloverdale and Fort Bragg. But should the rail line between Cloverdale and Fort Bragg be rehabilitated for freight rail service – the cost of which Marie Jones Consulting seems to ascribe to MRY, and which forms, in part, the basis of GRTA/NCRA's argument that MRY's STB jurisdiction should be revoked (as opposed to GRTA/NCRA's) – then *that* rehabilitated line segment once again could also be a source of new potential traffic. It too could have local traffic and transload traffic for further connection to the nation's freight rail network, changing fundamentally the potential for interstate freight rail service. And if the SMART service were to be extended to Cloverdale, the entirety would be the source of full-rail connection to the nations' interstate rail service via track.[124]

MJC's fundamental misunderstanding of the freight service industry is illustrated well by her discussion in Appendix B to her Feasibility and Market Analysis. It starts with the fact that "more freight is shipped by Truck within the United States than by any other mode."[125] MJC observes that "Trucks also ship more by weight."[126] Next, MJC observes that "Rail is competitive with truck freight only in 'ton miles traveled.'"[127] MJC bserves that freight rail service is on a decline, citing data that fails to include movement of rail intermodal traffic.[128] MJC hen notes that Costs Faced by Businesses Purchasing Transportation Services is greater for rail, citing a Bureau of Transportation Statistics (but failing to note that the figures for "[a]ir, rail, and water transportation include both passenger and freight services" while the figures for "[t]ruck transportation include[s]

[124] MJC notes that the line between Windsor and Cloverdale is embargoed by its current owner, SMART, but whether that embargo would survive a reasonableness test is open to question. Further, see footnote 87 and the text accompany the same, illustrating that SMART is working towards eventual freight service over the line.

[125] Id. at 32 (citing the U.S. Department of Transportation, 2019 Pocket Guide to Transportation, at 19).

[126] Id. at 33.

[127] Id.

[128] Id. at 35.

only freight services").[129] The sum total of this analysis, according to MJC is that "[n]ationwide trends indicate that rail service is not competitive with truck transport."[130]

Essentially, MJC's consultant, using the logic she applies in this proceeding, could (incorrectly) argue that most of the nation's interstate rail system should be abandoned so that the traffic could move more safely, economically, efficiently, and in a more environmentally friendly way, via trucks on the highway. But the conclusions of MJC, on behalf of GRTA/NCRA, are directly at odds with those of the California Department of Transportation, which notes that "freight rail movements are project[ed] to increase ~2-4% per year" and that, as a result, the "freight rail network will continue to play a critical role in goods movement" in the state. [131]

GRTA/NCRA claims that trucking freight is highly competitive,[132] which it often is. But at the same time, its consultant admits that any truck service would involve Highway 20, for example, which "has many tight curves and can accommodate only shorter trucks" operating at a low speed.[133] And just a few years before this, when that very same consultant was working for the City of Fort Bragg, and in support of funding for the Mendocino Line rehabilitation, she identified that same Highway 20, and the "high cost of trucking" as an "economic challenge" for the City of Fort Bragg, its residents, and its businesses, in light of the temporary difficulties facing MRY and the need for that sought after funding.[134] In this scenario, to the extent MRY can take any of this traffic off the road, which it can do at prices lower than those charged by trucks,[135] it is net positive for the

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[129] Id. at 37 citing https://data.bts.gov/stories/s/Transportation-Economic-Trends-Transportation-Cost/2yqq-baqd/, accessed on April 27, 2024.

[130] Id. at 23.

[131] State Rail Plan at 33.

[132] Market and Feasibility Analysis at 2.

[133] Id.

[134] Id. at 2.

[135] VS Pinoli at 20.

community and the environment. Indeed, there are existing aggregate shippers who currently have to use nothing but trucks to move from Ft. Bragg to Willits over Highway 20 who are committed to moving this traffic to the Mendocino Line once the line is rehabilitated because doing so is more economical than using trucks.[136]

Even more stunning, is the fact that the MJC consultant determines that the maximum potential freight demand for the Mendocino Line, if reconnected physically to a rehabilitated GRTA/NCRA Middle Segment line, is at most 303 rail carloads of freight per year,[137] defined by the percentage of rail service versus truck rail service in a market solely defined by the short haul market.[138] There is no question that quite a bit of traffic on America's short lines is local traffic,[139] but that is not the end of the story. To arrive at that number, MJC used some highly questionable approaches.

The MJC consultant analyzes potential rail freight demand based on population, but "[u]sing per-capita rail freight demand is not a recognized, or accurate, method to determine maximum rail freight demand for a short line railroad or geographic region."[140] "There is not a proportional increase in carload freight based on population density since most carload freight is not related to

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[136] VS Pinoli at 15.

[137] Market and Feasibility Analysis at 8.

[138] Id.

[139] See, "Short Line and Regional Railroad Facts and Figures," published by the American Short Line and Regional Railroad Association, 2017, reprinted 2019, at 10, appearing at aslrra.org/ASLRRA/document-server/?cfp=ASLRRA/assets/File/public/about/Facts_and_Figures_eVersion.pdf, accessed on April 24, 2024.

[140] Verified Statement of Matt Gedney, at 2 (discussing the Verified Statement of Marie Jones, at paragraph 3 and Market and Feasibility Analysis at 5). See also, Marie Jones Deposition at page 94, line 16, through page 95, line 2 (stating that a rail demand based on a per capital analysis is essentially just the same type of analysis as ones looking at retail sales per capita or income per capita, claiming that, in essence, "[i]t's a very normal way of comparing different economic metrics across regions").

personal consumption, but rather industrial & agricultural consumption, construction materials, and fossil fuel-based energy production, which often occurs as an origin and/or destination in rural areas."[141]

Similarly, the MJC consultant analyzes potential rail freight demand based upon gross domestic product per capita. But this also is not an accepted, or accurate, method of analyzing freight rail demand.[142] Matt Gedney, an experienced rail consultant with knowledge of the industry, its operations, and its economics, put it this way: "A substantial amount of rail shipments originating or terminating on short lines occur in low-GDP per-capita regions, particularly areas that produce low-value raw materials such as minerals, forest products, and agricultural commodities."[143] The GRTA/NCRA's consultant seems unaware of many of the fundamentals of rail transport, basing her analysis on methodologies that have never been used in the rail industry before and have little correlation, if any, in predicting demand for freight.[144]

Equally problematic is the fact that the MJC consultant extrapolates interviews with a few local potential shippers to discount any potential future rail transload customers.[145] According to

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[141] Id. at 3.

[142] Verified Statement of Matt Gedney, at 4 (discussing the Verified Statement of Marie Jones, at paragraph 3 and Market and Feasibility Analysis at 5). Imagine two scenarios: one of which is a mine located in the middle of farmland versus that same mine located next to an apartment complex. The mine in each case will produce the same volume of materials, regardless of whether it is located in an area of dispersed farmhouses or the apartment complex but MJC's faulty analysis would say that the mine located next to the apartment complex would generate more freight because it was in a higher per capita area. Clearly a per capita analysis is faulty, and Ms. Jones could not point to one rail economic study – used by the Association of American Railroads, the American Short Line Regional Railroad Association, the STB's Office of Economic Analysis or otherwise – using such an analysis to predict rail demand. See Deposition of Marie Jones, at page 94, line 11, through page 95, line 8 (comparing the demand for rail transport to the demand "for all sorts of commodities").

[143] Id. at 4-5.

[144] Deposition of Marie Jones, at page 94, line 3, through page 94, line 8.

[145] See, Verified Statement of Matt Gedney, appended hereto as Appendix C, at 5-6 (discussing the Verified Statement of Marie Jones, at paragraph 3 and Market and Feasibility Analysis at 5).

Mr. Gedney, "By limiting inquiries only to a few local manufacturers in Mendocino County, the analysis of potential rail freight demand is quite incomplete."[146] Her limited interviews stand in stark contrast to the other shippers who have signed letters supporting MRY and who have expressed their desire, and their commitment, to use MRY's freight rail services once the line is rehabilitated.

In the end, MJC's analysis is based upon flawed logic, flawed inputs, and is self-contradictory, especially when compared to her prior representations to the federal government on behalf of the City of Fort Bragg. In contrast, as shown in the Pinoli VS and in the various attachments to that verified statement, there are real shippers who have used the Mendocino Line in the past and several others that intend to use the line in the future. In such a factual scenario, neither the STB, nor the ICC before it, ever granted an adverse abandonment application over the objection of the incumbent railroad. Nor should it do so here.

H. The GRTA/NCRA Financial Analysis fails to consider the fact that current and future passenger service, combined with the federal loan, forms a sound basis for the financial wherewithal to continue rehabilitation of the Mendocino Line and perform continued freight rail operations.

Though there may not currently be a significant amount of on-line freight rail traffic to support repairs and maintenance on the line,[147] that is not the end of the story. As discussed above, "the break-even feasibility analysis employed by Ms. Jones, based on both railcar pricing or volume, fails to account for alternative sources of revenue routinely available to railroad operators generally and in this case in particular."[148] As is discussed in his Verified Statement, Matt Gedney

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[146] Id. at 6 (discussing the Verified Statement of Marie Jones, at paragraph 3 and Market and Feasibility Analysis at 5).

[147] GRTA/NCRA incorrectly asserts that none of the revenue data provided by MRY "is actually freight or passenger traffic moving in interstate commerce subject to the jurisdiction of the STB." Adverse Application at 31.

[148] Verified Statement of Matt Gedney, appended hereto as Appendix C, at 8 (discussing the Verified Statement of Marie Jones, at paragraph 3 and Market and Feasibility Analysis at 6).

notes that "[s]hort line railroads, particularly those operating on light density branch lines, can and often do derive a significant percentage of gross income from passenger operations, accessorial charges, right-of-way occupations, property leases, and mechanical services. There is also no regulatory requirement outlining the percentage of income that a short line railroad must receive from rail freight service."[149]

MRY has many facets, including the movement of freight, passenger, and tourist elements, none of which independently can sustain the costs of running that aspect of the business by itself, but which together all contribute to covering all of the costs of maintaining and operating the railroad, the essential glue that keeps all of the enterprises viable as a whole.[150] Other rail carriers have non-freight revenues that contribute to the carriers' bottom line, and MRY is no different. Just as those revenue generators may be reasonable and appropriate for the circumstances facing each of those carrier, the revenue generating activities of MRY are appropriate to the rail line in the circumstances in which it is found, especially in light of the remote area in which it is found, with an active rail line lying between it and the rest of the freight rail network embargoed by the very entity that is trying to force MRY into abandonment.

GRTA/NCRA acknowledges the existence of these revenue-generating services. GRTA/NCRA notes the sale of a conservation easement in 2013 to the Save the Redwoods League.[151] GRTA/NCRA notes the tourist revenue services called the Pudding Creek Express and the Wolf Tree Turn, both operating on the Mendocino Line.[152] Even MJC, upon whom GRTA/NCRA so heavily relies, acknowledges the existence of these revenue-generating

[149] Verified Statement of Matt Gedney, at 8.

[150] VS Pinoli, appended hereto as Appendix A, at 4.

[151] Adverse Application at 18.

[152] Adverse Application at 18-19.

services.[153] But nowhere in the GRTA/NCRA application is there any recognition of the fact that different aspects of the Mendocino Line's business can contribute to the overall financial health of the enterprise. GRTA/NCRA ignore the fact that the Skunk Train passenger revenues are sufficient to maintain, inspect, and pay for the fixed costs (including labor, overhead, and admin) associated with the Mendocino Line; leaving freight needing to merely cover its variable costs to remain a viable service.

As the Board has found before, freight rail service does not have to cover the full costs of repair, maintenance, and operational costs over a particular segment of rail. The Board has previously found that actual or potential passenger service has been accepted as a reason to keep a line in the national rail system.[154] It is clear that, "rail freight need not provide all of the income that would be needed to cover the cost of owning, maintaining and operating the line…."[155] In this case, MRY has an established freight, tourist and passenger rail operation that, together with corridor leases and other revenues, covers the cost of owning, maintaining and operating the Mendocino Line.[156]

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[153] Verified Statement of Marie Jones at Appendix A to Verified Statement 3 in Adverse Application, Feasibility & Market Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor, March 6, 2023, at 13.

[154] Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO, AB-1014, (STB served May 23, 2008), slip op. at 14 (stating that passenger service can "factor into the PC&N analysis if revenue from existing or potential passenger service on a line might make more than a de minimis amount of rail freight service feasible").

[155] Trinidad Railway, Inc. – Abandonment Exemption – in Las Animas County, CO, AB-573X, et al., slip op. at 10 (STB served August 13, 2001 ("In determining whether there are sufficient traffic prospects to enable the [carrier] to operate the line …, we consider all potential income resulting from the operation of the line, … include[ing] income from passenger operations.... Thus, rail freight need not provide all of the income that would be needed to cover the cost of owning, maintaining, and operating the line….") (cited in Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO, AB-1014 (STB served May 23, 2008) slip op. at 14).

[156] See, VS Pinoli, attached hereto as Appendix A, at 20.

GRTA/NCRA argues over and over again that since MRY purchased the Mendocino Line out of bankruptcy, and there is little freight service over the line, any freight developed "would not be able to recover the capitalization costs with earned income [and] MR would presumably go bankrupt, as CWR was before its assets were acquired in bankruptcy."[157] GRTA/NCRA attempts to prove too much with too little. MRY is not just a freight railroad – it is also a passenger railroad. They also provide railbike excursions, dinner trains, and other passenger rail services.[158] "MRY's operations make use of the same infrastructure and (mostly) the same people."[159] No one element of that business, including the freight service, has to stand on its own to survive in the business world in order for the combined enterprise to continue and thrive.

Further, the rehabilitation costs that GRTA/NCRA consultant MJC uses for her feasibility analysis are excessive. Though based on the 2019 BUILD Application materials, they fail to take into consideration work that has been done since that time, wrongly involve work on GRTA/NCRA property (on GRTA/NCRA-owned track, bridges and signals), and are inflated by 60% (with regard to structural improvements to Tunnel No. 1) and 47% (overall).[160] The competitiveness of rail versus truck is significantly skewed, and GRTA/NCRA's consultant fails to realize that, even at tariff rates, a three-car freight train would not only cover variable costs but will make a profit, contributing to the cost of doing business and producing capital for future investment. The customer also benefits because it can ship the same volume of materials being moved by truck via rail and at less than its trucking costs.[161]

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[157] See, Adverse Application, at 40.

[158] See, VS Pinoli, at 20.

[159] Id.

[160] See, VS Pinoli, at 21.

[161] See, VS Pinoli, at 20.

Matt Gedney put it succinctly: "The break-even feasibility analysis employed by [GRTA/NCRA consultant Marie Jones], based on both railcar pricing or volume, fails to account for alternative sources of revenue routinely available to railroad operators generally and in this case in particular."[162] For MRY, it is important to note that not one of their endeavors (freight, passenger, excursion) is sufficient to cover the costs of running that individual aspect of the business by itself – each contributes to the bottom line to make sure that the costs of running the freight service (for example) are partially covered by the revenues from that freight service, but also the other businesses that use the rail line over which that freight service is operated. And the passenger rail services – the Skunk Train and other non-tourist and other revenue sources essentially cover the fixed costs associated with maintaining and investing in the Mendocino Line. The RRIF loan will cover the rehabilitation costs. This means that any any profit obtained through freight rail service will be available to help cover any RRIF loan payments and provide a contribution toward profit and capital investment. The feasibility analysis performed by GRTA/NCRA simply fails to recognize the reality of MRY's enterprises using the Mendocino Line. It must thus be disregarded as not even relevant.

The most important question – indeed the *only* real question – along these lines is whether the enterprise as a whole is able to continue to provide freight rail services in a manner and a cost that is appropriate to the circumstances including in a manner that is able in any way to feasibly compete with alternative service providers. Pinoli's VS answers this question, as he reiterates the viability of current services and cites legitimate support that MRY has every reason to anticipate the expansion of their freight rail service.

[162] Verified Statement of Matt Gedney, at 8. See also, id., footnote 7 (noting that the analysis fails to consider several other sources of funding, including "rent, transload fees, storage fees and other revenue generators normally associated with short line rail markets").

None of the GRTA/NCRA's flawed logic, which is also based on flawed inputs, can bear up to the demonstrated commitments of continued and expanded freight and existing passenger service -- services that are vitally important to the local economy. The Mendocino Line is important for other constituencies that are supported by a viable freight and passenger rail line between Willits and Fort Bragg as well, constituencies that the Board cannot discount in balancing the public interest analysis as to whether to revoke MRY's STB authority.

I. The STB must consider all constituencies potentially affected by the proposed abandonment, and many of those constituencies, in this case, receive essential public services from the Mendocino Line.

California State Senator Mike McGuire, writing in support of federal funding to help rehabilitate the Mendocino Line and Tunnel No. 1, recognized that the Mendocino Line "assist[s] the local police and emergency responders with responding to incidents and fighting wildfires along the Line and in the region."[164] Those with a day-to-day involvement in this (such as the Mendocino County Sheriff's Office, the Chief of the Fort Bragg Fire Department, and the Battalion Chief of the California Department of Forestry and Fire Protection, Mendocino Unit) all wrote letters of support for federal funding for the Mendocino Line. All of these letters echo the importance of the Mendocino Line to this essential constituency, stating that rehabilitation of the Mendocino Line would help law enforcement in search and rescue missions, and fire departments and other federal and state agencies respond to incidents not only along the line but also in the region because of the access the Mendocino Line provides in this remote region.[165] State Senator McGuire put it this way: "Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has assisted with transporting fire crews and equipment into the surrounding

[164] Senator McGuire Letter, appended within Attachment 11 of VS Pinoli, at 1.

[165] Id.

mountains to fight fires, transporting law enforcement officers to various emergencies, and transporting water during droughts."[166]

The rail line has other constituencies as well. In support of a 2019 BUILD Grant, the Mendocino Land Trust explained that "Many areas of [its] property are not accessible via dirt road, and Mendocino Land Trust depends on the Skunk Train for much of our maintenance access."[167] It explained that it considered housing a caretaking in the area, but as with any resident along the line, it could not do so unless the MRY was there to permit that caretaker to travel the Mendocino Line to access goods (groceries, fuel, and the like) and services (i.e. mail) for which there are no other options.[168] The MRY operation "is the primary transporter of crews who help us conduct critical fire defense work."[169] The Mendocino Line is a vital resource, used by the various Mendocino Line enterprise operations, that has a number of very important constituencies dependent upon it that GRTA/NCRA completely ignore.

J. The asserted public interest for seeking Adverse Abandonment is not sufficient to overcome the very strong Congressional and federal interest in maintaining Freight Rail Service, especially when the abandonment of the Mendocino Line is not necessary to achieve the goal enunciated by GRTA/NCRA.

As discussed above, the only way that the Mendocino Line is currently physically connected by rail to the remainder of the instate freight rail system is via the GRTA/NCRA Middle Segment, which has been under an embargo due to GRTA/NCRA's actions or inactions for more than two decades. The enunciated public interest that GRTA/NCRA argues should overcome the very strong Congressional and federal interest in maintaining – and indeed enhancing – the national freight rail network, is a very narrow interest, specifically that GRTA/NCRA is under a state mandate to build

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[166] Id,

[167] See VS Pinoli, Attachment 5.

[168] Id.

[169] Id.

a hiking trail and that it believes abandonment of the Mendocino Line is necessary in order to do that. The theory is that the STB generally will not permit GRTA/NCRA to abandon its own Middle Segment line if it remains connected to another line of railroad that is within the STB's jurisdiction, so GRTA/NCRA must somehow get the Mendocino Line abandoned in order to ensure it can abandon its own line.

But GRTA/NCRA does not explain how this same theory would be applied in the real world even with regard to its own Northern Segment, which GRTA/NCRA recently placed into railbanking status under the explicit assumption that freight rail service will someday potentially be reintroduced.[170]

In any event, for a number of reasons, the Mendocino Line does *not* have to be abandoned to permit the Great Redwood Trail to proceed. Because of that, the GRTA/NCRA's enunciated interest cannot outweigh the very important interests (not only the freight interests, but also the interests held by the various constituencies involved, such as those of the tourism industry and those residents and businesses of the region who avail themselves of the essential rail services provided over the Mendocino Line).[171]

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[170] Indeed, the entire premise of railbanking is to preserve the corridor for the potential reactivation of rail service. Railbanking thus serves as the means by which a corridor remains "part of" the interstate rail system. If the Northern Segment can remain under the STB's jurisdiction via railbanking, and the Middle Segment, when and if it is converted to a trail likewise remains part of the interstate rail system, then certainly the Mendocino Line can remain "part of" the interstate rail service via its connection to a railbanked Middle Segment, which is itself connected to SMART and the interstate rail system. There is nothing in the statute that requires an "island railroad" to be physically connected to another active rail line, especially if that "island railroad" can remain "part of" the interstate rail system via other means, *i.e.*, through a trail, through transloading, through ports, or through the movement of commodities that have had a prior or subsequent move on the interstate rail system.

[171] The U.S. Department of Transportation recently issued a press release touting recent steps to opening its anticipated "Reconnecting Communities Institute." "U.S. Department of Transportation Announces Latest Step Toward Launching New Reconnecting Communities Institute," U.S. Department of Transportation, press release issued April 4, 2024. That institute will be the USDOT's "center for learning on restoring and reconnecting communities that have been harmed,

We are not aware of a single case in which the Board, or the Interstate Commerce Commission before it, has found that that a line of rail, temporarily or even permanently physically isolated from a direct track access to the remainder of the interstate freight rail system due to an embargo or through a trail, is legally not connected to that interstate freight rail system so as to justify an adverse abandonment, especially when there are existing shipments and the potential for future shipments. In fact, there have been several cases in which "island railroads" without a direct physical connection to the interstate rail network have been determined to continue to be "part of" the interstate rail system, and thus under the STB's jurisdiction. This can occur via such things as truck transload, car float, connections to ports, or through the movement of commodities that have had a prior or subsequent movement by rail in interstate commerce. For example, there is little question that the car float service between New York and Jersey City, NJ was a connection to the interstate freight rail system for the Bush Terminal Yards and Brooklyn Army Terminal in Brooklyn, Kings County, NY.[172] Another example is the line of railroad between Hallwood and Cape Charles, Virginia that was connected to the rest of the rest of the interstate freight rail service

isolated, and cut off from opportunity by past transportation choices." The City of Willits discussed a recent road transportation choice – a Caltrans decision to build a bypass around Willits which negatively affected the city and its economy, directly tying that decision as adversely affecting access to the Mendocino Line and the passenger and tourism services provided. See, letter attached as Attachment 11 to the VS Pinoli. It is decisions such as this, and the decision of GRTA/NCRA to forego any efforts over 25 years to re-establish freight and passenger service over the Middle Segment, that the Reconnecting Communities Institute may take up and study. Just because bad choices have been made by some in the past as to the road and rail system leading to Willits, is not a reason for the Board to reinforce them through the grant of adverse abandonment over the Mendocino Line.

[172] New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY, AB-596 (STB served May 12, 2003). In that case, even the party seeking adverse abandonment acknowledge this fact. See, id., slip op. at 5 (acknowledging the argument that "NYCH could have an alternate landing site at the City's 65th Street facility that would allow it to connect to its current rail rights-of-way and destination points").

by a car float service.[173] Another, very important example of an "island railroad" is the Alaska Railroad, an STB regulated and jurisdictional railroad. There is no direct physical connection to another U.S. STB regulated carrier. Yet, it remains "part of" the U.S. rail system and under the STB's jurisdiction via ferry, ports, transloading, air freight – all means by which it can move commodities that have had a prior or subsequent move in interstate commerce. Via these means, it is also part of the Military Surface Deployment and Distribution Command Transportation Engineering Agency's designated Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines.[174]

It is undisputed that the purpose behind the GRTA/NCRA's adverse abandonment application is to remove the Mendocino Line from the national interstate rail system so as to permit GRTA/NCRA to abandon its own rail line in favor of a hiking trail.[175] Indeed, GRTA/NCRA has specifically identified the instant proceeding – the proposed adverse abandonment of the Mendocino Line – as one of the proceedings it has undertaken in order to achieve a railbanking status on its line.[176] GRTA/NCRA desires to abandon its own Middle Segment to preserve its right

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[173] Canonie Atlantic Co. – Abandonment Exemption – Hallwood to Cape Charles, VA, AB-1267X, et al., (STB served August 2, 2019).

[174] Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines, 2023 Edition, published by the Military Surface Deployment and Distribution Command Transportation Engineering Agency at https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/RND%20Publications/STRACNET%202023.pdf, at 1 (identifying "civil rail lines most important to national defense").

[175] Adverse Application at 3 ("GRTA initiated this proceeding because [GRTA/NCRA] is working to transform a connecting rail line that has not been used since 1998," referring to the GRTA/NCRA Middle Segment, "into a 307-mile, world-class, multi-use rail-to-trail project"). See also, Verified Statement of Elaine Hogan, attached to the Adverse Application, at paragraph 4 ("Specifically, *for purposes of this proceeding*, GRTA must file for abandonment of the GRTA Line and seek to railbank it as part of GRTA's statutory mandate") (emphasis added) and 10 (explaining that it for GRTA/NCRA to create the Great Redwood Trail "in the most efficient and effective manner" the Mendocino Line must be abandoned).

[176] Railbanking, Railbanking | The Great Redwood Trail Agency, accessed on April 24, 5, 2024 (identified as one of the "current filings with the Surface Transportation Board (STB) to allow for

of way intact and to prevent adjacent landowners from exercising their reversionary rights and to reclaim the right of way formerly held by the railroad.[177]

But as discussed above, GRTA/NCRA misapplies the scope of the STB's jurisdiction. It is true that "the Board has held that it will not allow track to which the common carrier obligation is attached to become isolated from the interstate rail network as a result of the abandonment of an adjoining segment."[178] But that does not require a direct physical connection to another interstate rail system and the statute does not require such a physical connection. Here, the Mendocino Line is not, and would not cease to be, "part of" the interstate rail system even if the Middle Segment were to be abandoned and railbanked. MRY would still be "part of" the interstate rail system via the Middle Segment whether embargoed or railbanked[179] or via a "rail-with-trail" system in the event the Middle Segment is not abandoned or there is a successful OFA. Moreover, even if it becomes an "island railroad" MRY can still be "part of" the interstate rail system via transloading, ports, ferry service, air freight, or via the movement of commodities that have had a prior or subsequent

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eventual railbanking filings [to permit railbanking] from Sonoma County to Willits," The Great Redwood Trail Master Plan, April 2024 Draft, at 91 and 408).

[177] The Great Redwood Trail, Feasibility, Governance, and Railbanking Report, Component of SB 1029 Task Force Assessment, July 2020, Executive Summary at ES-8. Great Redwood Trail Feasibility, Governance, and Railbanking Report (ca.gov), accessed on April 25, 2024. See also, id. at 11 ("By conducting the railbanking process…, any reversionary rights that would be triggered by formal abandonment of the railroad corridor are not activated, and the ROW is preserved intact.").

[178] Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY Inc., FD 35692, Ballard Terminal Railroad Company, LLC – Lease Exemption – Eastside Community Rail, LLC, FD 35730, GNP RLY, Inc. – Abandonment Exemption in King County, Wash., AB 1316X (unconsolidated proceedings addressed in the same decision), (STB served April 24, 2023) ("Eastside Community Rail"), slip op. at 8.

[179] Eastside Community Rail, slip op. at 8 (noting that a line that is subject to interim trail use/railbanking protection will not isolate and strand a segment otherwise connected to the interstate freight rail network so long as the commitment to railbanking is enforceable and not illusory).

movement in interstate commerce, even if those commodities might come to rest in Fort Bragg or Willits before being transloaded or simply put on the MRY.[180]

Even if GRTA/NCRA's goal to establish a trail is in the public interest, and MRY does not concede that it is, the Board will not countenance the removal of rights-of-way from the national rail transportation network when unnecessary in order to achieve the enunciated ends.[181] Here, GRTA/NCRA states that the Mendocino Line **must** have its common carrier status removed in order to permit GRTA/NCRA to abandon its own Middle Segment line and that it cannot abandon its own line without stranding the Mendocino Line. But this is simply not true and is an overly broad, and incorrect, reading of the Board precedent.[182]

First, if GRTA/NCRA's theory that MRY will be severed if the Middle Segment is railbanked is correct, then the abandonment of its own Middle Segment line would sever its own Northern Segment line. But GRTA/NCRA's theory is not correct. In the event the Middle Segment is railbanked, the railbanked Northern segment will remain within the Board's jurisdiction and will not be severed from the interstate rail network because it will connect with another railbanked segment (the Middle Segment) that will connect with an active rail line, i.e., the SMART line.

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[180] See Armstrong Carpet.

[181] Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN.,AB-290 (Sub-No. 286) (STB served February 14, 2008), slip op. at 6 (noting that the installation of a storm water sewer and a recreational trail can take place without the sought after abandonment).

[182] If the Board believes it necessary, the Board should clarify (or flatly overrule) its prior precedents implying that an "island railroad" needs to be physically connected to another interstate railroad in order to be "part of" the interstate rail system and subject to the STB's jurisdiction. The Board would be justified in doing so given the changes in ICCTA from the prior jurisdictional language of pre-ICCTA. ICCTA clearly strengthened and enhanced the Board's jurisdiction over intrastate rail carriers. Indeed, before ICCTA, the ICC did not have jurisdiction over "the transportation of passengers or property … entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country…" but after ICCTA, the STB has exclusive jurisdiction over transportation that takes place in "a State and a place in the same or another State as part of the interstate rail network…." Compare 1994 U.S. Code Title 49, Section 10501(b) with 2024 U.S. Code Title 49, Section 10501(a)(2).

Similarly, assuming the Middle Segment is abandoned and railbanked,[183] MRY will remain connected to the intestate rail system in the same manner as the Northern Segment.

Second, it is also not clear, particularly given GRTA/NCRA's most current actions to install rail with trail segments on its own line, that GRTA/NCRA needs the abandonment of the Mendocino Line in order to achieve its goal. It is not enough that GRTA/NCRA believes that its trail would somehow be easier to achieve if it succeeds in having MRY's common carrier obligation removed. But the desire to establish a trail cannot form the basis for a grant of an adverse abandonment. "To justify withdrawing our protective jurisdiction over a rail line, we require a greater showing than that a local activity, however meritorious, would be somehow enhanced if the line were to be abandoned."[184] hiking Because GRTA/NCRA have not met this high burden, the adverse abandonment should be denied.

Second, as noted above, an adverse abandonment of MRY is not necessary because MRY will not be severed if the Middle Segment is abandoned and railbanked. MRY can remain "part of" the interstate rail system even if MRY becomes an island railroad without a physical connection to another STB railroad. MRY would remain "part of" the interstate rail system through railbanking, through transloading, through air freight, ports, ferry service, or through moving commodities that have had a prior or subsequent movement on another interstate rail carrier. There simply is no need to remove MRY's STB jurisdictional status for GRTA/NCRA to attempt to accomplish its goal of

[183] One cannot assume this. GRTA/NCRA still has to obtain abandonment authority, which could be denied. Or, alternatively, a party may file an OFA. GRTA/NCRA's entire basis for filing this case is based upon the assumption that its abandonment of the Middle Segment will be approved and the line railbanked. These facts cannot be assumed.

[184] Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN.,AB-290 (Sub-No. 286) (STB served February 14, 2008), slip op. at 6 (noting that the installation of a storm water sewer and a recreational trail can take place without the sought after abandonment).

creating the Great Redwood Trail. Abandonment of the Mendocino Line is not a necessary prerequisite to the abandonment of the GRTA/NCRA Middle Segment.

Finally, if MRY would no longer be "part of" the interstate rail system through being an island railroad, railbanking, being part of a continuous interstate rail movement, or via other means, then the adverse abandonment application should be still denied -- based upon the failure of GRTA/NCRA to meet the high standards applicable to adverse abandonments and because the adverse abandonment of the rail line is not necessary for GRTA/NCRA to accomplish its desire to create a the Great Redwood Trail[185] GRTA/NCRA demonstrates this by explaining that rail-*with*-trail is not only possible, but has been implemented and planned for portions of the Great Redwood Trail. As mentioned elsewhere, the Sonoma-Marin Area Rail Transit District (SMART) has acquired 87.65 miles of the southern portion of the railroad underlying the Great Redwood Trail and will be responsible for rail-*with*-trail development for the southern segment of the trail.[186] The Willits segment is another rail-*with*-trail segment that lies along the Great Redwood Trail, one that as recently as this year received GRTA/NCRA approval.[187] In applying the standard (whether the public convenience and necessity requires or permits the adverse abandonment), "the Board considers whether this is a present or future public need for rail service over the line and whether that need is outweighed by other interests."[188] When the public interest that is asserted by the

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[185] Seminole Gulf, slip op. at 5.

[186] Adverse Application at 11-12 (citing Sonoma-Marin Area Rail Transit District – Acquisition and Operation Exemption – North Coast Railroad Authority, FD 36481 (STB served Feb. 18, 2021)).

[187] See, the Governor's Office of Planning and Research, CEQAnet Web Portal, California Environmental Quality Act, Willits Rail with Trail Project site, https://ceqanet.opr.ca.gov/2022030663/5, accessed on May 12, 2024. See also, the Notice of Determination for the same, attached to the VS Pinoli at Attachment 9 (describing the project and noting that "the Great Redwood Trail Agency has approved the described project on February 13, 2024….".

[188] New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, N.Y., AB 1261 (STB served January 11,

proponent of adverse abandonment can be advanced without the need for the requested adverse abandonment, the Board should weigh that non-freight rail interest minimally.

GRTA/NCRA itself has acknowledged that an abandonment application can result in a Notice of Interim Trail Use, and that "NITU's are issued pursuant to 16 U.S.C. 1247(d). Section 1247(d) provides, *inter alia*, that interim trail use/railbanking 'shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes."[189] Therefore, authorizing abandonment does not necessarily isolate an active line of railroad simply because it is attached to the remainder of the interstate rail system through an inactive or railbanked adjoining segment.[190]

Further, should the Mendocino Line remain an active line of rail subject to the jurisdiction of the Board, GRTA/NCRA could still implement a "rail-*with*-trail" system rather than a "rail-*to*-trail" system. Indeed, the "rail-*with*-trail" model is not only already being implemented on the southern part of the Great Redwood Trail,[191] but it is under active implementation on sections of the Middle Segment and the Northern Segment.

A rail-with-trail solution is different than a rail-to-trail approach, according to a report issued jointly by the Federal Railroad Administration and the Federal Transit Administration:[193]

2022), slip op. at 2-3 (citing Norfolk Southern Railway – Adverse Abandonment – St. Joseph County, Ind, AB 290 (Sub-No. 286), slip op. at 3-4 (STB served April 17, 2012)).

[189] Letter Response filed June 28, 2021 (302628) in North Coast Railroad Authority – Abandonment Exemption – in Humboldt, Trinity and Mendocino Counties, CA, AB-1305X ("NCRA NOE Proceeding").

[190] Eastside Community Rail, slip op. at 8 (citing Elk River Railroad – Abandonment Exemption – in Kanawha & Clay Counties, W. VA, AB 1314X (STB served March 25, 2022)).

[191] "The rail corridor in Sonoma and Marin Counties was transferred to Sonoma – Marin Area Rail Transit (SMART), who will be responsible for rail-with-trail development for the Southern Segment of the Great Redwood Trail." Great Redwood Trail Agency, About | The Great Redwood Trail Agency, accessed on April 25, 2024.

[193] "Rails with Trails, Best Practices and Lessons Learned," Federal Railroad Administration and Federal Highway Administration, March 2020, at 1, and attached to the VS Pinoli at Attachment 8.

> The term "rail-with-trail" describes a shared-use path or trail open and developed for public use that is located on or adjacent to the rights-of-way of an active railroad or rail transit corridor. The term includes shared-use paths and trails located on or near railroad property which has tracks in place and property used by a railroad company or transit operator for storage, operations, maintenance, or security. Rails-with-trails are fundamentally distinct from "rails-to-trails," in which all rail service has been discontinued or abandoned, tracks and other rail infrastructure are removed, and the entire right-of-way is converted to a shared-use path or trail.

According to this joint FRA/FTA report, as of 2018, there were 343 rail-*with*-trails in the United States spanning an expanse of well over 900 miles, located in 47 states.[194] In California alone there were over 43 rails-*with*-trails.[195]

A rail-*with*-trail solution is also consistent with the policies of GRTA's predecessor on the GRTA line,[196] even at a time when it enunciated a specific intent to reinstitute freight rail service over its line.[197] The FRA/FHA Rail with Trails report quoted above specifically pointed to the NCRA's own policy and procedures manual's treatment that permitted rails-with-trails as an example to the nation of what can be achieved in this area.[198]

GRTA/NCRA has additionally argued for the continued "use of the MR Line as a tourist excursion rail operation by MR fits with California's plans to focus more attention in this area on ecotourism in this environmentally beautiful but economically struggling area," even while "further[ing] this state policy by turning the right-of-way into a trail that could easily be a branch of

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[194] "Rails with Trails, Best Practices and Lessons Learned," at 10.

[195] "Rails with Trails, Best Practices and Lessons Learned," at 11.

[196] See Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update, https://northcoastrailroad.org/Acrobat/Frequently_Asked_Questions.pdf, at 4 accessed on April 24, 2024 ("The NCRA is not opposed to bike and pedestrian paths on its right-of-way") (describing the process for evaluating proposals for the same), attached as Attachment 7 to the VS Pinoli.

[197] See id. ("NCRA and its Operator (NWP Co.) support all forms of rail service [including] Freight rail service which NCRA hopes to restart in summer 2011, initially from interchange (Lombard) to Windsor").

[198] "Rails with Trails, Best Practices and Lessons Learned," at 17.

the Great Redwood Trail.[199] While this is not a model that would allow MRY to continue its current operations, much less to carry out its plans, the model that GRTA/NCRA enunciates for the Mendocino Line, similar to what was instituted on the Great Redwood Trail Southern Segment, is equally applicable to the Great Redwood Trail Middle Segment.[200]

K. The Strong Public Interest in maintaining freight rail service over the Mendocino Line is not outweighed by the uncertain nature of the potential Great Redwood Trail.

GRTA/NCRA would have the Board remove its jurisdiction over the Mendocino Line now, in this proceeding, in order to progress a hoped-for dream of creating an hiking facility spanning hundreds of miles on a completely different rail line segment, and even though abandonment of the Mendocino Line is not a necessary prerequisite to the creation of that trail facility on that completely different rail line segment. MRY hopes that it is clear to both GRTA/NCRA and the Board that MRY is willing to work with GRTA/NCRA in order to create a rails-*with*-trails solution that would help facilitate creation of that dream. But at the same time, MRY is a freight common carrier over the Mendocino Line, such that it takes its common carrier obligation seriously and has, and will, continue to use its resources to ensure continued freight operations over its line.

The Great Redwood Trail, on the other hand, is and continues to be speculative, and unfunded, and as such is not a public interest that would outweigh the very strong federal interest in continued rail service to the Northern California region. The trail is expensive – in fact, it is estimated that total project costs for fully developing the Middle Segment and the Northern

[199] Adverse Abandonment at 42.

[200] As noted by GRTA/NCRA itself, in the April 2024 Draft Master Plan, "a successful Great Redwood Trail … will evolve through deeper partnerships and discussions…." April 2024 Draft Master Plan at 19.

Segment (and not including the SMART Southern Segment) is more than $900 million in 2025 dollars, and over $1 billion in 2030 dollars.[201]

This extreme cost should be compared with what GRTA/NCRA claims is necessary for rehabilitation in order to connect the Mendocino Line to the SMART Line for reactivation of a freight physical rail connection to the interstate rail network.[202] Though GTRA/NCRA's reactivation cost estimates are grossly exaggerated, GRTA/NCRA claims that "[i]n order for the MR Line to connect to the interstate rail network, GRTA has determined that it would cost $56,561,000 to rehabilitate the GRTA Line from Willits MP 139.5 to Cloverdale MP 85.6 ('Willits Segment')." This estimate of $56,561,000 is only 6% of what is estimated to be the cost of implementing the Great Redwood Trail (using 2025 dollars). Further, the cost of rehabilitating the GRTA/NCRA Line and the Mendocino Line together would be offset in part by the revenues received from the movement of rail freight traffic over the lines.

Again, the adverse abandonment of MRY's rail line is not necessary for GRTA/NCRA to accomplish its desire to create a trail. But even if GRTA/NCRA's faulty premise were somehow relevant, GRTA/NCRA has not met even the basic standard for a grant of an adverse abandonment. In applying the standard (whether the public convenience and necessity requires or permits the adverse abandonment), "the Board considers whether this is a present or future public need for rail

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[201] The Great Redwood Trail, Feasibility, Governance, and Railbanking Report, Component of SB 1029 Task Force Assessment, July 2020, Cost Estimates at page 5-3. Great Redwood Trail Feasibility, Governance, and Railbanking Report (ca.gov), accessed on April 25, 2024, attached as Attachment 6 to the VS Pinoli.

[202] Again, legally, the Middle Segment does not have to be rehabilitated or service restored, nor does MRY need to prove that it can operate from Fort Bragg to the connection with SMART profitably (and pay for the rehabilitation of the Middle Segment) in order for MRY to remain under the STB's jurisdiction and "part of" the interstate rail system. GRTA/NCRA's entire case is built upon this faulty premise. In the end, GRTA/NCRA simply does not like MRY being subject to ICCTA and federal preemption. The desire to do away with MRY's federal preemption rights is a large part of GRTA/NCRA's motivation. But their beef should be with the statute and Congress not MRY.

service over the line and whether that need is outweighed by other interests."[203] When the public interest that is asserted by the proponent of adverse abandonment, *i.e.*, the establishment of a trail, can be advanced only with the (uncertain) investment of funds calculated at a significant multiple (nearly 16 times) of what would be required in order not only to keep the current freight rail operations active but also to physically reconnect those current freight rail operations over a line of rail embargoed for over 25 years, the Board should weigh that non-freight rail interest minimally.

Also important is the fact that there is a demonstrated federal interest in continued freight rail service over the Mendocino Line, as demonstrated by the significant Federal funding to support the same. GRTA/NCRA claims that there is no funding for the improvements, but the US Department of Transportation has already approved a RRIF Express Loan, with the credit agreement executed, for, among other things, the rehabilitation of MRY's Tunnel No. 1, 27 bridges, and 40 miles of track, to be covered by the $31.40 million in assistance, based in part on project revenues.[204] In a press release issued with regard to the FRA's loan approval, FRA Deputy Secretary Polly Trottenberg recognized that "this important project will … improve freight service benefiting the entire region." [205]

And it will.

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[203] New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, N.Y., AB 1261, served January 11, 2022, slip op. at 2-3 (citing Norfolk Southern Railway – Adverse Abandonment – St. Joseph County, Ind, AB 290 (Sub-No. 286), slip op. at 3-4 (STB served April 17, 2012)).

[204]US DOT Press Release, "U.S. Department of Transportation Announces $31.4 Million Loan to Upgrade Critical Rail Lines in California", issued January 29, 2024 and attached to the VS Pinoli as Attachment 13 (specifically referencing the DOT's interest in the Mendocino Line to "improve freight service benefitting the entire region"). https://www.transportation.gov/buildamerica/projects/sierra-northern-railway-and-mendocino-railway-improvements (accessed on April 15, 2024).

[205] Id.

CONCLUSION

Under 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity require or permit the proposed abandonment. The present and future public convenience and necessity in this case simply does not require or permit the proposed adverse abandonment.

There is a demonstrated present and future public need for rail service over the Mendocino Line. There is existing demand for continued freight rail service over the line. There is every reasonable expectation that this demand will expand over time. Shippers have expressed a commitment to move their traffic from truck to rail when the rehabilitation is completed. The federal government believes the Mendocino Line is worth continuing as both a freight and passenger operation, as demonstrated by the very substantial funding commitment by the FRA. The Mendocino Line provides extremely important freight rail service, vital for many along the lines, including the residents and businesses of Fort Bragg. It serves as an essential lifeline for residents in the region. It generates economic activity for an isolated and rural community. It holds the promise of expanded and increased service. Under such factual circumstances, neither the ICC nor the STB have ever granted an adverse abandonment application.[206]

Nor should they do so here as these benefits are not outweighed by any other enunciated interests. Looking at the enunciated purpose of the adverse abandonment application – to enable GRTA/NCRA to more easily abandon its own line and build its desired hiking trail – that purpose does not support the need to abandon the Mendocino Line. Nor is an adverse abandonment of MRY actually needed for GRTA/NCRA to accomplish its goal. An adverse abandonment in this case

[206] See, e.g., Salt Lake City Corp. – Adverse Abandonment – in Salt Lake City, UT, AB-33 (Sub-No. 183) (STB served March 8, 2002), slip op. at 7 (Neither the Board nor the ICC have ever granted an adverse abandonment when there is active rail service or the carrier is undertaking reasonable efforts to provide common carrier service).

certainly does not outweigh the significant Congressional and Federal interest in maintaining the freight rail system. The proposed abandonment would have a serious, adverse impact on essential rural and community development, and upon important essential public constituencies that are unique to this proceeding.

The Board has exclusive and plenary jurisdiction over rail abandonments to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Accordingly, the Board typically preserves and promotes continued rail service in situations like this where a carrier provides rail service, has expressed a desire to continue operations, and has taken reasonable steps to acquire additional traffic. There is not a single case supporting the grant of an adverse abandonment in the factual circumstances present here, and GRTA/NCRA cannot point to any.[207]

As set forth above, there is an overriding Federal interest in this proceeding. Even if that were not the case, this is not a preemption case brought by a party in interest seeking to ensure that the Board's jurisdiction is being used in a proceeding involving that party in interest to shield a line from the legitimate processes of state law where no overriding Federal interest exists. It is explicitly a proceeding involving a party in interest seeking to shield *itself* from the legitimate process of *Federal* law by removing a Federal impediment to its proposed actions.

As the applicant here, GRTA/NCRA has the burden of proof in the PN&C balancing test. That burden of proof is "to show that the carrier has no likelihood of success in preserving the line

[207] This is not a preemption case where MRY is seeking to ensure that the Board's jurisdiction is being used in a proceeding to shield itself from the legitimate processes of state law where no overriding Federal interest exists. Quite the opposite. Instead, this is explicitly a proceeding involving a party in interest (GRTA/NCRA) seeking to shield *itself* from the legitimate process of *Federal* law by removing a Federal impediment to its proposed state actions. Likewise, as set forth in the concurrently filed comments of the Pacific Legal Foundation, there is a constitutional question as to whether Congress has actually provided for a non-carrier to file an adverse abandonment application. Comments for which MRY joins in part.

for rail service." This is a "heavy burden" to meet. In this case, the applicant clearly has not met that heavy burden. GRTA/NCRA has failed to demonstrate that there is no likelihood of success in preserving the line for rail service, given the existing and expanding freight rail service, the existing and expanding passenger rail and other services, and the financial backing of the Federal Railroad Administration.

The outcome of this case is clear. There is an undisputable overriding Congressional (national) interest in protecting current and the potential for future freight rail service, and to preserve that whenever possible. The STB has acknowledged that. The FRA has acknowledged that. Importantly, even GRTA/NCRA has acknowledged that. And there is no legal reason to grant the adverse abandonment application in order for GRTA/NCRA to proceed with their railbanking plans. As such, the Board should deny the GRTA/NCRA application for adverse abandonment of the Mendocino Line.

Respectfully Submitted

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June 17, 2024

Attorneys for MRY

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX A

VERIFIED STATEMENT OF ROBERT JASON PINOLI

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT JASON PINOLI

My name is Robert Jason Pinoli, and I am president of Mendocino Railway ("MRY"). I have a long history with MRY and its associated enterprises.

A. My Background and the MRY's Recent History

I served as vice president of Sierra Entertainment ("SE") from July 23, 2004 through May 14, 2014, at which time SE was dissolved. Prior to its dissolution, SE was at all times a wholly owned subsidiary of Sierra Railroad Company. From December 19, 2008, until January 2, 2021, I served as a vice president of MRY. On January 2, 2021, I became president of MRY, and I continue in that position today.

From early 2004 through May 14, 2014, my responsibilities as a vice president of SE included assisting SE's president and other officers manage and oversee excursion and non-excursion passenger transportation services, on MRY's behalf as an agent of MRY, on the Mendocino Line (also known as the California Western Railroad line ("CWR")). As of May 14, 2014, my responsibilities as a vice president of MRY – which had since December 19, 2008 expanded to included assisting MRY's president and other officers in managing and overseeing excursion passenger, non-excursion passenger, and freight transportation services conducted on the Mendocino Line by MRY and/or its agents – expanded yet again. My new expanded responsibilities included assisting MRY's president and other officers in managing and

overseeing MRY's provision – on its own behalf and without using SE as its agent – of excursion and non-excursion passenger transportation services on the Mendocino Line. As of January 2, 2021, my responsibilities expanded yet again when I was elected as MRY's president and became responsible for managing and overseeing all of MRY's operations, including MRY's provision on the Mendocino Line of excursion passenger services, California public utility non-excursion passenger services, common carrier freight transportation services, and all other revenue generating activities. As of January 1, 2022, my responsibilities as president of MRY again expanded to include managing and overseeing MRY's provision, on its own behalf, of freight transportation services on the Mendocino Line.

MRY has at all times been a wholly owned subsidiary of Sierra Railroad Company. Sierra Railroad Company is a holding company for several operations, including Sierra Northern Railway ("SNR") and MRY.

The Mendocino Line was put into service around 1885. It then provided, and continues to this day to provide, freight, passenger (non-excursion), excursion (tourist, i.e., "Skunk Train" or special holiday trains), mail, and other revenue generating services and activities to the businesses and residents in and around Fort Bragg and Willits, California. As explained, in Attachment 1,[1] after MRY took ownership of the Mendocino Line in 2004, various of SNR's covered employees, including Larry Ingold,[2] assisted MRY in operating trains over the Mendocino Line, including passenger, non-excursion passenger, and freight trains as MRY's

[1] See Attachment 1 – Larry Ingold Verified Statement, former President of MRY.

[2] As MRY noted in its Notice of Exemption filed with the STB, MRY offered its services over the Mendocino Line with the assistance of its sister entities, SE and SNR, acting as agents of MRY. Since that time, MRY has taken over all of the operations on the Mendocino Line and today itself directly provides freight and excursion and non-excursion passenger transportation on the line without the assistance of any agents.

agent.[3] MRY, both directly and via its agents, also transported mail between Fort Bragg and Camp Mendocino. Most importantly, Mr. Ingold's declaration confirms two important facts: that MRY – during Mr. Ingold's 12-year tenure – provided freight and passenger service and held itself out as being ready to, and was ready to, transport freight for any customer who wished to do so over the Mendocino Line. Id. at 5. Mr. Magaw's verified statement confirms this as well.

One innovation introduced during the Mendocino Line's long history was the development of single-unit motorcars for use over the line. These "railbuses" or "railcruisers" were powered by gasoline-powered engines and had pot-bellied stoves burning crude oil to keep the passengers warm. Legend has it that you could smell these railbuses before you could see them, which earned them the reputation of being "skunks." Since 1925, the name "Skunk Train" has been embraced for our operations, even though we long ago gave up the engines and stoves that created any smell.

While I know that some refer to us as the "Skunk Train" intending to disparage us, we are proud of the name and have even named our newsletter "The Little Stinker." The GRTA/NCRA, in its adverse abandonment application, even references our newsletter. I include, as Attachment 3 hereto, a copy of the Fall 2021 newsletter referenced by the GRTA/NCRA – a newsletter that describes some of our thinking, at that time, regarding a portion of Fort Bragg, our efforts to restore Tunnel No. 1, and our confidence in resuming freight rail service through that tunnel. We also in our newsletter described some of our discussions with local businesses about using our trains as a low-carbon way to transport their goods to and from Fort Bragg with the hope that

[3] See Attachment 1 – Larry Ingold Verified Statement and Attachment 2 – David Magaw Verified Statement. Both confirm that MRY has since inception, either directly or via its agents, transported freight, passenger (non-excursion), and excursion passengers over the Mendocino Line.

MRY might in the future be able to further connect directly with the rest of our national freight rail network. Far from being ashamed of the Skunk Train name, we have embraced it as a way to show our long history of railroading in Northern California.

B. MRY Provides Diverse Services to the Local Community and to the Region

A lot has been said in this proceeding about the services MRY provides, most of which statements have been false. We do a lot, especially given what we have. The Mendocino Line is our most valuable asset. It dates back to the early 1880s and the Fort Bragg Railroad, which was developed to move timber workers, supplies and support personnel, and felled trees. Even from its early days, the railroad carried freight (such as felled trees and goods necessary to support the timber industry). But we have always been more than that, also providing services to the people working in the timber industry and those living in the region. We are located in a remote part of Northern California, so the railroad from the very beginning also moved people, the materials and goods needed by those who worked, lived, and – given the great beauty of the region – recreated in areas that could only be reached via the line. For those living along the line – at locations particularly hard to reach by the very limited and often primitive road system – we have provided the essential transportation service that enables day-to-day life. This is a community we have served, are proud to serve, and hope to continue to be able to serve in the future.

Today, the railroad's business has many facets, each of which reflects the line's history and diverse users in the region. We are first and foremost a freight railroad subject to the jurisdiction of the U.S. Surface Transportation Board ("STB" or "Board"). But, using those same tracks and facilities, we have been able to underwrite our freight services by also providing excursion rail trips over our line, becoming the region's top tourist enterprise and helping bring

visitors who also benefit dozens, if not hundreds, of other local businesses. We also use our rail corridor to provide a route for hiking, transporting passengers to and from hiking trails in the forest. And we transport police and fire personnel to and from the forest to help them perform their duties. We also provide a very real and essential transportation service to the residents of this remote region, allowing them to live and thrive. And also generate additional revenue through grants of easements and licenses to use our tracks and right of way, not only to other public utilities (such as telephone companies) but also to environmental organizations seeking to ensure the continued survival of the local flora and fauna, including migrating salmon. Before turning to a discussion of our freight services, I would like to address the services we provide to these important constituencies.

C. MRY Provides Essential Rail Services to the Local Residents

It is vital to understand that while our passenger railroad service caters to tourists on excursion trains (who spend far more with regional hotels, restaurants, and other businesses than they do with us), it also provides non-excursion services to local constituencies which are no less essential and important. I will mention but two of these: first, our contribution to public safety and welfare and, second, our contribution to the residents who live in remote areas along the line.

The region traversed by the Mendocino Line is remote and accessed only by narrow, winding roads which can frequently become entirely impassable. The Mendocino Line has thus been, is, and will always be, an important transportation link to move firefighters and equipment into the surrounding forests to combat fires. First responders and law enforcement officers also use our services to access hard to reach points in the region and to respond to various emergencies. MRY has also stood ready to transport water to this water-deficient region in times of drought.

Further, MRY routinely moves people to and from residences and camps along the line. I distinguish this service from the excursion service we provide and discuss this as non-excursion "passenger service" because it is distinct from our excursion and excursion services; our non-excursion services in this field cater to and serve a very distinct constituency in the region who are being transported not for entertainment purposes but as part of their regular life in the region.

Given the remoteness of the region, we provide an essential service to the general public that resides here. This is an important service. Some of the people who have submitted letters opposing the GRTA/NCRA's adverse abandonment action explain the importance of our Mendocino Line to their day-to-day lives.[4] We transport not only local residents, but the goods they need to maintain their homes, the groceries they need for their day-to-day meals, and the propane they need for their heating and cooking.

We also serve as a vital link for these residents to other people and businesses in other areas of the United States. I note that the US Postal Service, Federal Express, UPS, and DHL make much of their use not only of trucks but of their integrated truck delivery through connecting with airlines and freight rail carriers in the movement of mail and packages throughout the United States. We believe we serve as an important cog in this essential service for many who reside along and near our line. On-Trac is another of these services (handling small packages in intra- and inter-state delivery services market) that has been used in conjunction with movements over the Mendocino Line to reach customers who otherwise might be extremely difficult to reach. Golden State Overnight similarly moves "less than truck load

[4] See Appendix E to the MRY Protest and Reply Comments, which consists of shipper and community support letters strenuously opposing the GRTA/NCRA's adverse abandonment application.

traffic" in the interstate marketplace and its movements have found their way to the Mendocino Line as well.

The GRTA/NCRA wants the Board to take an action that would not only impact past, current, and future regional freight users, but also firefighters, first responders, police enforcement, the potential regional delivery of water during droughts, and the regular access of residents along the line to retrieve mail, obtain groceries, acquire needed fuel (among other essential services provided over the Mendocino Line) solely to allow for the creation of a hiking trail that they have not only publicly said they don't have the money to build but could, if they chose, build *next to* their existing railroad tracks rather than on top of them. Among other things, their actions will impact access to Camp Noyo, a remote wilderness summer camp used by the Boy Scouts of America. In simplest terms, the GRTA/NCRA's seeking adverse abandonment will adversely affect several very important constituent groups that use and depend on the Mendocino Line.[5]

D. MRY Provides Important Freight Services over its Mendocino Line

I am aware that the GRTA/NCRA has asserted in its application for adverse abandonment that there have been no freight rail moves on the Mendocino Line for decades, and

[5] Make no mistake about it: removing MRY from STB jurisdiction will result in the elimination of freight service on the Mendocino Line. The various court cases included in the GRTA/NCRA's Adverse Abandonment Application, and in the California Coastal Commission's filings with the Federal Railroad Administration in MRY's RRIF Express loan process and in this proceeding, clearly establish that certain state and some local environmental groups, whose real objection is the STB's preemption authority, do not desire any continued freight service over the Mendocino Line. If the STB grants the GRTA/NCRA's Adverse Abandonment Application and withdraws MRY's common carrier status and right to assert preemption, these groups will directly regulate every aspect of MRY's operations, via building and design requirements, prohibiting transloading, imposing fines, imposing uneconomical fees and making costly demands, and imposing onerous permitting requirements, all of which will force MRY to cease all operations on the Mendocino Line.

certainly not since MRY purchased the line out of bankruptcy. But the GRTA/NCRA's assertion is simply not true. Though we have not often been able to run a regular "freight train" – a dedicated train consisting of one or more locomotives trailed by one or more freight cars all of which are loaded or empty – we have moved freight in smaller operations, sometimes intermixed with passenger operations, over the line. We are now, as we have been for decades, ready, willing, and able to provide freight service and to also recommence a more robust freight rail service.

As a freight railroad subject to the jurisdiction of the Board, we have continuously produced and maintained a freight rail tariff, the most recent of which – Freight Tariff CWR 9500, effective January 1, 2022 – is attached as Attachment 4 to my verified statement. We move freight traffic both in intra- and interstate commerce, mainly though, being the last mile of an interstate movement that had previously moved by rail and was eventually either directly loaded, or transloaded, onto MRY as part of a continuous interstate rail movement. We are not going to claim to be the largest mover of freight traffic in the rail marketplace (we may be among the smallest), but that does not diminish our status as a freight rail carrier or the service we provide to local residents that, if we did not exist, would in some cases would make certain customer projects impossible.

As a STB regulated rail carrier, we follow all Federal regulatory standards, conduct all federally required maintenance and testing, keep all federally required records, and are continuously looking for ways to expand our freight services. As an example of one of our efforts to expand our freight service, the North Coast Railroad Authority ("NCRA") on January 17, 2006, issued a request for proposals ("RFP") for "An Operator of Rail Freight Service and Excursion Service on the Northwestern Pacific Line" seeking a single operator to provide both

passenger and freight service on its line. I discuss this further below, but I raise this RFP here to demonstrate that, as far back as 2006, we discussed with the NCRA (now the GRTA) the fact that we had an FRA-approved train engineer certification program, annual training and re-certification of operating crews, a Department of Transportation drug and alcohol testing program, a program of testing and inspections pursuant to Federal Railroad Administration ("FRA") regulations, compliant incident reporting, and locomotive inspection and testing. We have kept up all of these efforts to this day and to this day maintain the Mendocino Line in accordance with federal regulations.

As previously mentioned, we may not be the biggest freight railroad in the United States, but we do move freight both in the intra- and interstate markets. We have moved a milling machine for Mendocino Land Trust, a non-profit organization that works to conserve lands, manage forests, restore, and preserve critical habitats, provide scenic areas and access for the public to enjoy. We have moved 150 carloads of aggregate for streambed restoration. We have moved bolted steel plates and preformed concrete structures, as well as other materials that originated outside the state of California, for customers, which materials arrived in Willits, California by truck, whereupon they were transloaded onto our railroad for delivery to their final destinations. These are but a couple examples of movements of commodities that previously moved as part of an interstate rail movement and terminated locally on the Mendocino Line. We continue to receive requests for service from Trout Unlimited, and others. There is no reason to believe that these customers will suddenly stop using MRY in the future. In fact, in a letter to the U.S. Department of Transportation, in support of the City of Fort Bragg's request for a 2019 BUILD Grant, Mendocino Land Trust noted that the project at issue, to reopen Tunnel No. 1, was "[n]ot only … critically linked to Mendocino Land Trust's ability to maintain and provide

public access to one of its important nature preserves, but collectively the [rehabilitation] Project is imperative for future economic growth in the region." See the letter from the Mendocino Land Trust to U.S. DOT, dated June 27, 2019, Attachment 5 to this verified statement, at 2.

In addition to the movement of aggregate, concrete blocks, and a steel bridge structure for the Soper-Wheeler company (discussed above), MRY has transported equipment and materials for utility improvements for AT&T, as well as lumber, construction equipment, and supplies for Camp Noyo. And our continuing efforts to expand freight service do not go unrewarded, as demonstrated by the exciting agreement reached with Grist Creek Aggregates discussed below.

E. MRY has made Significant Investments to Preserve Freight Rail Through Service

Freight, passenger (non-excursion), and excursion services have been conducted by MRY over the Mendocino Line for the past two decades, a period of time during which MRY has invested more than $30 million to rehabilitate/improve the line and return it to full operations. Over the last decade alone (and despite the economic downturn related to COVID-19), MRY has invested more than half of its annual revenues into the Mendocino Line each year. Prior to the collapse of its Tunnel No. 1, MRY carried out full freight service on the line, serving several shippers. Following the collapse of its Tunnel No. 1 in 2015, which severed the line, MRY became incapable of providing through freight service over the entirety of its line. But freight service on the line continued, despite the line being bifurcated into operating segments, as MRY worked and invested millions to prepare for repairing its partially collapsed Tunnel No. 1.

Between 2015 and 2019, MRY spent over $3.5 million to address hillside stabilization and ensure that Tunnel No. 1 could be rehabilitated for use over the next century or more. To undertake this improvement, MRY obtained a Construction General Permit from the North Coast

Regional Water Quality Control Board, a state agency, and exhausted a large portion of MRY's combined revenues from its freight, passenger, and excursion services.

As discussed below, MRY and SNR have jointly obtained a $31.4 million RRIF loan. MRY is preparing to invest (and repay) approximately $21.5 million (plus interest) of that loan in additional improvements necessary to preserve and expand its freight service. The RRIF loan process was lengthy, cumbersome, and incredibly expensive: with MRY and SNR having spent over $1.3m and over four years of time and effort to obtain this RRIF loan,[6] which, as noted, will be used to undertake the necessary improvements to the Mendocino Line to restore service to historical levels and to expand into new areas such as transloading, improving its environmental footprint, and supporting regional economies along the line. Since the closure of the tunnel in 2015, MRY has continuously been working to acquire traffic and provide through freight service over the entirety of the line. In 2015 and 2021, *at the City's request*, MRY stood ready to transport water from Willits, California, to Fort Bragg's water pumping station just east of MRY's Tunnel No. 1, allowing Fort Bragg to import about one-third of its water needs per freight train run even while Tunnel No. 1 remains closed. With the proceeds from the RRIF loan, MRY will be able to restore full through service between Fort Bragg and Willits so as to maintain and even enhance its current freight rail service. These past efforts in moving freight, investing our resources to restore and rehabilitate the line, and in spending over four years to

[6] This process was unnecessarily long due, in part, to the aligned efforts of the GRTA/NCRA and the California Coastal Commission ("CCC") to interfere in MRY's RRIF loan. Essentially, the CCC, and various other groups that also want control over the Mendocino Line, oppose MRY's ability to utilize ICCTA preemption. In my opinion, the CCC's efforts make it clear that if the STB grants the GRTA/NCRA's Adverse Abandonment Application and withdraws MRY's common carrier status and right to assert preemption, the CCC and other collaborating actors will directly regulate every aspect of MRY's operations, via building and design requirements, prohibiting transloading, and imposing fines, fees, costly demands, and onerous permitting requirements.

obtain a RRIF loan stand in stark contrast to the GRTA/NCRA's false assertions that MRY has not moved any freight and that there is no demand, need, or public interest in maintaining MRY's freight services over and on the Mendocino Line.

F. MRY has Made Reasonable Efforts to Expand Its Freight Rail Base

We have worked, and continue to work, to expand our freight network, to re-establish a full physical rail connection to the remainder of our national freight rail network, and to expand our freight rail service generally. As briefly mentioned above, the NCRA (now the GRTA) on January 17, 2006, issued an RFP seeking a single operator to provide both passenger and freight service on its line. At the time the NCRA issued its RFP, SNR provided the freight rail service over the Mendocino Line between Willits and Fort Bragg, on MRY's behalf, as MRY's agent, so it was SNR that submitted a response to that RFP. As explained in Attachment 2 - Magaw Declaration, obtaining the right to repair and operate the NCRA's former Northwestern Pacific Line would have enabled MRY to expand its common carrier services on the Mendocino Line as well as on the former Northwestern Pacific Line. While our proposal was based on a stated interest in re-establishing an active interchange for freight and passenger services for MRY's operations, including the lumber (outbound) and feed grain service (inbound) that had been the predominate commodity service served by the NCRA prior to the embargo of its former Northwestern Pacific Line, we had a legitimate interest in growing service across both adjoining rail lines.

Even as late as 2020, we asked for trackage rights over the GRTA/NCRA's line to re-establish freight service in conjunction with the Sonoma-Marin Area Rail Transit ("SMART")'s announcement that it was taking over the provision of those services south of the Mendocino County border. We have made other formal requests to the GRTA/NCRA to restore freight rail

service over its line. We know that there have been some movements of traffic over the GRTA/NCRA's line (for example, there was even a case in 2016 before the STB, later dismissed due to a settlement between the parties, concerning the movement of grain cars between the GRTA/NCRA and SMART over a portion of the line that is currently operated by SMART). We pointed out that MRY had applied for federal grants (discussed below) to improve our own line for connecting service to the GRTA/NCRA's line. Notwithstanding the fact that the GRTA/NCRA is a common carrier – and thus under an obligation to eliminate the embargo on its line – the GRTA/NCRA has either rejected or simply ignored our requests.[7]

The GRTA/NCRA has announced that its primary goal is to create a hiking trail. It is also well known that, despite having a common carrier obligation over their line between Willits and Cloverdale, the GRTA/NCRA has ignored its common carrier obligation and maintained an embargo for over 20 years! Unlike the GRTA/NCRA, MRY has always taken its common carrier obligation seriously and has always done its best to fulfill it. As I understand it, Congress and the Board have long prioritized rail service over state and local desires to create trails. Our actions are consistent with the priority of rail service over trails. The GRTA/NCRA want to ignore their common carrier obligations, and that goal, and replace its existing railroad line with a hiking trail (that it admits it currently lacks the money to build). To be clear, MRY does not oppose a trail on the Willits to Cloverdale segment of their line, and we are willing to work with the GRTA/NCRA in their effort to build a trail. In fact, MRY has offered to help build the trail and we employe personnel who have built trails. But a trail should not come at the expense of the

[7] In Appendix E to the MRY Protest and Reply Comments, there are several letters from shippers and other supporters expressing opposition to the GRTA/NCRA's adverse abandonment application. Some of those letters discuss the importance of the Willits to Cloverdale line owned by the GRTA/NCRA. Indeed, if that line were rehabilitated and service restored, MRY believes a significant amount of local and overhead freight could be generated on that line.

loss of freight service and the loss of a direct physical connection between MRY and the rest of our national interstate railroad network, especially when nothing prevents the coexistence of both rails and trails over the GRTA/NCRA's right of way. In fact, a rail-with-trail, rather than simply a trail, might make it easier for the GRTA/NCRA to achieve its desired Great Redwood Trail, particularly in light of the trail's current estimated cost of more than $900 million (in 2025 dollars) and over $1 billion (in 2030 dollars), as reported in the July 2020 report of the SB 1029 Task Force. See Attachment 6, at 6. Railroad traffic could help defray these trail construction costs, costs that the GRTA/NCRA has admitted it currently does not have the money to pay.

A joint rails-and-trails effort would be consistent with everything the GRTA/NCRA has said for a long time. For example, I attach as Attachment 7 a document entitled "Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update, that stated, back in 2010, that "The NCRA is not opposed to bike and pedestrian paths on its right-of-way…." That sentiment seems to have continued to live on. For example, the Federal Railroad Administration and the Federal Transit Authority issued a 2020 report that presented the GRTA/NCRA as a model for how to accomplish a *rail-with-trail* effort. Excerpts from that report – Rails with Trails, Best Practices and Lessons Learned, March 2020 – are attached as Attachment 8. We have also seen that the GRTA/NCRA is planning rails-with-trails over its own line and has transferred a portion of its line to Sonoma – Marin Area Rail Transit with the explicit intent of *rail-with-trail* development in the counties south of Mendocino Country. I attach as Attachment 9 one of the latest actions progressing the Willits Rail with Trail Project, together with the Notice of Determination, showing that the GRTA/NCRA approved the Willits Rail with Trail project on February 13, 2024. I attach as Attachment 10 a page from the

GRTA/NCRA's website which explains that. There is no reason the same approach cannot be taken with respect to the Willits to Cloverdale segment of the GRTA/NCRA's line.

As I mentioned above, MRY has sought federal grants and loans to help revive freight transportation service over the Mendocino Line. For example, through the City of Fort Bragg, MRY applied in 2018, 2019, and 2020 for a federal grant under the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development ("BUILD") program to improve the Mendocino Line for service. We were supported in those efforts by federal, state, and local elected officials, as seen from the letters I attach as Attachment 11 hereto. Shippers, such as Wylatti Enterprises LLC (dba Geo Aggregates), explained that it had, at that time, no option but to use trucks for its freight transportation needs but that "if freight rail services over the entire Line were restored, we would happily consider switching to freight." Id. Flobeds, another local Fort Bragg business, echoed similar sentiments. Id. MRY also sought funding to improve its line under the Consolidated Rail Infrastructure & Safety Improvements ("CRISI") program in 2021 and 2022.

MRY did not receive a BUILD grant or a CRISI grant; they are awarded on a competitive basis and other California projects won out over our applications. But while we were not told why we did not receive a grant, I cannot help but believe it was in large part due to the GRTA/NCRA's longstanding failure to lift its embargo and re-establish service over its line, because, until that happens, the only reasonable efforts we can undertake to expand interstate freight rail service over our line is through transloading (efforts we have taken, though against the opposition of both the GRTA/NCRA and the CCC).

Which is not to say that all our efforts have been unsuccessful. We are excited about MRY earlier this year having, jointly with SNR, been awarded a $31.4 million RRIF loan. As

indicated on the FRA's website, appended hereto as Attachment 12, these loan proceeds will, among other things, be used to rehabilitate Tunnel No. 1 and to improve 27 bridges and 40 miles of track on the Mendocino Line. I am excited about this project, which FRA Deputy Secretary Polly Trottenberg recognized, stating "this important project will … improve freight service benefitting the entire region." The U.S. DOT Press release encapsulating that sentiment is appended as Attachment 13. The FRA also has issued a RRIF environmental review letter that speaks favorably of our project, a letter that I appended as Attachment 14.

The above demonstrates that we have for years been trying to re-establish a full physical rail connection to the rest of our nation's interstate freight rail network but have been stymied at every turn by the GRTA/NCRA. Given the GRTA/NCRA's opposition, we have not been able to tender, or even get a specific bid to tender, any specific volume of any specific commodity of traffic for any certain freight shipment in interchange with the GRTA/NCRA for through movement by rail over the GRTA/NCRA's line between Willits and Cloverdale. Obtaining such a commitment would require finding a shipper willing to waste its time knowing that – because of the GRTA/NCRA's opposition and inaction in leaving its line embargoed – any shipment it might tender would not actually be transported over the GRTA/NCRA's line. It is for all real-world intents pointless to request service from the owner of a line when that owner refuses to perform actions that would enable it to fulfill its common carrier freight obligations on its line.

Considering the GRTA/NCRA's repeated refusals to respond to reasonable requests to re-establish freight rail service over its line, I will admit that it has been difficult to continue freight service over the Mendocino Line. The GRTA/NCRA's bad faith actions have not stopped our efforts, but they have limited the scope of what we can accomplish by ourselves and against their wishes.

That said, we have been diligently working to develop freight rail service over our own Mendocino Line, including freight rail service that would move in the interstate rail network through transloading and through the spot market. I am extremely excited about Grist Creek Aggregates and their commitment to move a substantial amount of traffic once we have reestablished service through Tunnel No. 1. That commitment is appended hereto as Attachment 15.

Consistent with existing property zoning, we intend to construct a raw log and lumber transload facility on the former Georgia-Pacific millsite property in Fort Bragg, California. This project has the very real potential of not only expanding our freight service but also of helping remove trucks off local roads. Willits, California, is connected to Fort Bragg via California State Route 20. The GRTA/NCRA's consultant, Marie Jones, correctly characterizes Highway 20 in her Feasibility & Marketing Analysis by stating that it "has many tight curves and can accommodate only shorter trucks…." Heavy truck traffic creates significant dangers for motorists in this corridor, with a very corresponding danger to the general public who are forced to use this corridor in their day-to-day lives. Indeed, buses and motorhomes over 45' are specifically prohibited because the road is so windy.[8] I have seen reports about lumber truck accidents in the area and it gives me great pause. That report, appended as Attachment 16, describes an incident on Highway 101 (which connects to Highway 20 just south of Willits) which could just as easily have happened on Highway 20. In fact, as again recognized by the GRTA/NCRA's consultant, Marie Jones, the Highway 20 connection between Fort Bragg and Willits is so difficult to travel that the average speed on the highway is low. Once we have been

[8] https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/trucks/busmap-d01-a11y.pdf

able to use the RRIF loan to restore through service between Fort Bragg and Willits on the Mendocino Line, we will be able to again provide the general public with an alternate route to avoid this road by using our passenger rail service. When our lumber transload service comes online, we will also be able to take additional truck traffic off Highway 20, making it safer for everyone.

Our efforts to expand our freight service have also paid off through a commitment by Grist Creek Aggregates, LLC to ship aggregate from Willits to Fort Bragg once our Tunnel No. 1 is reopened. That commitment, embraced by the letter agreement in Attachment 15, anticipates at least 400 carloads annually, which will further increase road safety by removing 1,600-2,000 trucks from the Highway 20 corridor each year. Freight moves such as this will be an important contributor to MRY's overall financial health and the health of our communities.

G. MRY is in the Best Position to Understand Its Operating Model and the Scope, Cost, and Best Manner to Complete Improvements to Its Mendocino Line to Ensure the Long-Term Provision of Competitive Rail Services

As an STB Class III rail carrier, passenger service provider, and provider of tourism services, MRY best understands its business of operating over the Mendocino Line. The GRTA/NCRA's fundamentally flawed Feasibility & Marketing Study sorely misses the mark in failing to recognize that railroads often have diversified operations and revenue streams and, all of which must be considered in determining a railroad's financial sustainability. In MRY's case, the revenues from MRY's various excursion trains, non-excursion trains, holiday trains, and from other sources, such as easements and rental payments, essentially cover all fixed and variable costs for the line, *i.e.,* maintenance, overhead, fuel, labor, and contributions to profit (which to the extent that profits were generated have, for over 20 years, been reinvested back into the company). MRY's expected rehabilitation costs (significantly over-stated in the GRTA/NCRA's

Adverse Abandonment application) will be covered by MRY's RRIF loan, with payments on that loan being factored into MRY's operations. As such, MRY's freight operations only need to cover their variable costs in order to be financially viable, which I expect they will.[9] Even if each freight movement did not cover its variable cost, there is nothing wrong with the other of MRY's revenue streams subsidizing its freight services so that shippers and the community can have freight services available to them all while removing truck traffic from highways and improving the quality of life by reducing emissions. Ironically, GRTA/NCRA's consultant (including during the time she was an employee of the City of Fort Bragg), had no concerns in her previous reports and testimonies with respect to the 2019 Build Grant application about MRY losing money or going bankrupt. Indeed, she presented, and successfully delivered, a resolution by Fort Bragg's City Council to seek federal funding to rehabilitate the Mendocino Line based, in part, on the line's economic contribution to Fort Bragg and the surrounding communities.[10]

Though MRY's business model has not significantly changed, Ms. Jones seems to have had a change of heart since going to work for the GRTA/NCRA and now seems not to comprehend MRY's business model at all. This is just one of many misunderstandings and

[9] I understand that the GRTA/NCRA's consultant believes that it takes more than three trucks to handle the materials that could be carried by a single railcar, and that the average trucking cost from Willits to Fort Bragg is approximately $843.67 per truck. (Deposition of Marie Jones at page 121, line 3 through page 121, line 18.) Given that, to be competitive with trucking costs, a rail car could be billed at as much as $2,531 for a shipment between Willits and Fort Bragg (assuming 3 trucks per rail car) and still be competitive with trucking. Yet such a price is more than MRY's tariff rate of $1,680 per rail car for hazardous materials and $1,440 per rail car for all other commodities, meaning that rail shipments would be priced lower than truck shipments. Marie Jones, who is no expert in railroad operations, would argue that MRY could not make money at that rate but when one looks at the variable cost to run even a three-car train ($3,812), and the tariff revenue from the same ($4,320), MRY would make money over its variable costs and contribute to its overhead cost of doing business even at those rates. See Attachment 17.

[10] See Attachment 18 - Resolution of the Fort Bragg City Council to Submit a Department of Transportation ("DOT") Build Grant for the MRY to Repair its Tunnel and Rehabilitate its Track, Resolution No. 4181-2019, passed June 24, 2019.

mischaracterizations in Ms. Jones' Feasibility & Marketing Study submitted by the GRTA/NCRA.

While cost is always a consideration, many companies and industries are also today greatly concerned about being good environmental stewards. This is yet another area that the GRTA/NCRA's consultant fails to appreciate. While trucking is highly competitive, MRY offers shippers, businesses, and individual rail users the ability to ship with a reduced carbon footprint and, as noted in footnote 9, at prices lower than those charged by trucks. Both of these factors are important to businesses.[11] It is commonly known that "Moving freight by rail instead of truck lowers GHG emissions by up to 75%, on average."[12] And, as noted above, MRY can charge carload rates, even at its tariff rate (which is its *maximum* rate, with railroads often entering into below-tariff contracts), which are lower than the trucking costs of shipping equivalent freight. This is yet another reason the GRTA/NCRA's Feasibility & Marketing Study is too flawed to be meaningful.

MRY fully embraces its role as a freight railroad, a passenger railroad, a provider of railbike excursions, and a partner to residents, businesses, and camps to which transportation via other means is challenging if not even impossible. MRY's operations make use of the same infrastructure and (mostly) the same people. No one element of MRY's business, including its freight service, has to stand on its own in order for MRY to survive. Further, as recognized in the

[11] See Triple Play: Growth, profit, and sustainability, available at https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/the-triple-play-growth-profit-and-sustainability, explaining "new analysis indicates financially successful companies that integrate environmental, social, and corporate governance (ESG) priorities into their growth strategies outperform their peers—provided they also outperform on the fundamentals."

[12] See Freight Rail and Climate Change, available at https://www.aar.org/wp-content/uploads/2023/06/AAR-Climate-Change-Fact-Sheet.pdf.

Verified Statement of Matt Gedney, the GRTA/NCRA's flawed Feasibility & Marketing Analysis fails to consider several other sources of funding, including "rent, transload fees, storage fees and other revenue generators normally associated with short line rail markets." It also fails to consider the revenue to railroads such as MRY from crossing agreements, easements, and the 45G Railroad Track Maintenance Tax Credit.

As to rehabilitation costs, the GRTA/NCRA has produced a report by Mr. Dave Anderson.[13] Mr. Anderson's rehabilitation estimates are significantly inflated and nowhere near prior estimates presented in the City of Fort Bragg's 2019 BUILD Grant or in MRY's RRIF loan application. In the RRIF application, SNR and MRY presented rehabilitation estimates, including estimates for rehabilitating the MRY line, and these estimates accepted by the U.S. DOT for purposes of the recently awarded RRIF loan. The total cost of repair of the collapsed Tunnel No. 1 and rehabilitation of the 40-mile rail line was forecasted to be $24,849,950 for purposes of the 2019 BUILD Grant.[14] MRY sought (and received) a RRIF loan of which $21,491,071 will go to funding five projects to, among other things, make structural improvements to Tunnel No. 1 and rehabilitate the line.[15] The GRTA/NCRA, on the other hand, ups the cost of rehabilitation of Tunnel No. 1 by 60% (report at 3) and the total rehabilitation cost by 47%.[16] The estimate delivered by the GRTA/NCRA's consultant also includes costs to rehabilitate GRTA/NCRA-

[13] See Verified Statement of David Anderson, attached to the Adverse Abandonment Application, at 1.

[14] See Attachment 19, summary page of the FY 2019 City of Fort Bragg California's BUILD 2019 Grant Application.

[15] See Attachment 20, project description from the RRIF Loan Application. The amount is lesser in the RRIF Loan Application than in the 2019 BUILD Grant submission by the City of Fort Bragg largely due to work already accomplished pursuant to a CRISI Grant award.

[16] See Railroad Rehabilitation Assessment Mendocino Railway Fort Bragg to Willits, November 30, 2023, attached to the Adverse Abandonment Application, at 11.

owned track, bridges, and signals that MRY should not be obligated to finance. (VS of David Anderson at 1.) These artificially inflated costs for rehabilitating not only MRY's Mendocino Line, but also a portion of the GRTA/NCRA's line, were used by Ms. Jones in her flawed report as well. (VS of Marie Jones at 2.)

In addition to vastly overstating to MRY's purported rehabilitation costs, the GRTA/NCRA's experts also incorrectly assert that MRY cannot make a profit on its freight operations. MRY anticipates that its RRIF loan will cover its rehabilitation costs and that its freight operations will not only cover their variable costs but also generate a profit so as to contribute to MRY's capital investment. Under these facts, there is no justification for granting the GRTA/NCRA's adverse abandonment application.

CONCLUSION

I have been hooked on the Skunk Train, and on railroading, since I first rode the line as a child in 1980. That experience ultimately led me to spend nine years working for the CWR's predecessor company. And it later in 2002 led me to come work for MRY and its parent, Sierra Railroad Company. I have committed my career in service to this industry and in service to this institution and I feel comfortable with the direction this railroad is heading.

I am, however, very uncomfortable with the idea that the GRTA/NCRA could reduce almost a quarter-century of effort, millions of dollars in investment, and 139 years of railroad service to this region to ashes just to build a hiking trail that even the GRTA/NCRA admits it lacks the money to build.

I am even more uncomfortable with the idea that GRTA/NCRA is trying to destroy our railroad without there being any need to do so. In the wealthier and better-connected counties to the south of Mendocino County, the GRTA/NCRA plans to build its trail *next to* its existing

railroad line, allowing rails *and* trails to coexist. It seems that it is only the mostly blue-collar residents and struggling businesses of Mendocino County, all of whom lack the road infrastructure of the counties to the south, who must do without any rail access. I cannot envision how this adverse abandonment action is in any way in the public interest of the people and businesses of our region.

Our railroad traces its roots back to 1885. Throughout the subsequent 139 years, it has provided – and continues to provide – freight, non-excursion passenger services, excursion services, mail and other important services to the remote constituencies found in this region. While no one element of the railroad may be enough to allow it to succeed economically, all of its elements work together to sustain the railroad and to allow it to continue to serve its communities. What we sometimes forget is that the railroad was founded by a visionary man who bonded two cities via ribbons of steel, serving not only both those communities but those living and working in-between. In the 20 years we have owned the railroad, we have hit some rough spots – particularly with the collapse of our Tunnel No. 1 – but we have sought to continue to fulfill that vision, to continue to provide a necessary service to our region and doing our best to constantly improve the line and its services.

We have throughout our 20 years of operations made reasonable efforts to address the rough spots we found when we acquired the railroad and those that have from time to time appeared since our acquisition. We have also during that time made reasonable efforts to expand our freight rail base, including our efforts to operate the NCRA line in 2006 and our countless attempts to see service restoration on our neighboring railroad. Why? Because synchronized systems work better. We look forward to even more progress as a result of the Federal government's backing of our railroad through its recently announced RIFF Express Loan. We

take our federal freight rail common carrier obligation seriously. With the denial of the GRTA/NCRA's adverse abandonment application, the funding opportunities before us, and the efforts of our dedicated employees, as well as our supporters in the community, we believe we will continue to move the legacy of this 139-year-old operation by carrying freight and people well into the future.

VERIFICATION

I, Robert Jason Pinoli, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. I further certify that I am qualified and authorized to file this Verified Statement.

Executed on this 17 day of June, 2024.

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 1 – Verified Statement of Larry Ingold

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF LARRY INGOLD

I, Larry Ingold, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called to testify, I would and could testify competently thereto.

2. I served as the Vice President, Operations, and a member of the Board of Directors, of Sierra Northern Railway ("SNR") from early 2003 until mid-2015. I was also from early 2003 mid-2015 employed as the general manager of SNR's Oakdale Division. I was at all times during my employment with SNR a qualified and certified locomotive engineer pursuant to 49 CFR Part 240 and a qualified and certified conductor pursuant to 49 CFR Part 242.

3. From the spring of 2004, and continuing at least through my retirement from SNR in mid-2015, SNR acted as an agent of its sister company, Mendocino Railway ("MRY"), in providing MRY with assistance in operating MRY's California Western Railroad line ("CWR") between Fort Bragg and Willits, California. In this capacity, SNR assisted MRY with maintaining the CWR line and MRY's railroad equipment used on that line. Between the spring of 2004 and the time MRY was able to hire a full complement of its own covered employees (as defined in 49 CFR Part 219.5), SNR also assisted MRY's operations of its CWR line by providing supplemental covered employees—including qualified and certified locomotive engineers and conductors, such as myself, to operate trains on the CWR—and by providing related training, operational testing, and recordkeeping assistance.

4. I was personally involved in providing MRY with this assistance. Between the spring of 2004 and my retirement from SNR, my responsibilities for SNR included conducting, managing, or assisting MRY with the following activities on the CWR: maintenance of way (i.e., maintenance of the physical railroad line and associated improvements, including tunnels and bridges); maintenance of steam and diesel locomotives, freight and passenger railroad cars, and

maintenance of way vehicles and equipment; training, certification, drug testing, and recordkeeping related to covered employees (i.e., employees providing common carrier freight railroad services); interacting with railroad inspectors from the California Public Utilities Commission ("CPUC") and the Federal Railroad Administration ("FRA"); and operating steam and diesel locomotives on the CWR for the transportation of people and freight. My responsibilities were not limited to MRY's excursion passenger transportation services on the CWR but also included responsibilities as to MRY's non-excursion passenger and freight transportation services on the CWR.

5. I was one of the SNR employees who operated steam and diesel trains on the CWR on MRY's behalf, operating virtually every weekend train on the CWR for the first year or so after MRY acquired the CWR line. The trains I operated on the CWR on MRY's behalf transported excursion passengers, non-excursion passengers, and freight. I know trains I operated on the CWR carried non-excursion passengers because I was, prior to departure, informed of the stations along the CWR where I would need to stop to allow them to disembark. I was also on multiple occasions introduced to these passengers and in the process learned that they were not riding my trains for excursion purposes. I also stopped the train to pick up non-excursion passengers from their cabins and homes along the line and then transported them to Fort Bragg. This latter service was conducted because the CWR was operated as a "flag-stop" railroad, meaning that non-excursion passengers and hikers could flag passing trains to pick them up and transport them into town. When operating trains on the CWR, I made flag stops to pick up non-excursion passengers, including hikers, after which my conductor collected their fares and we transported them to Fort Bragg.

6. I also operated trains on the CWR on MRY's behalf that transported non-excursion passengers to and from Fort Bragg and Camp Noyo (operated by the Redwood Empire Council of the Boy Scouts of America and located at approximately CWR Milepost 16.4), and to and from Fort Bragg and Camp Mendocino (operated by the Boys and Girls Clubs of San Francisco, and located at CWR Milepost 19.6). I transported hundreds of campers from Fort Bragg to the camps, returning to pick them up again one to two weeks later for transportation back to Fort Bragg, after which I transported another group of campers from Fort Bragg to the camps, etc. In addition to transporting campers to and from these camps, I also transported their baggage and other goods to and from those camps, usually on dedicated flatcars which were included as part of the train solely for that purpose. I also transported sacks of incoming mail from Fort Bragg to Camp Mendocino and transported outgoing mail from Camp Mendocino to Fort Bragg.

7. I also operated trains on the CWR on MRY's behalf on which I transported full propane tanks (both large and small) from Fort Bragg to customers at various locations along the CWR line, also transporting empty propane tanks back to Fort Bragg. I on multiple occasions saw these propane tanks being delivered by propane company trucks to MRY's trains, which trucks I also on multiple occasions saw pick up empty propane tanks from MRY's trains. I transported other supplies and materials to and from the cabins, homes, and camps for delivery to customers on the CWR line as well, some of which were quite large and difficult to unload from the trains, even with multiple employees assisting with unloading. While I do not know what most of these supplies and materials consisted of, as they were generally transported in closed crates, boxes, or bags, I did see grocery bags and building materials (including large roles of insulation—there was a Home Depot distribution warehouse in Fort Bragg just west of MRY's

railroad roundhouse) being loaded onto the train which I then transported to locations along the CWR line.

8. My duties with SNR included my record-keeping responsibilities, knowing MRY's records in general, and knowing the nature and purpose of MRY's and SNR's operations as for-profit companies. The excursion passenger services, the non-excursion passenger services, and the freight transportation services provided by or on behalf of MRY on the CWR were provided in exchange for compensation. The only exceptions to this rule of which I am aware were (a) MRY's periodic charitable donations of excursion passenger tickets, (b) MRY's periodic transportation of journalists and travel industry professionals, and (c) MRY's periodic transportation of CPUC and FRA inspectors on the CWR.

9. The non-excursion passenger transportation services and the freight transportation services provided by or on behalf of MRY on the CWR were provided in exchange for compensation as per MRY's published tariffs. The only exception to this rule of which I am aware is MRY's sale of non-excursion ticket books, which contained tickets for multiple trips to and from the various cabins and homes along the CWR line, which I understand were sold at a reduced rate to people who lived in those cabins and homes and who made repeated trips between Fort Bragg and their cabins and homes. I personally saw those ticket books being used by non-excursion passengers when traveling on the CWR line.

10. Given my management role with SNR, and my responsibilities for MRY on MRY's CWR line, I know that one of MRY's trains in mid-2011 was flag stopped by a person who reported that he and another person had been ambushed and shot at in the forest. MRY transported this person to Fort Bragg (the other person's body was later reported in the press as being discovered in the forest). Throughout the following month or two, MRY assisted in the

manhunt for the shooter by transporting special weapons and tactics ("SWAT") teams, U.S. Marshalls, and other law enforcement personnel between Fort Bragg and locations along the CWR by rail. The manhunt, and MRY's assistance with transportation, continued until the shooter was shot by police in the forest in late 2011. A media article concerning these events, including references to MRY's related transportation services, can be found at: https://story.californiasunday.com/aaron-bassler-fort-bragg-manhunt/. MRY provided its transportation services to the law enforcement authorities with the expectation of being compensated and submitted requests for such compensation.

11. A landslide during the spring of 2013 blocked MRY's Tunnel Number 1 on the CWR, temporarily ending MRY's ability to operate trains through the tunnel. I assisted in overseeing the repair of the hillside at issue, which repairs were completed by mid- to late-2023 such that MRY was able to resume service through Tunnel Number 1. About two years later, a tunnel contractor hired by MRY to improve Tunnel Number 1 negligently collapsed the western face of Tunnel Number 1. While this collapse disrupted MRY's ability to provide service through Tunnel Number 1, MRY continued until the time of my retirement to offer and provide excursion passenger service, non-excursion passenger service, and freight transportation service on either side of Tunnel Number 1. At all times throughout the period when I was performing services for MRY, MRY held itself out as being ready to, and was ready to, transport freight for any customer who wished to do so on the CWR.

12. At all times throughout the period when I was performing services for MRY, MRY was a California public utility and Class III common carrier railroad subject to the jurisdiction of the United States Surface Transportation Board. My responsibilities on behalf of MRY included training MRY's employees to operate steam and diesel locomotives on the CWR.

I was also responsible for maintaining the federally required records (including random drug testing records) for the employees of MRY and SNR who operated trains on the CWR on MRY's behalf. My responsibilities throughout this period also included interacting with CPUC and FRA inspectors who visited to inspect MRY's CWR line and related railroad facilities, equipment, and records. In this capacity, I interacted with the CPUC's and FRA's motive power and equipment ("MP&E") inspectors (who inspected the railroad rolling stock and other equipment used on the CWR), operating practices ("OP") inspectors (who inspected engineer training and certification, drug testing records, hours of service records, and other records required by the United States Department of Transportation to be maintained as to services on the CWR), and track inspectors (who inspected the CWR's tracks and other infrastructure and whom I accompanied at times on their track inspections). While I have forgotten the names of many of these inspectors, I recall that Mike Fox was one of the inspectors who inspected MRY's CWR line and its facilities and operations on behalf of the CPUC before going to work for the FRA and then inspecting MRY's CWR line and its facilities and operations on behalf of the FRA.

VERIFICATION

I, Larry Ingold, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12th day of June, 2024.



Larry Ingold

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 2 – Verified Statement of David Magaw

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF DAVID MAGAW

1. I served as the president of Mendocino Railway ("MRY") from the time of MRY's incorporation on January 26, 2004 until May 24, 2012. I have also, during this period, and continuing to the present, served as MRY's treasurer and as a member of MRY's Board of Directors. Mendocino Railway has at all times been a wholly owned subsidiary of Sierra Railroad Company.

2. As MRY's president and treasurer, my responsibilities included managing and overseeing MRY's operations, including MRY's efforts to acquire railroad lines and equipment. In 2003 and 2004, I assisted Sierra Railroad Company's efforts to purchase the railroad assets of California Western Railroad, Inc. ("CWRR Inc.") in a Chapter 11 bankruptcy case known as *In re California Western Railroad, Inc.*, then pending before the United States Bankruptcy Court for the Northern District of California as Case No. 02-12924. My responsibilities included being in charge of performing due diligence as to CWR Inc.'s railroad assets, including its California Western Railroad line ("CWR"),[1] a railroad line that had historically provided excursion passenger transportation services, non-excursion passenger services, and freight transportation services in Mendocino County between Fort Bragg and Willits, California. My due diligence included inspecting the CWR Inc.'s real and personal railroad property; inspecting its financials, employment records, contracts, published common carrier service tariffs, and other business records; evaluating its employees; determining how many, and what types of, employees MRY would need in order to fulfill its public utility and common carrier service obligations on the CWR line; and determining whether MRY might be able to substantially increase the amount of excursion passenger transportation service, non-excursion passenger service, and freight transportation service on the CWR.

3. Following my due diligence, Sierra Railroad Company placed a bid to purchase CWR Inc.'s railroad assets. On February 11, 2004, the Bankruptcy Court ordered Michael H.

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[1] The line between Fort Bragg and Willits, California, formerly owned by CWR Inc. will be referred to herein as the "CWR" because MRY has, since acquiring this line, retained the "CWR" reporting mark and has continued to use the name "California Western Railroad" to refer to this line.

Meyer, CWR Inc.'s trustee, to sell CWR Inc.'s railroad assets—including the CWR line—to Sierra Railroad Company. As a new company acquiring rail assets to perform common carrier freight operations was required to obtain Surface Transportation Board ("STB") authority to do so, the Bankruptcy Court ordered that "Sierra Railroad Company shall promptly seek, at its expense, Surface Transportation Board approval to acquire the railroad assets of the [California Western Railroad Inc.]."

4. In compliance with the Bankruptcy Court's Order, and STB requirements, MRY – which had been formed by Sierra Railroad Company to acquire the CWR line and the California Western Railroad Inc.'s other railroad assets – on or about March 11, 2004 filed a verified Notice of Exemption with the STB under 49 CFR § 1150.31 (the "Notice") to acquire the CWR line and all related railroad assets. I assisted in that filing. MRY explained in its Notice that (a) it was formed as a wholly owned subsidiary of Sierra Railroad Company for the purpose of acquiring and operating the CWR line and its railroad assets, (b) that its projected revenue as a result of its acquisition of the CWR line and its railroad assets did not exceed $5 million per year and thus would allow MRY to make an exempted filing to the STB to be a Class III rail carrier, and (c) that MRY explained that "Mendocino Railway will operate the CWR line, at least initially with the help of its affiliated entities: Sierra Northern Railway (a Class III common carrier); Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company); and Sierra Entertainment (a tourism, entertainment, and passenger operations company)." The STB published the Notice of Exemption (STB Finance Docket No. 34465) on April 9, 2004.

5. Following the issuance of the STB's Notice of Exemption, and the acquisition of the CWR assets, and the resultant institution of MRY as a Class III common carrier railroad, my responsibilities on behalf of MRY expanded to include hiring and training employees to perform MRY's public utility and common carrier railroad services on the CWR (which services included passenger transportation services and freight transportation services); ensuring that MRY had the railroad equipment and facilities it needed to perform its public utility and common carrier railroad services on the CWR; interfacing with existing and potential customers for railroad

transportation services on the CWR, including customers interested in excursion passenger, non-excursion passenger, and freight transportation services; managing MRY's railroad maintenance of way program and its program for improving its railroad infrastructure, facilities, and equipment to ensure that it could perform any public utility and common carrier services requested by members of the public; overseeing MRY's acquisition of additional railroad real property and other railroad property and equipment as needed to maintain and expand its public utility and common carrier services; overseeing MRY's operations at its main stations in Fort Bragg and Willits, California, as well as its other stations and stops along the CWR; interfacing with governmental officials, including railroad inspectors from the California Public Utilities Commission and the Federal Railroad Administration; hiring and overseeing MRY's senior managers; setting MRY's strategy for growth, including expanding its freight transportation services; and overseeing cash management, risk management, investment activities, and financial planning. My responsibilities also included participating in discussions with representatives of the North Coast Railroad Authority (the "NCRA"), a governmental agency that had acquired the former Northwestern Pacific Railroad line that connects to the CWR, and one that was tasked with repairing and reopening the former NWP line. In that capacity, I was involved in bidding on the right to repair and operate, on behalf of the NCRA or on our own behalf, the former NWP line, which would have enabled the expansion of MRY's common carrier services on its CWR line as well as on the former NWP line.

6. My responsibilities also included directing and supervising my Director of Marketing, Alan Lambert (now deceased), to prepare and place into effect tariffs for MRY's freight operations on the CWR. These tariffs included switching tariffs, demurrage tariffs, rail car storage tariffs (including the storage rate for several privately-owned railcars being stored by MRY on the CWR), and a tariff for "less than carload freight," which allowed people living along the CWR line to pay for the transportation of both interstate and intrastate parcels of freight that did not take up an entire train car (though MRY at all relevant times also offered the

transportation of full carload freight as well). My responsibilities also included setting rates for transporting excursion passengers and non-excursion passengers on the CWR.

7. As I was at all relevant times a qualified and certified locomotive engineer pursuant to 49 CFR Part 240 and a qualified and certified conductor pursuant to 49 CFR Part 242. I furthered my understanding of MRY's excursion, non-excursion, and freight transportation services on the CWR by occasionally personally operating MRY's trains on the CWR, something I did 4-6 times a year during the first three or four years of MRY's operations of the CWR, operating them less frequently thereafter.

8. My personal operation of trains on MRY's behalf included performing special train movements (*i.e.,* trains that are not part of MRY's regular train schedule but that are scheduled especially for specific customers) of equipment by rail over the CWR between Fort Bragg and Willits. These special movements included transporting railroad passenger cars, railroad center-beam cars, and other railroad equipment from various points on the CWR to Willits, California, for the owners of such railroad cars, from whence the railroad cars were transported to other destinations located off the CWR line. All of these services were conducted by MRY for compensation.

9. My roles and responsibilities with MRY have provided me with first-hand knowledge of all aspects of MRY's operations, including MRY's revenues associated with its provision of public utility common carrier railroad transportation services on the CWR to the public for compensation. The only exception I am aware of as to all railroad services being provided in exchange for compensation were periodic charitable donations made by MRY for excursion services on the CWR. While my role as MRY's president ended on December 31, 2015, I have since that time, and to the present, remained knowledgeable as to MRY's operations in my roles as MRY's treasurer and as a member of MRY's Board of Directors, roles which require me to remain knowledgeable about, and to engage in regular discussions with MRY's management about, MRY's operations, strategic plans, and finances.

10. Throughout my services for MRY, and continuing to this day, MRY has offered and provided the service of: (a) transporting non-excursion passengers to and from various cabins, homes, camps (which camps include Camp Noyo, located at CWR Milepost 16 and operated by the Redwood Empire Council of the Boy Scouts of America), and Camp Mendocino, located at CWR Milepost 19.6 and operated by the Boys and Girls Clubs of San Francisco), and intermediate stations along the CWR which are otherwise inaccessible, or not as easily accessible, via road, and (b) transporting various items of parcel freight to and from these cabins, homes camps, and intermediate stations. As part of my services for MRY, I operated trains on the CWR that provided both these railroad transportation services. All of these railroad transportation services were, and are, conducted by MRY for compensation.

11. It was not unusual during the time that I operated trains for MRY on the CWR for non-excursion passengers to spend one or two weeks, or even longer, at the cabins, homes, and camps along the CWR before returning by rail to Fort Bragg or Willits, California. Because of this, it was also not unusual for MRY's trains—including those I operated—to transport their supplies and materials to and from these cabins, homes, and camps and to and from intermediate stations on the CWR line. These supplies and materials included food, building materials, propane, newspapers, furnishings and appliances, and other equipment.

12. I also as part of my services for MRY performed railroad switching operations and movements of freight railcars on behalf of customers who paid MRY for such services. While, after the first 5-6 years of MRY's operations, I no longer operated such trains myself, I am aware because of my continued role as MRY's treasurer and as a member of MRY's Board of Directors that MRY continues to offer and provide these services to customers for payment.

13. Because of my past role as MRY's president, and my continuing role as MRY's treasurer and as a member of its Board of Directors, I am aware that MRY since its acquisition of the CWR, and continuing to this day, has always offered and made available to members of the public, for compensation, excursion passenger services, non-excursion passenger services, and freight rail services on the CWR line. I am for the same reasons aware that MRY has on

numerous occasions since early 2004, and continuing to this day, had discussions with potential freight customers—including the City of Fort Bragg—concerning the transportation of freight over the CWR line, for compensation, particularly for the transportation of propane, lumber, water, and trash, primarily to allow these commodities to be moved by rail rather than by truck over Highway 20.

14. After purchasing the CWR line, MRY immediately began making significant expenditures to expand its ability to provide, and to increase, its public utility and common carrier services on the CWR. These expenditures included improvements to the CWR's right of way and railroad infrastructure. These expenditures also included purchasing much of Georgia-Pacific's former millsite in Fort Bragg, property intended for the development of freight rail facilities, including a new transload facility to serve the residents and businesses of Fort Bragg, California and the surrounding communities along coastal Highway 1. MRY made these investments—which have totaled more than $30 million—to enable MRY to increase the non-excursion passenger and freight transportation services it could offer, and provide, to the public on the CWR.

15. To further increase the non-excursion passenger and freight transportation services it could offer, and provide, to the public on the CWR, MRY and its sister company, Sierra Northern Railway, jointly applied for, and just recently obtained, a $31,491,077 Railroad Rehabilitation and Improvement Financing ("RRIF") Express Program ("RRIF Express") loan from the United States Department of Transportation ("DOT"). MRY intends to use its portion of these funds to reopen the CWR's collapsed Tunnel No. 1, to replace rails and ties, to make siding improvements, and to make improvements to 27 bridges on the CWR. This loan will bring MRY's total investment in the CWR to well over $50 million, and will allow MRY to again ship goods via rail between Fort Bragg and Willits, California without the need for any intermediate trucking.

16. MRY has always been connected to the interstate rail network in Willits, California via Amtrak (in conjunction with Greyhound) and via the former NWP (which has been

under the control of the North Coast Railroad Authority ("NCRA"), which entity has recently changed its name to "The Great Redwood Trail Agency" ("GRTA")). The GRTA line has not been abandoned and remains under STB jurisdiction. While the GRTA line has been embargoed since late 1998, GRTA is still a regulated railroad and cannot abandon its line without STB authority. Indeed, even though the line is embargoed, because it has not yet sought abandonment authority, GRTA has a common carrier obligation over its line, just like MRY has over its line.

17. MRY has on many occasions since early 2004 sought to acquire operating rights over the GRTA line, not only in order to increase the transportation of freight by rail on the CWR between Fort Bragg and Willits, but also to expand MRY's operations to the GRTA line. MRY engaged in negotiations several times with the NCRA as to various potential operating agreements that would permit MRY to operate, or to operate over, the GRTA line. In 2006, the NCRA finally issued a Request for Proposals, seeking a partner to repair, operate, and maintain the line. While MRY responded to the NCRA's Request for Proposals, representatives for the NCRA informed MRY that they wanted a more optimistic proposal than that offered by MRY. When MRY refused to inflate its predicted business numbers without support therefor, the NCRA selected Northwestern Pacific Railway Co., LLC—a non-railroad with no experience repairing or operating railroad lines—to repair and operate the NCRA (now GRTA) line. Though the NCRA had not selected MRY, MRY was hopeful that Northwestern Pacific Railway Co., LLC would reopen the line to Willits, California as it had proposed to do in its offer to the NCRA. When it became apparent that Northwestern Pacific Railway Co., LLC was unlikely to successfully reopen the line, MRY again sought to obtain the rights to do so, both through the NCRA and through Northwestern Pacific Railway Co., LLC. But neither the NCRA nor Northwestern Pacific Railway Co., LLC allowed MRY to do so.

18. After the NCRA changed its name to the GRTA, and sought to abandon a portion of the GRTA north of Willits, California, MRY filed at the STB to acquire the southernmost approximately 30 miles of that portion of the GRTA in order to preserve freight rail service to

shippers on that portion of the line. The GRTA opposed MRY's efforts and MRY was not successful in acquiring that portion of the GRTA line.

DATED: June 11, 2024

David Magaw

DAVID MAGAW

VERIFICATION

I, David Magaw, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11th day of June, 2024.

David Magaw

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 3 - Copy of Little Stinker Fall 2021 Newsletter



FALL 2021 | VOLUME 1 | ISSUE 1

Big News and Fun Stuff from One of America's Oldest Railroads

Big Plans for the Mill Site

PAGES 2-3



The State of Tunnel No. 1

The Skunk's vision to reconnect the full Redwood Route

PAGE 4

Skunk Saves Salmon

Continuing a legacy of environmental stewardship

PAGE 5

A History of Our Stations and Look at Our Past

PAGES 6-7

PAGE 6

RAILBIKES ON THE NOYO



An entirely new journey along the Noyo River, extending the Railbike line by 12.5 miles. Read more about this unique experience on Page 6.

Photo by Brendan McGuigan

Navigating COVID-19 as a Railroad

This has been a year unlike any other, both here at The Skunk and in the world at large. Our incredible staff has been working tirelessly to ensure the safety of our guests, workers, and community throughout the Covid-19 pandemic. We have implemented safety protocols across the board, deep cleaning surfaces and spaces, switching over to mask usage on all of our trips and back-of-house operations, limiting travel among our workers, and being some of the first in line to ensure our team received vaccines. Although this time is not yet over, along with the rest of the world we are eagerly anticipating a return to normalcy and are thrilled to welcome guests back on to our rides. As a common carrier we are under Federal Railroad Administration & Transportation Security Administration regulations, and as such are currently looking forward to relaxing restrictions in late January, 2022. Whatever the timeline we are proud of our crew members who have done everything to ensure guests have a space in which to experience the glory of the redwoods.

Visitor Survey

Every year we perform a visitor survey to determine the impact we have on our local community. Our 2020 survey once again demonstrated that the Skunk Train is an integral part of the Mendocino County community and one of the strongest economic drivers in the region. Of our riders, 70% were visiting the Skunk Train for the first time – and 32% were visiting Mendocino County for the first time. 42% planned their trip to the area specifically to ride the Skunk Train, and 80% stayed overnight.

The average stay was 2.7 nights, generating a whopping 73,000 room nights. Our average rider spent $800 on their trip, excluding tickets, generating over $27 million for the local economy. Not bad for a 136-year-old Skunk!



What's In A Name?

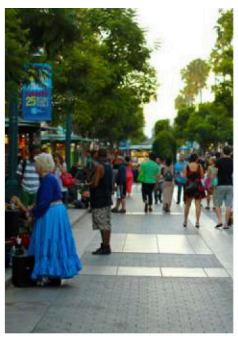
The nickname "Skunk" originated in 1925, when motorcars were introduced. The combination of fumes created a very pungent odor. Old timers living along the line said these motorcars were like skunks: "You could smell them before you could see them."

BIG PICTURE

Reinvigorating a Town

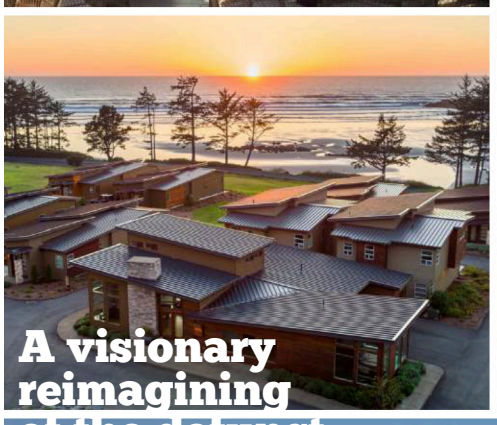
Taking ownership of a large portion of the historic coastal Mill Site, the Skunk Train will work with experts to develop a world-class destination, breathing new life into this unique stretch of coastline.











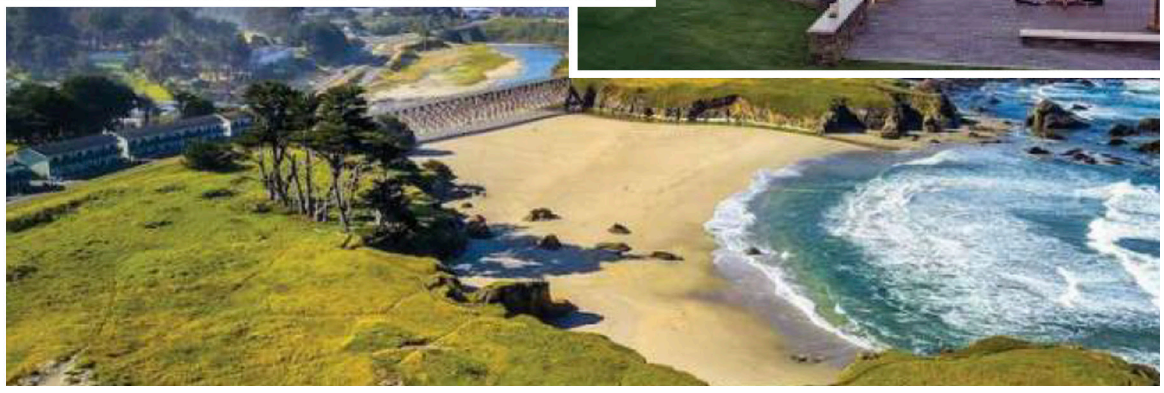
A visionary reimagining of the defunct Fort Bragg Mill Site to meet the needs of a new millennium



A NEW DAWN







Concept imagery from the broadly approved Mill Site Land Use Plan, developed by Hornberger+Worstell

After years of planning and hard work with an incredible team of experts, the Skunk Train is excited to unveil its land use plan for the Fort Bragg Mill Site. This is a once-in-a-generation project, completely reimagining one of the California Coast's most striking stretches of oceanfront land. The vision and scope of the new Mill Site is staggering, incorporating tiered housing, an oceanfront hotel, sprawling open space preserves, the central Railroad Square, an oceanfront rail expansion, a flagship restaurant, commercial space, and an educational historic park.

Since the day the Mill Site closed, its future has been an open question for the residents of the Mendocino Coast. Numerous plans are proposed.

The most successful of these plans to date is certainly the City-led Coastal Trail. It first opened in a limited capacity in 2015, since then seeing further expansion, including the construction of the **Noyo Center for Marine Science**'s Crow's Nest.

We at the Skunk have also been involved in the planning – taking stewardship of some of our legacy property and reimagining it as a cornerstone of the Fort Bragg economy in the post-Mill era. Working



with **Hornberger + Worstell**, we developed a Master Plan to preserve and develop hundreds of acres that we will purchase from **Georgia-Pacific**.

This plan is the culmination of years of community and government collaboration, expert input, and a genuine love and appreciation of Fort Bragg and this historic site. Our broadly-approved plan reflects local citizens' community plan, and is sweeping in scope. It envisions new residential properties at all levels of density, a restoration of part of the coastal spur of the rail line, expanded public parking, a hostel, live/work units, storefront commercial space, a massive open space preservation, a restoration of our dry shed, an oceanfront hotel and condos, a Pomo education center, and more. We have purchased 77 acres from Georgia-Pacific, and are finalizing the purchase of the balance of the site.

We are excited to continue sharing our vision and our progress as we work with the community and local government. We will ensure this space adds meaningfully to the economic prosperity and lifestyle of the Mendocino Coast.

(continued on page 3)

A Storied Legacy

For over a century the Fort Bragg Mill Site stood as the absolute geographic landmark and economic driver for the City of Fort Bragg. In many ways, it was the origin of Fort Bragg. After the short-lived military fort was abandoned, the majority of the land sat unused. When our founder, C.R. Johnson, started his lumber operations on the Mendocino Coast, the primary mill was located at Newport, just south of Westport.

The Union Lumber Company's blossoming timber operations soon outstripped Mill Creek's capacity. C.R. Johnson turned his gaze south, where the sprawling site of the army base offered plenty of flat land for growth and deep coastal waters for log-carrying ships. On November 16, 1885, Mill #1 commenced operations capable of producing more than 80,000 board feet per 12-hour shift. Mill No. 1 remained in use for nearly 111 years. At its peak it produced more than 500,000 board feet per shift before finally closing its doors on June 21, 1996.

Thus began the decline of the Mill Site, then owned by Georgia-Pacific. The mill was finally shuttered for good in 2002.

Throughout its long history the Mill Site contributed massively to Fort Bragg. C.R. Johnson laid out the original plan for the city after opening the mill, and became its first mayor in 1889.

We look forward to shepherding this incredible stretch of coastline as it enters its next chapter.

Who Owns the Skunk Train?

Mendocino Railway operates **The Skunk**, and also operates Sacramento, California's **River Fox** (riverfoxtrain.com). Mendocino Railway is a subsidiary of Northern California's **Sierra Railroad Company**, which purchased and reopened The Skunk in 2003 after the closure of the GP mill. It also provides freight railroad services through **Sierra Northern Railway** (sierranorthern.com) and renewable zero-emission energy and fuels though **Sierra Energy** (sierraenergy.com).



Model Railroad Barn

Discover History In Motion!

Located just west of the Fort Bragg depot, the Model Railroad Barn showcases the history of rail in Mendocino County, highlighting the 1900-1940 period, presented in G-Scale over 1,800 feet of working track. Admission is free with a Skunk Train ticket.



Two Phases of Development

Phase One of the proposed development will create 500 units, as well as extensive open space to retain the beauty of the area. Phase Two adds a beautiful southern park and a connection point to the Noyo Headlands Coastal Trail.

BIG PICTURE

The future begins with rethinking our depot area – an expansion into a newly-revitalized Railroad Square, with green walking space and structures, a large indoor space to host farmer's markets and other events, our depot, and the model rail museum. We have also retained the Dry Shed – a 70,000 square foot building – the only remaining original building on the site.

We are also restoring train service to Glass Beach for passengers and will be adding an iconic train station there with a view of the ocean, built in the style of a historic lighthouse.

Housing takes place in multiple areas of the plan, all modern and comfortable, ranging from medium density to small-unit high density, helping to alleviate some of the housing pressure the coast is currently experiencing.

The southern portion of the plan envisions a beautiful modern hotel, with condos attached. This will offer economic opportunities for our local community, as well as helping to cement Fort Bragg as a scenic destination for visitors.

The western portion of the property will be devoted to public parks and open space, building on the success of the existing Coastal Trail.

In the north we hope to work with the **Sherwood Band of Pomo Indians** to provide a space for cultural education. We hope this can help give visitors an experience that can shed light on some of the historic injustices this site represents, and we will defer to the tribe on how this can best be achieved – here we are making space, but come to it with an open mind, not wishing to put our own values on the final product.

Although this project is still in its relatively early phases, we see the Mill Site as the most important project of this century for the Mendocino Coast! We look forward to working with local leaders to help ensure it adds to all of our economic prosperity and lifestyle.



"The restoration of railroad service to Glass Beach is going to be an amazing ride!"

- Mike Hart, CEO of Mendocino Railway's parent Sierra Railroad Company

An ambitious redevelopment to reimagine one of the most-stunning stretches of the California coastline.

LOCAL SPECIAL

Mendocino County residents can use code **MendoFall21** for deeply discounted trips!

Pudding Creek Express	~~$41.95~~	$32
Wolf Tree Turn	~~$49.95~~	$30
Pudding Creek Railbikes	~~$250.00~~	$100
Railbikes on the Noyo	~~$495.00~~	$150
Fort Bragg Pumpkin Express	~~$47.95~~	$30
Fort Bragg Christmas Train	~~$49.95~~	$32
Willits Pumpkin Express	~~$52.95~~	$35
Willits Christmas Train	~~$52.95~~	$35

ID must be presented at time of ride to prove residency.
No early pickup of tickets.

Now Hiring!

Team Skunk is hiring for all positions!

Executive / Administration, Mechanical, General Labor – Track Maintainance Worker, Retail, Construction, Train Crew – Brakeman / Conductor!

Join a team of dedicated, passionate, hard-working people to help this 136-year-old institution continue to thrive!

Call 707.964.6371 For More Info!

UPDATES | **Tunnel No. 1 Reopening Plan** With the tunnel settled after its collapse, primary survey work can now begin, with the goal of reopening the full Redwood Route within the next year.

TUNNEL NO. 1 UPDATE

THE LIGHT AT THE END OF THE TUNNEL

Plans are in progress to reconstruct Tunnel No. 1 for the next century, restoring access to the full Redwood Route



A wooden pedestrian bridge currently crosses Pudding Creek from The Glen to the closed Tunnel No. 1 before continuing on to a scenic trail through stands of ancient redwoods.

More than any other single issue, we receive regular correspondence inquiring as to the status of our Tunnel No. 1 – the artery that connects the short western side of our line from Fort Bragg to The Glen with the majority of our rail, terminating in Willits.

Tunnel No. 1 is a 1,112 foot bore, completed in 1893 by the California Western Railroad and was a critical step toward connecting the mill town of Fort Bragg to the extensive redwood holdings east of the tunnel in the Noyo River Basin. It was built by skilled Chinese laborers, without whose hard work the Skunk Train as we know it simply would not exist.

In 2013 Tunnel No. 1 suffered a massive cave-in sometime between April 12 and 13. Although there had been other cave-ins, this was on a scale not seen before. Forty feet of the tunnel collapsed down, with thousands of tons of rock sealing off a huge portion of the bore. With large-scale community involvement and an incredible partnership with the **Save the Redwoods League**, the Skunk Train worked with an outside contractor to repair the damage. Work on the tunnel by an outside contractor led to the collapse of the tunnel and their insurance company declined coverage.

"The steel rails that connect Fort Bragg to Willits will once again do so as we commence work in Q1 of 2022."

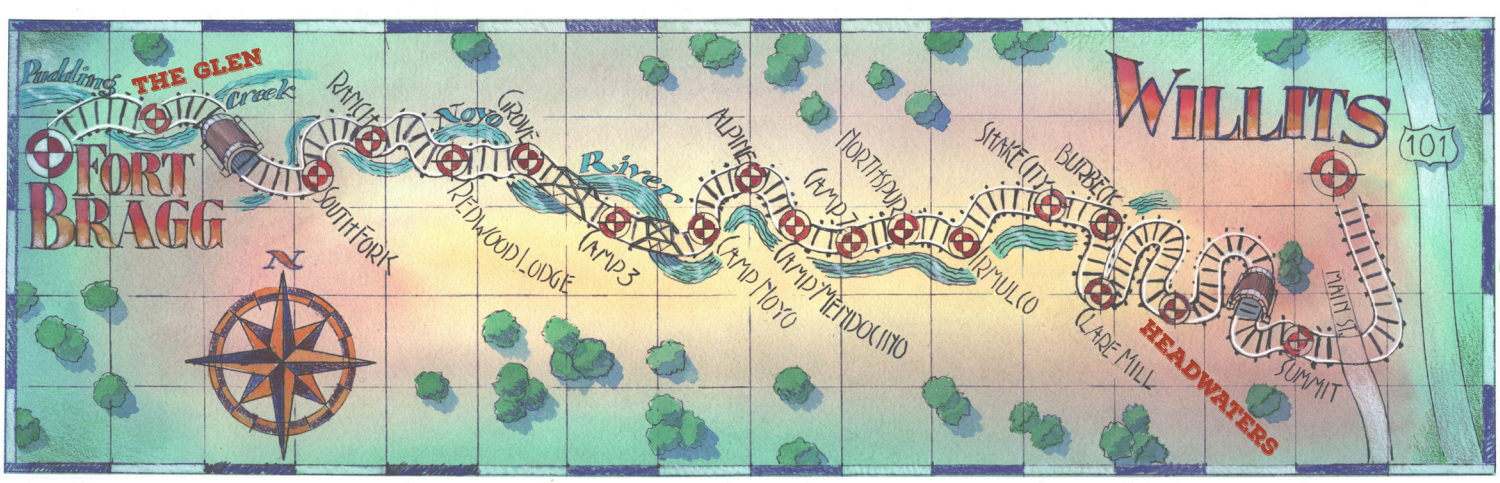
An El Nino event in 2015-2016 meant a huge amount of water fell on the tunnel in a short period of time, and the consequences of the shoddy workmanship became apparent with a second collapse. This was more extensive – affecting nearly 200 feet of the tunnel, and destabilizing the area.

For six years we have undertaken the work of shoring up the tunnel collapse to prevent further sliding, and have invested over a million dollars in stabilization efforts securing and terracing the hillside and making it ready for the restoration of the tunnel.

We are now at the point where enough settling has occurred that these engineers can begin drafting a formal plan. We hope to have the tunnel reopened in late 2022. The tunnel was nearly completely rebuilt in 1976 when freight train crews brought an excess height boxcar through the Tunnel creating a massive cave in whereby we had to exhume most of it and rebuild it. The work we plan to do will further modernize it ensuring that it will not only survive the next El Nino event or earthquake, but that it will be in a good position to remain open for the coming decades and century.

Tunnel No. 1 is located only three miles from the Western terminus of our line, and its closure limits not only our ability to run through service for scenic trains, but also our ability to undertake new operations on the line. We are looking at a resumption of freight service, talking to local businesses about being able to use the trains as a low-carbon way to transport their goods to and from Fort Bragg. In the future it may even be possible to connect at Willits with other lines, relinking Fort Bragg to the greater web of railways throughout the United States.

This tunnel is a critical part of our history and our future, and we are excited to do the necessary work to ensure that it reopens. We know many of you have a deep connection to our fully-connected journey, and we want to assure you that we feel equally passionate about the issue. We know it has been a long time coming – unfortunately these things take time. We are finally at a point where we can see the light at the end of the tunnel – and we will share, in these pages and in other public forums, our progress as this important moment draws nearer.



The Historic Redwood Route

Spanning 40 miles, the full Redwood Route passes through ancient redwood groves, alongside two stunning rivers, and over more than thirty trestle bridges. Our current excursions run from Fort Bragg to The Glen (Pudding Creek Express and Pudding Creek Railbikes), from Willits to Headwaters (Wolf Tree Turn), and from the east side of Tunnel #1 to Camp Noyo (Railbikes on the Noyo).

Restoring Natural Habitat

Working paw-in-hand with Trout Unlimited, the Skunk is doing his part to ensure that vital salmon habitat is restored and maintained for the next generation.

ECOLOGY

ECOLOGICAL STEWARDSHIP

SKUNK SAVES SALMON!

Working Paw in Fin with Trout Unlimited to restore vital waterways to Mendocino County

Environmental stewardship has always been a part of the Skunk Train's mission. Our founder, C.R. Johnson, was a visionary conservationist, who set aside massive stands of old growth redwoods in the middle of his holdings to preserve them for generations to come. That forward-looking attitude helped make the Skunk the incredible destination it is – without untouched redwoods along our line the trip would not be the once-in-a-lifetime visit it is.

So we are always looking for ways to continue this legacy of preservation and restoration, and are excited to announce two major restoration projects along the Noyo River and our line.

These projects would not have been possible without the amazing partnership of **Trout Unlimited**, the **Mendocino Land Trust**, the **California Fish Passage Forum**, the **National Fish and Wildlife Foundation**, **NOAA Fisheries**, the **California Department of Fish and Wildlife**, the **Nature Conservancy**, the **Salmonid Restoration Project**, **Michael Love and Associates**, **Granite Construction**, and **AECOM**. Together the project costs $3.5 million, and we are grateful to the many funders Trout Unlimited brought to make it a reality.

The first site is located at the Upper Noyo – just east of Burbeck, and the first place the railroad tracks cross the Noyo River after salmon spawn at the headwaters. Originally the Upper Noyo location had an open flow streambed at its base, but in the 1990s this was replaced with a large (and we do mean large) culvert. This was to the long-term detriment of the fish habitat, and it was our desire to restore that flow to encourage fish spawning and travel. We exhumed old infrastructure in its entirety, and the soil atop it, before replacing it with modern, fish-friendly infrastructure and restoring the soil. The result is a free-flowing waterway that salmon and other fish can once again utilize.





The newly-restored streambed and state-of-the-art culvert system allows for fish to return to the waterways to spawn and live

The second site, Gulch C, is in and surrounding Shake City. The existing infrastructure here was historic and beautiful, but once again was not conducive to fish habitat. The exterior was a typical concrete construction, and the interior was redwood. Here we also replaced the infrastructure to restore the natural streambed. At the personal direction of Mike Hart, Gulch C has been permanently renamed '***Pinoli Gulch***' in recognition of the years of work that Mendocino Railway CEO Robert Pinoli has invested in this project!

Both of these projects have been incredibly gratifying to all of us here at the Skunk. We love our history, and love the beauty that comes along with many of our older infrastructure pieces (our wooden trestle bridges are some of the most popular spots along our route). With this history comes a need to recognize when pieces have outlived their usefulness. These two culverts represent just such a situation – engineered originally with the best of intentions, but as our understanding of habitat has evolved, so too have our needs.

The potential impact of these modernizations cannot be over- emphasized, and we are incredibly grateful to Trout Unlimited to lending their expertise throughout the process. The Noyo River houses one of the most stable California coho populations in the state – but even that is in danger, ranked as a moderate to high extinction risk. Coho salmon are vanishing shockingly quickly across the state, and without recovery projects on key watersheds throughout the state, the species will vanish. Together, these restoration projects reopen spawning access to nearly two miles of critical waterway – both for California coho and steelhead. We couldn't be happier.

The project has attracted national attention as well – just this March, Trout Unlimited called out this specific project while testifying before the **House Natural Resources Committee** (on which sits our very own Congressman Jared Huffman).

SNAPSHOT

Railbikes on the Noyo

This incredible 25-mile roundtrip journey takes you through some of the most scenic stands of redwoods along the Redwood Route, culminating in a picnic at fabulous Camp Noyo before returning to Tunnel No. 1



AT A GLANCE

DEPARTURE POINT:
Sherwood Rd. Fort Bragg

TURNAROUND:
Camp Noyo

LENGTH:
25 Miles Roundtrip

DURATION:
Four Hours

RIDERS PER BIKE:
Two

PRICE:
$495 Per Bike

INCLUDED:
Bike Rental
Group Guide
Picnic
Beverage

A REVOLUTIONARY NEW JOURNEY

RAILBIKES ON THE NOYO

Railbike lovers take note! The Skunk continues to innovate with this exciting new half-day ride through some stunning redwood groves along our line – getting you back into the **Noyo Canyon** for the first time in a long time!

Building on the success of our highly popular Pudding Creek Railbikes experience departing from the **Fort Bragg Depot**, we're thrilled to announce an entirely new experience. This very special trip has required the reopening of this section of the railroad for just a handful of riders, and we're excited to unveil our new Noyo Experience. This trip departs from the far side of Tunnel No. 1, opening up miles of open track to our railbikes.

You'll arrive at our property on **Sherwood Road**, just a few minutes from the main depot. From there a short hike on a beautiful new trail takes you through the redwoods to the Noyo River.

From there you'll ride 25 miles roundtrip – an extensive ride that takes you past some of the most iconic spots along the Redwood Route, over beautiful historic trestle bridges, and alongside and over the winding Noyo River, stunningly scenic in any season. We're staggering these trips by a few minutes, so the trip is tranquil, and you can enjoy the solitude of the redwoods.

The railbikes stop at Camp Noyo for relaxation, exploration, and a light picnic

> **Majestic views with an old timey nastalgia... definitely be bringing more friends and family this way!**
> - Liz W.



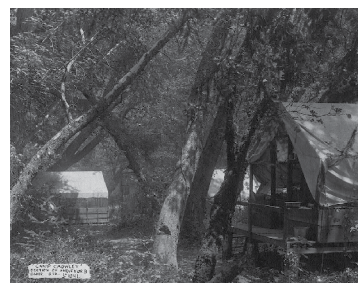
The first leg of the trip ends at **Camp Noyo**, where you'll disembark and have an hour to spend resting, hiking, and chatting. A picnic is provided, so you can recharge a bit before getting back on the bikes for the return trip.

Our railbikes are electric-powered, so you can make the ride as strenuous or easy as you wish – pedal yourself or sit back and relax and enjoy the ride. We've gone through multiple iterations of our custom-built bikes, and are very proud of what we've created. We look forward to sharing the experience with you and your loved ones.

Don't forget to ask about our local specials!

A Tale of Two Stops

Although we are offering a number of exciting new rides for your enjoyment, the core of the Skunk has been, and will always be, our train trips. Currently we're offering two trips: the 7-mile roundtrip Pudding Creek Express out of Fort Bragg, and the 16-mile roundtrip Wolf Tree Turn out of Willits. These trips take you to two of the historic stops along the Redwood Route, and are great fun for the whole family.


Surveyor's camp at Crowley

The Glen

The Pudding Creek Express disembarkment is at **The Glen**, 3.5 miles in from the coast. This was the junction point that spurred off to the town of **Glen Blair** – also known as **Glenela**. The **Glen Blair Lumber Company** founded this site, producing some of the finest redwood timber in the world, until the **Union Lumber Company** acquired it in 1891. Until Tunnel #1 was completed, Glen Blair was the end of the line – and flourished until the 1920s, when it was abandoned and eventually overgrown by redwoods.

Newly developed, The Glen features a large platform deck for easy disembarkment a scenic hiking loop trail through the redwoods, and a longer trail leading back to the Fort Bragg depot. This stunning locale is where **Little Valley Creek** meets **Pudding Creek**, and is the perfect setting for a stop.

Headwaters

The Wolf Tree Turn trip ends at the historic station of **Crowley**, now **Headwaters**, which we've developed into a comfortable place to hike around or enjoy a picnic.

Historically this was a minor logging camp – but not without its quirks. The Frenchman who owned the camp reputedly had a deep love of tennis, and he actually had special clay brought in to construct his own court on the site. The lumber camp here lasted in a dorment state well into the modern era, with the foreman's house, a mess hall, and five worker bunkhouses remaining intact until recently.

136 Years of History

With over a century of history to draw from, we have deep archives of incredible photographs of bygone eras – we'll try to share some of our favorites in every issue.

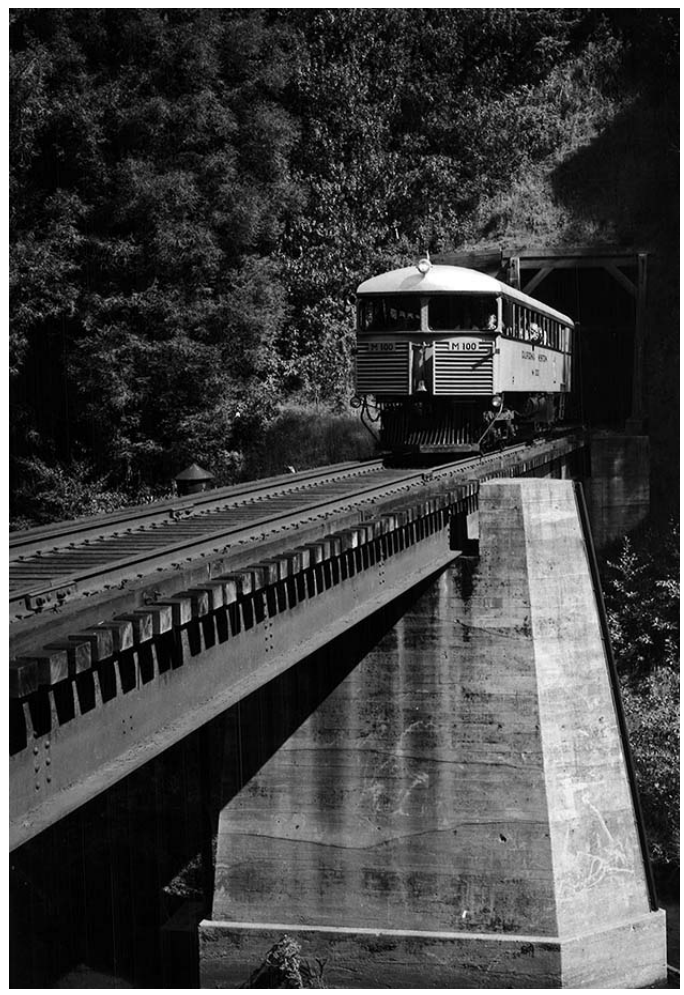
HISTORY



A historic bridge on Stage Road, with an early car that reminds us of our very own Railbikes; date unknown



Skunk employee, 1960s



Our gas-powered, self-propelled M-100 railcar (a 'Skunk') in the 1960s



Year-Round Events

AUG. 20TH & 21ST
SEPT. 10TH & 11TH
Cinema in the Redwoods

AUG. 6TH, 13TH, & 14TH
SEPT. 10TH, 11TH, 17TH, & 18TH
Music in the Redwoods

WEEKENDS THROUGHOUT OCTOBER
The Pumpkin Express

SELECT DATES IN DECEMBER
Magical Christmas Train



Skunk Train Season Passes

A Year of Memories for One Low Price

Can't get enough of the Skunk? Have a die-hard train lover in your life? We've got the solution! Our new Annual Pass gives you the opportunity to enjoy the Skunk Train all year long! One price gets you access to **all four of our major trips**: The Pudding Creek Express, Wolf Tree Turn, Pumpkin Express, and the Magical Christmas Train. Plus a 15% discount on any other special event trains throughout the year, and a 10% discount on all retail merchandise.

Priced at just **$149.95** for an adult pass, **$89.95** for a child pass, or **$29.95** for an infant or pet pass, it's an affordable way to make sure you never miss out on a little bit of train time right when you need it.





In the Next Issue

In our next issue learn the story behind our iconic Art Car, our plans to re-roof the Roundhouse to return it to service, more about our exciting new hiking trail from The Glen to Fort Bragg, the new Sierra Railroad Locomotives (now the lowest-emission fleet in the state, and coming soon to the Skunk), and much more!

Be sure to subscribe to receive the most up-to-date information about everything we have coming, from expansions, new projects, maintainance and the return of old equipment, events, historical tidbits, and interviews with staff old and new.

Subscribe

Receive the Little Stinker quarterly in your mailbox and stay up to date on everything Skunk related!

Call 707.964.6371 or write littlestinker@skunktrain.com



SKUNK TRAIN

A Wilderness Adventure! • Mendocino, CA

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 4 – MRY (current) freight rail tariff

MENDOCINO RAILWAY

FREIGHT TARIFF CWR 9500

LOCAL AND INTERCHANGE
CHARGES
APPLYING
BETWEEN/AND AT
STATIONS ON THE
MENDOCINO RAILWAY / CALIFORNIA WESTERN RAILRAOD (CWR)

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

ISSUED: January 1, 2022

EFFECTIVE: January 1, 2022

ISSUED BY
Robert Jason Pinoli, President
Mendocino Railway / California Western Railroad
100 West Laurel Street
Fort Bragg, California 95437

CONTACT INFORMATION
707-964-6371 Phone
707-964-6428 Fax
Info@SkunkTrain.com

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

ITEM 10 SUPPLEMENTS AND REISSUES

When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements thereto or successive issues thereof."

Where reference is made in this tariff to items, it includes "reissues" of such items.

ITEM 15 REFERENCES TO TARIFFS, ITEMS, NOTES, RULES, ETC.

Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff as it may be applicable on intrastate traffic, or traffic within Canada.

When the words tariffs or contracts are used in this tariff, they refer to tariffs or contracts lawfully on file with the U.S. Surface Transportation Board as to interstate traffic and State Commissions as to intrastate traffic, or their respective successors.

ITEM 20 METHOD OF CANCELING ITEMS

As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff, or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 100-A cancels Item 100 and Item 300-B cancels Item 300-A in a prior supplement which, in turn, cancelled Item 300.

ITEM 30 PAYMENTS OF CHARGES

Customer shall pay the applicable charges to Railroad upon invoice and on or before the due date specified in the invoice. Charges are due and payable within thirty (30) days following the date of the invoice. In the event that the invoice has not been paid or payment has not been made by Customer on or before the due date, a late payment charge of two percent (2%) of each unpaid charge shall be assessed immediately, and then finance charges of two percent (2%) per month shall then accrue and be assessed on the outstanding balance (payments, late payment charges and interest) owed. Payments shall be applied first to late payment charges, then to interest charges, and then to the outstanding balance.

MENDOCINO RAILWAY

CWR 9500

SECTION 1
SWITCHING
(Charges in dollars and cents per car, except as otherwise noted)

ITEM 1000

SWITCHING CARS DELIVERED BY CONNECTIONS IN ERROR AT ALL STATIONS ON CWR

Cars, loaded or empty, delivered in error by connecting carriers will be subject to charges as shown in this item. Charges for cars delivered in error include the movement from and return as necessary to interchange track(s) of the carrier making the erroneous delivery. Charges are payable by the delivering connecting carrier.

CHARGE $300.00 per car

ITEM 1050

CARS DELIVERED IN INTERCHANGE TO CONNECTING CARRIERS

Cars received in interchange, loaded, or empty, for immediate switch service to another carrier or destined to points on the CWR which require CWR handling or switching service prior to placement or delivery to the interchange track(s) will be subject to the charges shown herein. Charges are payable by the delivering connecting carrier.

CHARGE $300.00 per car

ITEM 1100

CARS SWITCH FOR CONSIGNOR, CONSIGNEE OR PRIVATE CAR OWNERS

ITEM	STATION	FROM	TO	COMMODITY	CHARGE
1110	All stations in California	Any location at any industry	Another location within the confines of the same switching limits.	Cars of railroad or private ownership loaded, partially loaded or empty.	$300.00
		When at the request of owner of private track a car or cars are switched from a private track to the tracks of CWR or other private tracks as a temporary expediency to make room for another car or cars.		Cars of railroad or private ownership loaded, partially loaded or empty.	$300.00
		If such car or cars are returned to the private tracks.		Cars of railroad or private ownership loaded, partially loaded or empty.	$300.00
1020	All stations in California	Any location at an industry shed, dock platform or open area served by a common set of tracks or parallel tracks where cars are regularly placed for loading, unloading, or other purposes.	Another location at the same industry shed, dock, platform or open area served by a common set of tracks or parallel tracks where cars are regularly placed for loading, unloading, or other purposes.	Cars of railroad or private ownership loaded, partially loaded or empty. Applies only when prior or subsequent to a linehaul and when it is necessary to move the car incidental to switching of other cars to or from the tracks serving the shed, dock, platform or open area, or is otherwise determined by CWR to be necessary for its operations.	No charge (Exception to Item 1010)

ITEM 1100 (Continued)

CARS SWITCH FOR CONSIGNOR, CONSIGNEE OR PRIVATE CAR OWNERS

ITEM	STATION	FROM	TO	COMMODITY	CHARGE
1030	All stations at which track scales are located in California	Any location on track within switching limits.	Track scales and return.	Freight Carloads (Applies only when incidental to a linehaul.)	$300.00 (Note 1)
				Freight Carloads (Applies only when not incidental to a linehaul.)	$300.00 (Note 1)
		Interchange tracks of connecting carrier with which carrier has an interchange arrangement.	Track scales and return.	Freight Carloads (Also applies on empty railway equipment.)	$300.00 (Note 1)

(1) – Applies on movements to track scales and return, loaded or empty on request of shipper or consignee and where weights thus obtained are not used for assessing freight charges. Does not apply on freight, including empty railway equipment received from interchange tracks and returned to interchange tracks and returned tracks of connecting carriers.

ITEM 1100 (Continued)

CARS SWITCH FOR CONSIGNOR, CONSIGNEE OR PRIVATE CAR OWNERS

ITEM	STATION	FROM	TO	COMMODITY	CHARGE
1050	All stations in California	Industry track loading location within switching limits.	Any track within same switching limits where loaded cars may be held for disposition.	Freight Carloads (See Note 1)	$300.00 (Note 2)

Note 1 – Applies only on loaded cars moved from loading track at shipper's directions, when such cars are to be held awaiting dispositioning. When billing instructions are furnished within 24 hours after the first 7:00 a.m. after the switching service is performed, exclusive of Saturdays, Sundays and (6) holidays, no charge will be made when billing instructions are furnished within the time limit specified herein.

Note 2 – Applies only when movement is incidental to a subsequent linehaul, otherwise, Item 1150 applies. Other applicable charges may also apply.

SECTION 2
Switching charges
(Charges in dollars and cents per car, except as otherwise noted

LINEHAUL CHARGES (Rule 11)

ITEM 2000			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	All Other, FAK (Note 1)	$1080.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	All Other, FAK (Note 1)	$1440.00 per car
ITEM 2010			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$480.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Empty rail cars for dismantling or furtherance to off rail points (Note 1)	$720.00 per car
ITEM 2020			
BETWEEN	AND	COMMODITY	CHARGE
Willits CA.	Northspur, CA (Willits Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1320.00 per car
Willits CA.	Fort Bragg, CA (Fort Bragg Subdivision)	Hazardous Materials, STCC 28,29,48,49	$1680.00 per car

Note 1: Rates do not apply on hazardous materials (STCC 28,29,48,49), COFC, TOFC.

ITEM 2500

OVERLOADED OR IMPROPERLY LOADED CARS RECEIVED IN INTERCHANGE

When a car is discovered to be loaded in excess of its stenciled or allowable load limits, or improperly loaded on the CWR, the connecting carrier will be notified and requested to provide disposition.. Cars subject to the above conditions will be placed at a location on the CWR, held pending disposition, and will be subject to storage and other charges as may be applicable under the provisions described in CWR Tariff 6001, and CWR will bill shipper of record (as shown on the Bill of Lading) for such charges until disposition or other instructions have been received. When disposition is received, the applicable charges as shown below will be applied.

A. When a car is received from a connecting carrier and returned to the same connecting carrier at the same junction under one or more of the conditions described above, a charge of $360.00 per car will be assessed.

B. When a car is received from a connecting carrier and switched to and/or from any of the following stations on the CWR for the purpose of reducing, transferring, trimming, shifting or reloading, a charge of $360.00 per car will be assessed. For all other Stations, a charge of $720 per car will be assessed.

Note 1: Disposition on overloaded or improperly loaded cars must be in writing and clearly define the party, name, address, phone and fax numbers, responsible for the charges. This information must be delivered to the CWR via US Mail, facsimile (707-964-6428), or email to CWR's customer service department (Info@SkunkTrain.com).

MENDOCINO RAILWAY

CWR 9500

SECTION 3
WEIGHING
(Charges in dollars and cents per car, except as otherwise noted

---

ITEM 3000 WEIGHING

A. Applicable at all stations on the CWR
B. Weighing will be performed where requested by the customer, provided it is practicable for the CWR to do so and railroad or private scales are available.
C. Charges, if applicable, will be performed pursuant to applicable switching charges under Item 1100.

MENDOCINO RAILWAY

CWR 9500

SECTION 4
SPECIAL MOVEMENTS & ADDITIONAL CREWS
(Charges in dollars and cents per car, except as otherwise noted

---

ITEM 3500 SPECIAL MOVEMENTS

A. Applicable at all stations on the CWR
B. Special movements / work trains maybe scheduled to moves goods or materials with a diesel locomotive and the following CWR cars; flat cars, bottom dump gravel hopper, and side dump car.
    i. Locomotive fee per shall include a basic crew and will be charged at a rate of $800.00.
    ii. CWR Flat Cars will be charged at a rate of $400.00 each per day.
    iii. CWR bottom dump gravel hopper will be charged at a rate of $400.00 per day.
    iv. CWR side dump car will be charged at a rate of $400.00 per day.
C. Crews for any special movements will be billed out at cost, plus benefits, plus overhead.

- END -

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 5 – Letter from Mendocino Land Trust

June 27, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

My nonprofit conservation organization, Mendocino Land Trust, recently became aware that the City of Fort Bragg, CA (the "City") will be submitting an application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[1] replacing 30,000 chromated copper arsenate railroad ties[2] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line. As explained herein, Mendocino Land Trust fully supports the City's efforts because resumption of freight and passenger operations over the entire Line is necessary not only for our company but to also help drive economic growth in the region, which includes Fort Bragg, CA and greater Mendocino County, both of which are decidedly rural.

MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years. MR/CWR have also helped transport police and fire emergency responders, transported water during droughts, and been the bedrock of the community. The Line and the freight and passenger services offered is the critical infrastructure that drives the

[1] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, CA to Willits, CA.

[2] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

region's economy, which has taken a hit since the tunnel collapsed. MR's inability to operate the Line from Fort Bragg, CA to Willits, CA has increased transportation cost for industries and businesses and reduced the flow of customers to the region.

Mendocino Land Trust owns the Noyo River Redwoods property – 426 acres in the middle of the Line. Six miles of the Line wind through our property via a number of switchbacks on steep terrain. They Noyo River Redwoods is conserved by Mendocino Land Trust in perpetuity for forest conservation and regeneration purposes. The only way to take the public to see the property is via the Skunk Train, as the forestry road to the property is very rugged. Many areas of the property are not accessible via dirt road, and Mendocino Land Trust depends on the Skunk Train for much of our maintenance access. Mendocino Land Trust would like to consider housing a caretaker on our property in the future, but that will depend in large part on delivery of goods and services via the train. In addition, the Skunk Train provides transportation for our fundraising events on our property and ships in all equipment and goods needed for such events. The Skunk Train is the primary transporter of crews who help us conduct critical fire defense work.

Mendocino Land Trust knows MR and the Skunk Train well. Our organization is aware that MR has invested heavily in the railroad for the good of the region and has partnered with the region's industries and businesses. MR's actions to date have been impressive. For starters, MR took a lightly used rail line that was in poor condition and spent millions of dollars on the Line to make it essential infrastructure for the region and its economy. To be clear, MR has become and continues to be a responsible partner with the community it serves. The collapse of the tunnel set back much of the progress that MR was able to make in rehabilitating the Line. In the light of the money MR has spent to date, MR, a small company, simply does not have the funds necessary to complete the Project in the foreseeable future. We have been told that Mendocino Railway has offered to pay 50% or more of the total Project cost of approximately $25,000,000 out of its limited resources, and we hope that 2019 BUILD Grant funds can provide the matching funds needed for this crucial Project. We understand that if 2019 BUILD Grant funds are not obtained, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR a small window of time to take action before reopening the entire 40-mile line could become infeasible.

On the other hand, if awarded a 2019 BUILD Grant, the Project will contribute to safer roads, rejuvenate a transportation asset that has served the region for well over a century, enhance the quality of life in the region, promote economic sustainability, and improve economic competitiveness in our largely rural region. Not only is the Project critically linked to Mendocino Land Trust's ability to maintain and provide public access to one of its important nature preserves, but collectively the Project is imperative for future economic growth in the region. As such, Mendocino Land Trust requests that the U.S. Secretary of Transportation give this Project the utmost consideration and approve the funding necessary to make repairs to the tunnel and rehabilitate the Line.

Sincerely,



Ann Cole
Executive Director

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 6 – July 2020 report of the SB 1029 Task Force

Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail



Report to the Legislature
2020

California Natural Resources Agency

State of California
Department of Finance

DGS General Services
Facilities Management Division

California Department of Parks and Recreation

Caltrans

OSAE

CalSTA
California State Transportation Agency

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EXECUTIVE SUMMARY

North Coast Railroad Authority (NCRA) was created in 1989 to maintain and operate freight rail service between the Bay Area and Humboldt Bay. Declining industry revenue, deferred maintenance, and catastrophic storm damage shut down rail operations north of Windsor, Sonoma County, in 1998. Operations south of Windsor resumed in 2011, and NCRA continued to strive to resume rail service in the north, only to fall deeper into debt each year. (Please see the map in Figure 1 for project locations.)

Senator Mike McGuire introduced the North Coast Railroad Authority Closure and Transition to Trails Act (SB 1029, Chapter 934 Statutes of 2018), which was signed into law by former Governor Edmund G. Brown Jr. in September 2018. The Act directs the California State Transportation Agency (CalSTA), in consultation with the Natural Resources Agency, to "conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve North Coast Railroad Authority and dispense with its assets and liabilities," as well as "a preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by North Coast Railroad Authority, and recommendations relating to the possible construction of a trail." Finally, the statute requires "an assessment of the options for transferring the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail." See page 12 and Appendix A for additional detail.

CalSTA convened a multi-agency SB 1029 Task Force (Task Force) comprised of representatives from the California Department of Transportation (Caltrans), the Natural Resources Agency, the Department of Parks and Recreation (State Parks), the Department of Finance, and the Department of General Services (DGS). The Task Force agencies conducted independent studies in their respective areas of expertise and prepared individual assessment reports focused on their findings, included as Appendices C, D, and E. These appendices are available on the CalSTA website at: https://calsta.ca.gov/subject-areas/reports.



Figure 1. Current Ownership Map of the Historic Northwestern Pacific Rail Line

Report Organization

This report is presented in sections defined by the areas of concern described in SB 1029 and are an assimilation of findings from all Task Force assessment reports, which examined NCRA and the proposed Great Redwood Trail from unique perspectives.

Areas of concern discussed in this report include:

- Financial Assessment
- Successor Agency Governance Options
- Property Assessment
- Rail-Trail Constructability
- Railbanking Assessment
- Freight Rights in the Southern Section

Key Findings

The following items were identified during the assessment and have been highlighted here as significant considerations for the proposed dissolution of NCRA and development of a Great Redwood Trail.

Financial Assessment

The financial assessment was conducted by the Department of Finance, Office of State Audits and Evaluations (OSAE). Additional detail can be found starting on page 20 and in the full OSAE report (Appendix C).

Value of Assets - NCRA has a calculated value of net assets of (-) $7.2 million as of December 31, 2019.

Outstanding Debt - As of December 31, 2019, total known liabilities were $7.4 million. In addition, contingent liabilities are estimated to total at least $11 million, but many are unknown and could total additional millions of dollars. (See Appendix C for more detail.)

Contingent Liabilities – This assessment identified contingent liabilities with unknown but potentially significant costs that must be factored into any dissolution plan for NCRA. These include but are not limited to: staff pensions; unidentified environmental contamination; removal of abandoned rail equipment in the Eel River; levee repairs; stabilization or removal of structures; and possible future litigation.

Property Assessment

The property assessment was conducted by OSAE, DGS, and State Parks. Their findings are discussed in detail beginning on page 29 and in the agency's individual reports (see Appendices C, D, and E).

Pro Rata Share of Proceeds - NCRA's property, rights-of-way, and easements were purchased with state and federal funds totaling $141 million. In accordance with governing law, Funds Transfer Agreements between the State of California (State) and NCRA require that all rights-of-way and other property acquired with public funding must remain dedicated to public transportation uses *in perpetuity*. If property or equipment are declared excess, disposed of, or taken out of public transportation use, the State and Federal Highway Administration have options, including: taking title to the property; directing its *pro rata* share to other eligible public transportation projects (pending CTC approval for state funds); or requiring proceeds from the fair market sale be returned or credited to the State, in the proportionate funding participation by State and other non-recipient generated public funds. For the right-of-way from Willits, Mendocino County, to Humboldt Bay the proportionate share is 100-percent state funds, and Willits to Healdsburg, in Sonoma County, is 10-percent state, 90-percent federal. On a recent right-of-way sale in Ukiah, Mendocino County, NCRA retained the 90-percent federal share of proceeds. Additional study would be needed to determine if proceeds from liquidation would be enough to satisfy the outstanding debt while also allowing state and federal programs to recoup their investments.

Licenses and Permits - As an "active" railroad, NCRA is governed and regulated by the federal Surface Transportation Board (STB), the Federal Railroad Administration, the California Public Utilities Commission, and various resource-permitting agencies. For the rail line north of the Sonoma-Mendocino county line to be dismantled, all three government agencies must be consulted and involved in the process.

Title Searches, Reversionary Clauses, and Liens - Liquidation of the corridor will require a detailed examination of individual title reports. This assessment has identified more than 2,800 parcels that will need to be reviewed on a case–by–case basis for reversionary clauses and possible liens prior to disposition for a non-rail use.

Lease Agreements and Encroachments - Existing lease agreements must be assessed individually based on the underlying property status. These vary in conditions and length of the term.

Railbanking Assessment

The railbanking assessment was conducted by State Parks and is described in detail starting on page 24 and in Part II of Appendix D.

Legal Process - Railbanking is a legal process administered by the STB by which unprofitable or unused rail corridors can be converted to trails for recreational or transportation purposes. The process begins when a railroad company files legal notice it plans to abandon the line and a trail manager files a request to railbank it within 30 days. Due to the short timeframe a trail manager should to be identified prior to abandonment. Another railroad company could disrupt the railbanking process if it wishes to use the railroad corridor for trains.

Future Railroad – Railbanking preserves the corridor for future railroad use.

Reversionary Clauses – These clauses are commonly found in railroad easements and return ownership of abandoned railroad property to underlying property owners. These are generally not triggered by railbanking (which is a "rail" use) but must be reviewed on a case-by-case basis due to variations in language.

Successor Agency Governance Options

Six typical trail management governance structures were analyzed for potential trail governance. Of these six structures, four were considered options for the Great Redwood Trail and were analyzed in more detail. This assessment concluded that a central governance structure, as a successor agency, is best suited to most efficiently meet the railbanking requirements and to manage and maintain a trail that crosses multiple jurisdictions. This successor agency should own the entire corridor, have a clear reporting structure, and have access to a consistent, reliable funding stream. This organization/agency could either develop, manage, and maintain the entire length of the corridor, or partner with various public and private entities for these services at specific locations along the trail. A full discussion of the options and case studies begins on page 41 and is included in Part II of Appendix D.

Rail-Trail Constructability

The Rail-Trail Constructability and Feasibility assessment was conducted by State Parks and looked at physical conditions, cultural resources, historic structures, accessibility, constraints in the Eel River Canyon, active transportation route opportunities, and ease of construction. A full discussion of the issues can be found starting on page 54 and in Part I of Appendix D. Key highlights of these findings include the following:

Planning-level Cost Estimates - Trail development of the entire 252-mile corridor is estimated to cost nearly $750 million, or about $3.1 million per mile, in 2020 dollars, and in excess of $1 billion, or about $4.6 million per mile, in 2030 dollars. These costs are in addition to the known and contingent liabilities described above and would be incurred over many years based on project phasing and priorities. These cost estimates do not include unknown, but potentially significant, environmental remediation costs that may be required prior to project construction. The significant costs and long-term maintenance challenges are related mostly to major stabilization of slopes; rebuilding or replacement of deteriorated rail infrastructure; and potentially rerouting around major obstructions.

Physical Constraints - Throughout the entire rail corridor, but more concentrated in the Eel River Canyon, physical constraints that influence trail feasibility include: geomorphic challenges (landslides, high-risk slopes); large right-of-way encroachments (particularly if they are legally authorized); failing infrastructure (bridges, trestles, culverts, and tunnels); abandoned equipment; and previous contamination or hazardous materials sites that may require remediation. In addition, the presence of wetlands and special-status species; historic structures: areas of archaeological sensitivity; and tribal lands may present significant constraints to trail development.

Major Opportunities - Most of the corridor is conducive to trail construction and problem areas are in discreet, identifiable locations. In the Eel River Canyon, for example, it is estimated that 75 percent to 85 percent of the corridor is in good physical condition for trail construction. Trail design options could reduce construction and environmental mitigation costs; thereby improving feasibility. If fully developed, the Great Redwood Trail would provide a tourist attraction and active transportation commuter route. It is estimated to generate $24 million in annual local economic activity, reduce 1,580.43 metric tons of carbon dioxide, and increase walking and biking by 1,384,915 new trips annually.

Potential Environmental Remediation, Mitigation, and Liability

Environmental remediation, mitigation, and liability costs are estimated at $4 billion based on a precursory analysis of existing conditions visible in the corridor; prior environmental studies, databases, and consent decrees; cost comparisons; and knowledge of current regulation. It includes an assessment of project-level environmental studies and wetland mitigation, which will vary depending on the project design. It also estimates remediation of known hazardous waste contaminants as part of a larger trail project. A detailed discussion can be found starting on page 64 and in Appendix F.

NCRA has an outstanding consent decree requiring environmental remediation at station sites throughout the corridor. Cost for the remediation effort was estimated in 2002 at $4.3 million to $6.9 million. There are additional liabilities due to abandoned rail equipment, including rail cars, that are left along the line and in the Eel River. NCRA has received legal notice from at least one local jurisdiction that it must remove abandoned rail equipment, in the City of Eureka, but this effort was halted due to worker exposure to hazardous material. The equipment remains onsite. Finally, there are unconfirmed potential costs and obligations regarding the storage of liquefied petroleum gas in Schellville, Sonoma County, which is in the southern section proposed for transfer to Sonoma-Marin Area Rail Transit District (SMART).

If the Great Redwood Trail project moves forward and the railroad corridor is converted to a trail, wetland mitigation and hazardous waste remediation will be required. The level of effort and therefore, cost, varies greatly depending on the chosen project design and site-specific characteristics not yet identified through environmental studies. Based on the project phasing developed in State Parks' report (Appendix D), Caltrans' North Region Division of Environmental developed a cost estimate for environmental liability focused on these two aspects of the project, including some environmental studies. The planning-level estimate for wetland mitigation is $103 million. Hazardous waste was identified at 39 locations based on previously documented reports. The remediation estimate assumed that all ballast (gravel in railbed) would be required to be removed and cleaned off-site and that only 50 percent of the track would be easily accessible from the road, with a cost estimate of $3.9 billion to $4 billion for full remediation of the entire corridor. If the trail project does not move forward, or if the ballast does not require removal, this liability cost estimate will be reduced. (See Appendix F)

Freight Rights in the Southern Section

The highest and best use of the NCRA right-of-way and freight operations easement on the southern portion of the rail corridor (beginning with mile post 89 at the Sonoma-Mendocino county line) is a transfer to SMART for passenger and freight rail operations. It is also well suited to development of rail-with-trail segments as part of the Great Redwood Trail. Section 17 of SB 1029 appropriated the sum of $4 million to SMART for the acquisition of freight rights and equipment from North Western Pacific Railroad Company (NWPCo), NCRA's contracted freight operator, to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service. In addition, the Budget Act of 2019 appropriated $2 million dollars to SMART for safety upgrades and maintenance upon acquisition of a freight contract. The Task Force acknowledges that SMART will need funding to adequately maintain

the additional right-of-way and freight operations. SMART, NWPCo, and NCRA have concurred with this arrangement and the agreements to execute the transfer are in progress. A detailed discussion of freight rights starts on page 71.

Scenario Analyses

Final Task Force recommendations distill findings from the individual Task Force assessments into five alternative scenarios. Scenarios 1, 2, and 5 consider the financial and policy implications of dissolving NCRA, while scenarios 3 and 4 leave NCRA intact. Scenarios 2 and 3 also explore the financial and policy implications of converting the former railroad to the Great Redwood Trail, a multi-use "active transportation" corridor, as proposed by SB 1029. Scenario 1 liquidates the right-of-way, scenario 4 maintains NCRA's *status quo*, and scenario 5 contemplates purchase of the right-of-way by another railroad company.

The five scenarios considered include:

Scenario 1: NCRA is dissolved, and its right-of-way is liquidated

Scenario 2: NCRA is dissolved, and its right-of-way is converted to a trail

Scenario 3: NCRA is not dissolved, and its mission is amended

Scenario 4: NCRA maintains *status quo*.

Scenario 5: A new railroad company buys out NCRA

Dissolution of NCRA

Dissolution of NCRA requires legislation because a dissolution plan was not included in its enabling legislation and a process has not been previously established. Scenarios 1, 2, and 5 include dissolution as part of the analysis. Dissolution considerations are discussed beginning on page 78 and include the following:

- NCRA's outstanding debt;
- Ongoing lease agreements, encroachments, licenses, and permits;
- Environmental remediation and potential ongoing liability; and
- NCRA's role in railbanking.

Scenario 1 includes liquidation of the right-of-way and must also consider the following:

- Liquidation of the corridor prevents future railroad use (pages 78 and 83);
- The cost of title reports must be planned for;

- Reversionary clauses will be triggered (see page 35);
- Existing lease agreements and contracts may interfere with liquidation plans; and
- If the State requires sale proceeds returned (see page 32) and additional costs to the seller are incurred by real estate due diligence environmental analyses (see page 81), liquidation may result in a negative net value.

Scenario 2 includes conversion of the right-of-way to a trail and must also consider the following, as discussed in detail starting on page 84:

- A trail manager must be identified, and effective trail governance established, before rail abandonment commences;
- Railbanking costs and timeframes per STB regulations must be planned for;
- A reliable funding source for trail development must be identified;
- Environmental mitigation costs will vary based on trail design and will need to be reassessed; and
- Effective stakeholder input must be incorporated into the process.

Scenario 5 includes the purchase of NCRA by a new railroad company and must include the identification of a railroad company with the resources to rehabilitate the railroad line. This is discussed in detail starting on page 89.

NCRA is not Dissolved

Scenarios 3 and 4 maintain NCRA's governance of the rail corridor.

Scenario 3 changes NCRA's mandate from owning and operating a railroad to owning, constructing, and maintaining a trail in the rail corridor. Repurposing NCRA by amending its mandate to focus on trails is discussed in more detail starting on page 86 and would need to consider the following issues:

- NCRA would be 1) the railroad owner and would need to file a notice of abandonment for the railroad with the STB, and 2) the trail management successor agency, which would need to apply to railbank the corridor with STB before proceeding with the trail development process.
- It would still need to address the issues discussed above, including outstanding debt; lease agreements and encroachments; licenses and permits; and environmental liability.
- A reliable source of revenue would be required to cover agency operations under the revised mandate, including additional staff expertise for a trail management agency would need to be identified.
- NCRA is a quasi-governmental entity which lacks formal public oversight, and has resulted in a lack of transparency, public mistrust and significant debt. Structural change to avoid repeating past problems is

recommended. Specifically, NCRA should be identified as a local agency, state agency, transportation district, or private organization and new reporting requirements with clear oversight responsibilities should be created.
- Staff with trail management experience would need to be hired.

Scenario 4 maintains the status quo and makes no changes to NCRA or the railroad corridor. Based on results of this assessment, key considerations are discussed in more detail starting on page 88 and include:

- It is anticipated that current conditions are not conducive to NCRA meeting its existing mandate to rehabilitate the railroad north of Windsor and its regular annual revenue cannot support agency operations combined with its current debt load.
- Liquidation of NCRA's assets is not likely to cover current outstanding debts, deferred maintenance, and continuing property management responsibilities, and NCRA may be forced into bankruptcy or immediate dissolution. In such an event, NCRA's right-of-way is likely to fall to the Department of General Services.
- Environmental liabilities may persist.

Next Steps

Statutory changes would be required to dissolve NCRA and set a clear path forward for the corridor. It would be beneficial for management of the corridor if follow-up legislation clarified whether the right-of-way should be liquidated, sold to another railroad company, or converted to the Great Redwood Trail. If the Great Redwood Trail option is preferred, the legislation should also identify or create a successor trail management agency (or amend NCRA's mandate) with a clearly defined governance structure and oversight mechanism, a reliable revenue source to support agency operations, and establish a process for public stakeholder engagement in the next phase of the project. Finally, resources to support NCRA agency operations through the dissolution process, with ongoing CalSTA oversight, should be considered.

SB 1029 requires NCRA to seek approval from the California Transportation Commission (CTC) for any sale, easement, or lease executed after August 1, 2018. Caltrans continues to monitor NCRA's contracts, activities, and provide technical assistance, including liaising with CTC as necessary.

Conclusion

NCRA's right-of-way includes significant and costly challenges. The agency's debts threaten its financial viability, and all options for resolution are expensive. The Legislature stepped in to protect the failing railroad in 1989 when it created NCRA and funded its right-of-way acquisitions. The CTC supported NCRA when it allocated transportation funds for rail rehabilitation. If NCRA is left to disband on its own, it is likely that NCRA's assets and liabilities will ultimately fall to DGS, which handles abandoned property. Railbanking the corridor would allow for interim trail use, preserve the corridor for future railroad use, and create an attractive tourist destination as well as a scenic non-motorized commuter route.

Acronyms

This assessment report uses the following abbreviations, acronyms, and common names.

- CalSTA, California State Transportation Agency
- Caltrans, California Department of Transportation
- CTC, California Transportation Commission
- DGS, Department of General Services
- NCRA, North Coast Rail Authority
- NWPCo, Northwestern Pacific Railroad Company
- NWPRA, Northwestern Pacific Railroad Authority
- OSAE, Department of Finance, Office of State Audits and Evaluations
- RRIF, Railroad Rehabilitation & Infrastructure Financing
- SMART, Sonoma Marin Area Regional Transit
- State, State of California
- State Parks, California Department of Parks and Recreation
- STB, Surface Transportation Board



Figure 2. NCRA Corridor, Southern Section

STATUTORY REFERENCE & PURPOSE

This assessment report is submitted to the California Legislature (Legislature) in compliance with Government Code section 13978.9, which requires the California State Transportation Agency (CalSTA), in consultation with the Natural Resources Agency, to conduct an assessment of North Coast Railroad Authority (NCRA) to provide information necessary to:

1) determine the most appropriate way to dissolve NCRA and dispense with its assets and liabilities including the debts, liabilities, contractual obligations, and litigation; assets, including property, rights-of-way, easements, and equipment; and freight contractor lease, including the contractor's assets and liabilities, to the extent that information is available;

2) assess the feasibility of converting the railroad corridor to a multi-use trail including an assessment of governance structure options for a successor agency that would assume ownership and management responsibilities from North Coast Railroad Authority;

3) assess options for railbanking portions of the railroad corridor, feasibility, and process of railbanking; and

4) assess the options for transferring the southern portion of the rail corridor to the SMART including material assets and liabilities, as well as rights and abilities to operate freight rail.

An excerpt of the applicable Legislation is included in this Assessment Report as Appendix A.



HISTORY OF NCRA AND THE STATE OF CALIFORNIA

The historic Northwestern Pacific Railroad begins at the Ferry Building in San Francisco, mile post 0.0, and runs north to Humboldt County where it splits, circling west around Humboldt Bay and east past the City of Blue Lake to Korbel, a small historic logging settlement in the Redwoods of Humboldt County — a total distance of approximately 316 miles. (See Figure 1, page 2) The Northwestern Pacific line was built in the late 1800s to haul redwood lumber and passengers between Humboldt County and the San Francisco Bay Area. It was in regular operation by a series of private owner-operators until the 1980s when the timber industry began to decline. In 1983, Eureka Southern Railroad, a private enterprise, which owned the northern section (Willits to Humboldt Bay) sought authority to abandon the rail line under 49 U.S.C. Section 10903 from the Interstate Commerce Commission[1]. The Commission denied the request in 1984, and Eureka Southern Railroad filed Chapter 11 Bankruptcy on December 15, 1986. The railroad, and liquidation of its assets, then fell under the jurisdiction of the US Bankruptcy Court and its trustee, Philip M. Arnot[2].



Figure 3. Section of the NCRA Railroad in the Eel River Canyon

To preserve the rail corridor, the California Legislature enacted the North Coast Railroad Authority Act, Government Code sections 93000, et seq. (Statutes of 1989, Chapter 1085). The Act authorized the newly created public entity to provide passenger and freight railroad service in Humboldt, Trinity, Mendocino, Sonoma, and Marin Counties with specific focus on the Eureka Southern Railroad in Humboldt and Mendocino Counties and the option of extending service into

[1] The Interstate Commerce Commission was abolished in 1995 and several of its functions, including the governance of railroads, were transferred to the Surface Transportation Board.
[2] In Re Eureka Southern Railroad Inc., 1987

Del Norte County. To facilitate this, the Legislature authorized the use of state and federal funds to begin purchasing the line, one segment at a time. The details of these purchases and types of funds can be found in Appendix B, *Public Investment in the NCRA Rail Corridor*.

The first purchase, which took place in 1992, included a portion of rail and all assets owned by Eureka Southern Railroad under the purview of the bankruptcy trustee. This section of rail, which extended from Willits north to Korbel and around Humboldt Bay, used state Proposition 116 funds (1990) exclusively for the right-of-way purchase and made NCRA the sole owner of freight and passenger rights. (See the map in Figure 1, Page 2)

Three additional right-of-way purchases were brokered in 1995 and 1996 on the southern portion of Northwestern Pacific line with ownership shared between NCRA and a Joint Powers Authority, North Western Pacific Railroad Authority (NWPRA), which would eventually transfer all its holdings to SMART. The "Willits," the "Healdsburg," and the "Lombard" Segments extended public ownership of the railroad from Willits, Mendocino County, south to Novato, Marin County, and from Ignacio, Marin County, east to Lombard near the Napa River in Napa County and national rail interchange. Figure 4 on page 16 depicts the right-of-way ownership delineation lines, with the red segment under NCRA ownership and the blue segment under SMART's. The two entities have further developed operational easements and maintenance agreements in their shared territories.

After purchasing the Eureka Southern Railroad in 1992, NCRA operated freight service and a short-lived passenger rail service before severe storm damage and deferred maintenance compelled the Federal Railroad Administration to close the entire NCRA railroad from Arcata to Schellville for public safety reasons[3] in 1998. Not only were there landslides and collapsed tunnels, but there were also railcars in the Eel River (where they continue to reside in 2020), and staff were not adequately trained to safely handle operations. The railroad remained closed until 2011 when the Emergency Order was lifted for Windsor south to Ignacio and east to Lombard, for freight service only.

After 23 years with no operable railroad north of Windsor, Senator Mike McGuire introduced Senate Bill 1029 (SB 1029), the *NCRA Closure and Transition to Trails Act*. SB 1029 was signed into law (Chapter 934, Statutes of 2018) by former Governor Edmund G. Brown Jr. on September 29, 2018.

[3] Emergency Order 21, Notice No. 1 on November 25, 1998

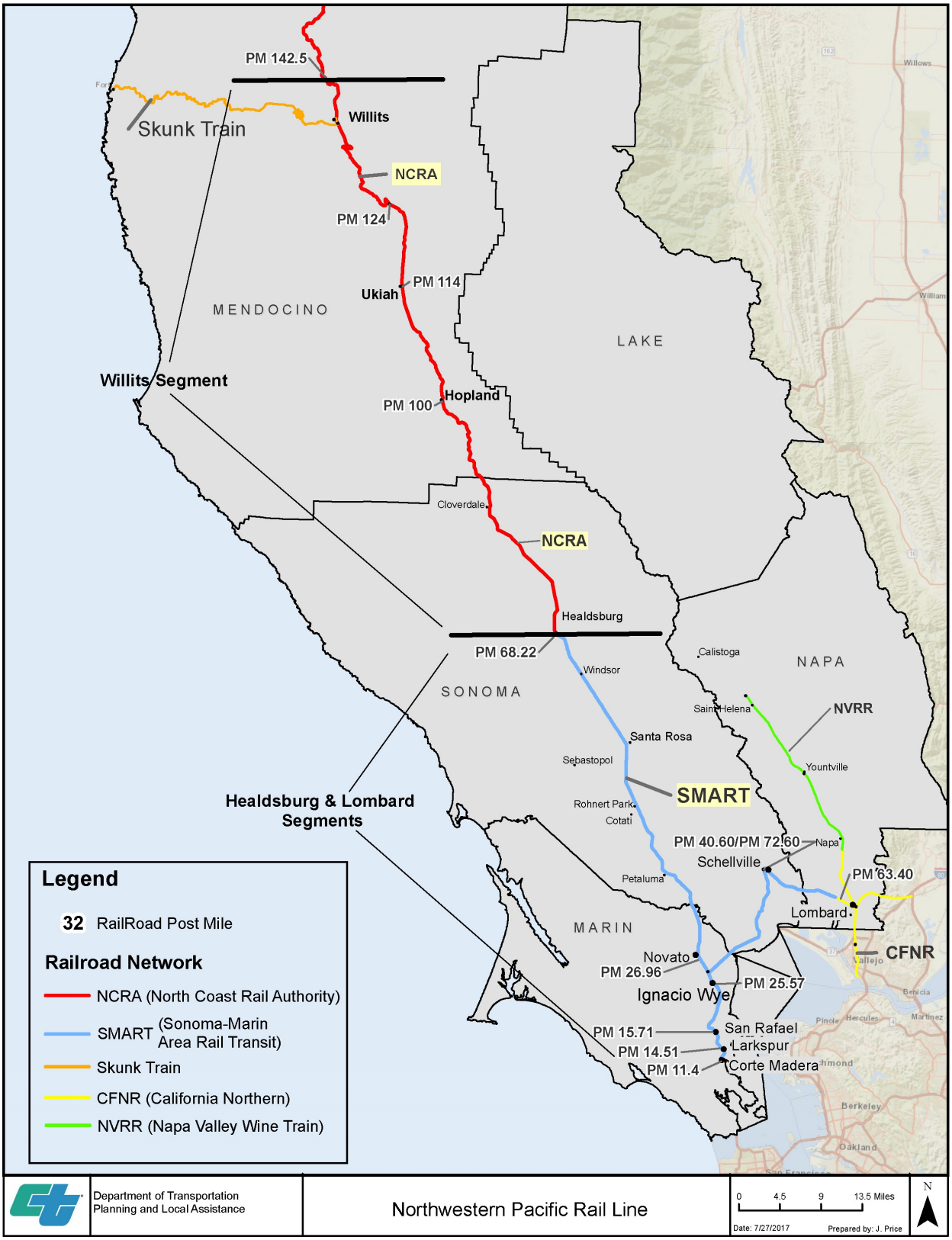


Figure 4. Map of Northwestern Pacific Railroad - Southern Section

State Oversight

When the Legislature created NCRA, it did not designate NCRA as a state or local agency and did not appropriate funding for its operations. Since its inception, NCRA has covered its expenses from rail revenues; state grant funding; public and private loans; loan forgiveness; proceeds from lease agreements; and leasing or sale of assets.

NCRA's quasi-governmental status has complicated its relationship with the state and local jurisdictions. As an independent special district, it has claimed to be a "state agency," a "local agency," and when it has been beneficial, a "railroad," thereby qualifying itself periodically for a variety of different funding mechanisms and environmental exemptions. Aside from the California Public Utilities Commission, which exercises state jurisdiction over rail operations, NCRA has no formal state oversight built into its governance structure. Caltrans does not have prescriptive or enforcement jurisdiction over NCRA, and oversight activities have been limited to fiduciary responsibilities associated with grant funds allocated by the CTC and administered by Caltrans.

As a result, Caltrans has provided monitoring and auditing for state-funded activities of NCRA. After a 1998 post-project audit conducted by Caltrans' Office of External Audits and Investigations[4], NCRA received the designation of "High-Risk Grantee" and the CTC began requiring 'special conditions' to be included with each subsequent release of funds. These conditions required enhanced oversight by Caltrans and more rigorous reporting by NCRA. Subsequent audits have not removed the "High-Risk Grantee" designation.

Public Investment in the NCRA Corridor

Between 1990 and 2011, a total of $124 million of state and federal funds were invested in the NCRA corridor to restore freight rail service. These funds were used to purchase the entire right-of-way from Lombard to Humboldt Bay; to rehabilitate 62 miles of track (including 56 crossing signals, 50,000 crossties, and 50,000 tons of ballast); emergency levee repairs in Schellville and Humboldt Bay; repair 43 rail bridges and three movable bridges; install quiet zones in Novato; to briefly cover NCRA agency funds and outstanding debt; to settle litigation; and to address environmental contamination left behind by the historic private rail

[4] With the passage of Senate Bill 1, The Road Repair and Accountability Act of 2017, Caltrans's Office of External Audits and Investigations was reorganized. The new Independent Office of Audits and Investigations is led by a Governor appointed Inspector General and is vested with the authority to maintain a full-scope, independent, and objective audit and investigation program.

operators. However, the economic, environmental, and social challenges NCRA faced proved insurmountable for the resumption of freight rail service in this corridor, which has led to the current effort and assessment for use of NCRA's right-of-way as a multi-use path.

Current investment in the SB 1029 Assessment and associated dissolution activities includes $17.8 million. A full description of state and federal funds used in this corridor can be found in Appendix B, *Public Investment in the NCRA Rail Corridor*.

Table 1. Summary of Public Investment in NCRA Rail Corridor

Purpose	Amount
Right-of-Way and Equipment Acquisition	$44,800,000
Rail Rehab/Capital Projects	$48,744,364
Project & Environmental Studies	$12,677,000
Debt, Admin, Local Match	$17,310,550
SB 1029 Assessment & Dissolution	$17,800,000
TOTAL PUBLIC INVESTMENT	**$141,331,914**

Northwestern Pacific Railroad Company (NWPCo)

Following an open bidding process, NCRA's Board of Directors approved NWPCo as its new freight operator on September 13, 2006, and executed an Operating Agreement later that month.

NWPCo is a private enterprise created in June 2006 and should not be confused with the prior owner-operator, North Western Pacific Company L.L.C. (NWPY); the historic name of the rail line, Northwestern Pacific Railroad (NWP); nor the Joint Powers Authority and SMART predecessor described previously on page 15, NWPRA.

Following execution of the Operating Agreement, NWPCo and NCRA entered into a series of complicated contracts that helped finance rehabilitation of the southern portion of the line and lift the Emergency Order 21 from Windsor, south; it also left NCRA severely in debt to NWPCo and contractually obligated for up to 99 years with no guaranteed lease payment revenue[5]. These contracts and financial arrangements are detailed on page 23 and Appendix C, *OSAE Calculated Value of Net Assets Report*.

[5] Unless and until NWPCo's revenues exceed $5,000,000 for freight operations on the line, it owes no annual lease payment to NCRA.



FINANCIAL ASSESSMENT

Scope of Work

OSAE's responsibilities and objectives for its component assessment report were to 1) assess NCRA's debts, liabilities, contractual obligations, and litigation; 2) assess NCRA's assets, except for the estimated values for equipment and real properties with property rights; and 3) assess NCRA's freight contractor lease, including the contractor's assets and liabilities, to the extent that information is available. The OSAE assessment did not include the estimated values for equipment, real properties with property rights, and contingent (including potential environmental) financial liabilities. Instead, the Task Force teams collaborated to compile lists of equipment and contingent liabilities based on the information available and verified the existence of the equipment whenever possible. As a result, the calculated value as of December 31, 2019, presented on the following pages excluded values for these items.

In conducting the assessment and determining the calculated value, OSAE focused on NCRA's business transactions from July 1, 2016, to December 31, 2019, and expanded this period when necessary to the extent the information was available. OSAE interviewed individuals from NCRA, including NCRA's board members, Caltrans, SMART, and NWPCo. OSAE reviewed NCRA's and NWPCo's accounting records and other available documents; reviewed working papers of the independent auditors of NCRA and NWPCo; obtained third-party confirmations and representation on financial and legal information and equipment conditions; and visited select NCRA depots to verify equipment. Because not all records were available and NCRA was able to provide only limited information on NCRA activities, OSAE's determination of calculated value is based on certain assumptions, as cited in the report.

OSAE's complete *Calculated Value of Net Assets Report* is included as Appendix C.

Net Calculated Value of NCRA

Based on the calculation procedures performed by OSAE; facts and circumstances as of the calculation date; and assumptions made, the calculated value of NCRA's net assets as of December 31, 2019, was a total debt owed of $7,239,933. This calculated value excludes capital assets (equipment and real properties) and contingent liabilities. The current market value of these assets has

not been calculated or considered here. Table 1 summarizes the calculation results.

Table 2. Calculated Value of Assets and Liabilities as of Dec. 31, 2019

Description	Calculated Value
Cash	$ 104,857
Accounts Receivable, net of Allowance for Bad Debt	$ 41,378
Other Current Assets	$ 22,453
Total Assets	$ 168,688
Railroad Rehabilitation & Improvement Financing Loan	$ (2,403,899)
Debts owed to NWPCo	$ (3,321,721)
Professional Services Payables	$ (1,000,657)
Employment Related Liabilities	$ (235,365)
All Other Payables	$ (446,979)
Total Liabilities	$ (7,408,621)
Total Calculated Value	$ (7,239,933)

Financial Assets

The following financial assets are variable, and the totals included in this report are confirmed only through December 31, 2019. NCRA continues to be an operational organization with daily agency activities, and these confirmed totals will need updating if NCRA is dissolved. NCRA's major assets are briefly described below; please refer to the full *Calculated Value of Net Assets Report* in Appendix C for additional detail.

Cash

Valid and Supported Balance $104,857

NCRA's cash is pooled with the Sonoma County Treasurer, which has been maintaining and managing NCRA's bank accounts and acting as NCRA's disbursing agent since 2001. The assessment validated cash transactions greater than $5,000 between July 1, 2016, and December 31, 2019, by reviewing associated agreements and invoices.

Accounts Receivable

Valid and Supported Balance $41,378

Accounts receivable consist of uncollected property lease income and other service fees. Based on OSAE's review of income transactions for the period between July 1, 2016, and December 31, 2019, and the associated lease

agreements and invoices, NCRA's primary income sources included revenue from leasing rail cars, properties, and cellphone towers' facilities.

Other Current Assets

Valid and Supported Balance $22,453

NCRA's other current assets confirmed total includes prepaid insurance expenses and small deposits made in 2006 and is valid as of December 31, 2019.

Outstanding Debt and Contractual Obligations

NCRA's debt obligations as analyzed in the OSAE report are valid as noted below as of December 31, 2019. Activity on the accounts after December 31, 2019, has been noted as updates in the description but have not been confirmed in the total calculated value presented by OSAE. For additional detail, please see the full Calculated Value of Net Assets Report in Appendix C.

RRIF Loan

Recorded Balance $2,403,899
Valid and Confirmed Balance $2,403,899

The Federal Railroad Administration granted NCRA and NWPCo a loan, as co-borrowers, from the Railroad Rehabilitation & Improvement Financing (RRIF) Program in November 2011.

Under the loan terms, the Federal Railroad Administration agreed to lend NCRA and NWPCo up to $3.18 million for allowable project costs. The loan bears an interest rate of 2.96 percent per annum and is due and payable in full 25 years after the date of the drawdown. NCRA-owned rail cars and equipment (identified previously as assets) were pledged as collateral to secure the loan.

Update after December 31, 2019:

- NWPCo has made two quarterly payments of $45,115 each.
- CalSTA has encumbered funds to settle the remaining RRIF Loan balance; as part of the transfer of freight rights from NWPCo to SMART, south of the Sonoma-Mendocino county line.

Debts Owed to NWPCo

Recorded Balance $3,992,534
Calculated Value Total $3,321,721

Incorporated in June 2006, NWPCo is a freight carrier operating 62 miles of rail between Lombard and Windsor. NWPCo and NCRA entered into an Operating Agreement in September 2006 for the resurrection of operations along the Northwestern Pacific Railroad Line between Willits and Healdsburg, including NCRA's freight easements between Healdsburg and Lombard.

The Operating Agreement had an initial term of five years, with options to extend. In September 2011, NWPCo sent a Notice of Action to extend the agreement term by 20 years. Under the agreement, NWPCo is required to remit annual lease payments in the amount of 20 percent of net income commencing in the first year after NWPCo has generated positive net income exceeding $5 million. In June 2011, the Operating Agreement was amended to require NWPCo to remit $25,000 monthly lease payments. The lease payment requirement was waived, and the obligation was terminated upon the execution of the Memorandum of Understanding – FRA Loan.

Since September 2006, NCRA and NWPCo have maintained a close financial and operational relationship. While NCRA struggled to become financially sustainable, it incurred significant debt through continued borrowing from NWPCo. Specifically, NCRA entered into eight agreements, seven amendments, and one informal financing arrangement with NWPCo to fund NCRA's operations. It also incurred a trade payable obligation. As of December 31, 2019, OSAE's calculated value of NCRA's debts owed to NWPCo totaled $3,321,721. A detailed discussion can be found in the full OSAE report (Appendix C).

Calculated Value for Legal Obligations – Judgments/Settlement Claims

Recorded Balance $2,155,198
Calculated Value Total $0
Updated Balance $658,183+

OSAE categorized legal obligations such as legal judgements and settlement claims as Legal Liabilities in its *Calculated Value of Net Assets Report* in Appendix C. For purposes of this discussion, Legal Liabilities are referred to as legal obligations – judgements/settlement claims.

OSAE identified three long-term legal obligations – judgments/settlement claims liabilities, two of which could not be verified. The third liability was settled in April 2019 with Friends of the Eel River and Californians for Alternates to Toxics

regarding their lawsuit over NCRA's Russian River Division Environmental Impact Report (EIR). CalSTA used funds appropriated in the 2019 Budget Act to settle the Russian River Division EIR lawsuit debt of $1,915,803.29 in January 2020. Although this payment was made after December 31, 2019, it was included in the calculation to determine the calculated value.

Update after December 31, 2019:

On April 29, 2020[6], NCRA settled one lawsuit OSAE identified as a contingent liability (see Table 3). According to the stipulated judgement against NCRA, an outstanding balance of $658,183 is owed to MCM Construction and interest will accrue at a rate of 7 percent per annum from May 5, 2020, until paid in full. In September 2019 MCM Construction filed a complaint for breach of contract and violation of prompt payment statutes, alleging NCRA owed a total of $500,000 for work performed on the Ukiah Depot courthouse project. In addition to the 7-percent post-judgment interest and opposing party's attorney's fees, NCRA is required, pursuant to Public Contract Code, to pay 2 percent interest on retention and 10 percent interest on progress payments.

Professional Services Payables

Recorded Balance $1,002,852
Confirmed Total $1,000,657

NCRA maintains two regular staff members (Executive Director and an Executive Assistant). All other staff are on-call contractors. As of December 31, 2019, NCRA owed two of its contractors a total of $1,000,657 for services rendered.

American Rail Engineering, Inc.

NCRA entered into a professional services contract with the American Rail Consultants in January 2007 for engineering and other supporting services.

The assessment noted NCRA's unpaid invoices balance of $410,365 materially agrees with American Rail Engineering, Inc.'s, confirmation and is valid and supported. However, an adjustment of $5,699 is needed to increase interest owed to $189,903 based on American Rail Engineering, Inc.'s, confirmation and OSAE's recalculation.

Outstanding balance owed to American Rail Engineering, Inc., as of December 31, 2019, is $600,268.

[6] MCM and NCRA reached settlement on April 29, 2020. The Mendocino County Superior Court entered the settlement into judgment on May 5, 2020.

Update after December 31, 2019:

American Rail Engineering, Inc., has an active contract for Professional Services that it continues to provide to NCRA. Outstanding invoices for work performed during FY 2019-20 have been brought current using NCRA lease revenue and CalSTA funds from the Budget Act of 2019[7], which appropriated $8.8 million for "expenses related to dissolving NCRA, including operations, maintenance, and the retirement of outstanding debt." Outstanding invoices for services provided by American Rail Engineering, Inc., prior to FY 2019-20 do not qualify for payment from this funding source and will continue to accrue interest until satisfied.

Christopher Neary

Christopher Neary served as NCRA's legal counsel until February 2019, when Sonoma County became NCRA's legal counsel. Based on OSAE's review, NCRA's recorded balance owed to Christopher Neary should be reduced by $7,894, due to an incorrectly recorded invoice and a duplicate monthly retainer recorded for September 2017. As of December 31, 2019, the calculated value for amounts owed to Christopher Neary is $400,389.

Mr. Neary is no longer under contract with NCRA, and once this debt is settled, additional liability is not anticipated.

Employment Related Liabilities

Recorded Balance $218,734
Confirmed Total $235,365

Net Pension Liability

NCRA participated in the Miscellaneous Plan and the Public Employees' Pension Reform Act Miscellaneous Plan, both of which are defined benefit retirement plans administered by the California Public Employees' Retirement System (CalPERS). Based on OSAE's analysis, the balance of $212,650 is confirmed as of December 31, 2019, and will vary due to other factors that impact net pension liability. In addition, NCRA may incur unfunded termination liability if it were to terminate its retirement plans with CalPERS.

Salaries and Benefits Payable

NCRA's general ledger included $22,715 in salaries and benefits payable as of December 31, 2019. Based on review of the accounting records and financial statements, OSAE determined the calculated value for salaries and benefits payable is based on NCRA's general ledger balance of $22,715 as of December 31, 2019.

[7] AB 74 (Ting, Chapter 23, Statues of 2019), Item No. 0521-101-0001

All Other Payables

Recorded Balance $1,037,172
Confirmed Balance $446,979

Balfour Beatty Rail Inc.

NCRA recorded a $6,637 balance owed to Balfour Beatty Rail, Inc., for unpaid invoices and $296,036 interest, totaling $302,673 as of December 31, 2019. OSAE made several attempts to obtain confirmation of these balances from Balfour Beatty Rail, Inc., and its successor company, but received no response. As such, OSAE was unable to validate the balance and the calculated value does not include the amounts owed to Balfour Beatty Rail, Inc.

TransDynamics and Golden Age Rail Equipment Corporations

NCRA incurred an obligation of $510,000 to TransDynamics Corporation and Golden Age Rail Equipment Corporation for the purchase of various rail equipment in 1997. The general ledger listed an unpaid balance totaling $288,708, including $124,000 principal and $164,708 in interest. TransDynamics Corporation has been dissolved, and a successor could not be found. Likewise, Golden Age Rail Equipment Corporation could not be located. Therefore, OSAE was unable to validate the debt and the calculated value did not include the $288,708 unpaid balance and interest.

Unearned Rent Revenue

Unearned rent revenue comprises payments received under property and operating lease arrangements in advance of the period earned. Revenue is recognized on such lease arrangements on a *pro rata* basis over the lease term. NCRA recorded $235,690 unearned rent revenue as of December 31, 2019. OSAE validated this balance. Therefore, the $235,690 unearned rent revenue balance was valid and supported, and OSAE based its calculated value on the general ledger balance for unearned rent revenue as of December 31, 2019.

All Other Vendors

NCRA recorded other payables of $210,101 as of December 31, 2019. OSAE increased this amount by $1,188, to $211,289, through verifications with respective vendors. These debts are owed to numerous small vendors because of regular business practices; this amount will vary as NCRA continues to operate through the 2020-2021 and subsequent fiscal years.

Contingent Liabilities

Contingent liabilities summarized in Table 3, below may occur depending on the outcome of an uncertain future event. Estimated potential liability amounts listed as "Unknown" may require further analysis by specialized consultants. This list is

not all inclusive and additional liabilities may be identified if NCRA is dissolved. Please see the full OSAE *Calculated Value of Net Assets Report* in Appendix C for additional detail. Environmental remediation liabilities are described below and discussed further in the *Environmental Liabilities* section starting on page 64.

Table 3. Contingent Liabilities

Description	Estimated Potential Liability Amounts
Potential Environmental Remediation Costs	
Estimated costs for future rail ops, clean-up, and remediation activities to comply with the Environmental Consent Decree settled in July 1999.	$4,347,000 - $6,926,000[8]
Abandoned rail cars and equipment in the Eel River and other sites.	Unknown
Potential legal issues and removal costs of rail equipment in Eureka	Unknown
Potential safety improvements needed for the hazardous material storage of LPG cars stored in the Schellville Depot.	$5,200,000 - $7,200,000
Other existing and probable hazard materials and contaminants.	Unknown
Potential Repair, Maintenance, and Structural Removal Costs	
Costs for a falling trestle, weed abatement, and a collapsed tunnel.	Unknown
Potential removal costs related to illegal structures.	Unknown
Costs for one building at the Ukiah Depot and three in the Willits yard.	Unknown
Costs related to rail debris identified by State Parks' consultants.	Unknown
Potential Liabilities Resulting from NCRA's Business Practices and Property Rights	
Potential interest owed to Christopher Neary as of July 31, 2019.	$193,660
Estimated settlement for MCM Construction litigation[9]	$536,026
Potential liabilities related to a football field on the Willits yard.	Unknown
Potential liabilities for NCRA waiving competitive bidding for contracts.	Unknown
Unfunded termination liability related to NCRA's pension plans with CalPERS as of June 30, 2018.	$759,027 - $846,259
Future management fees for FEC Real Estate Service.	$40-$50,000/yr.
Defending encroachments.	Unknown
Potential Liabilities Related to Third-Party Rail Equipment Owners	
Costs for relocating rail equipment owned by two third-party owners.	Unknown

[8] Estimate pursuant to the 2002 Capital Assessment report, not represented in present dollar value. Remaining obligations of the Environmental Consent Decree not assessed as of December 31, 2019.

[9] MCM litigation was settled in May 2020. Please see page 24 for more detail.



PROPERTY ASSESSMENT

Scope of Work

The Department of General Services, Asset Management Branch, Real Estate Services Division's (DGS) responsibilities and objectives for this assessment were to 1) assess NCRA's property, rights-of-way, and easements; 2) assess options for transferring the southern portion of the rail corridor to SMART; and 3) estimate market rate values for equipment and real properties.

DGS, helped identify and aggregate NCRA real property data along its 316-mile rail corridor. DGS reviewed recorded and unrecorded real property asset data provided by NCRA; its property manager FEC Real Estate Services LLC; SMART; CalSTA; the California Department of Tax and Fee Administration (CDTFA, formerly BOE) railroad valuation maps; County Assessor maps and data; County Surveyor mapping; information obtained from ParcelQuest Parcel & Property Data; and material provided by NWPCo. More than 2,800 right-of-way parcels and their associated property rights were identified and compiled in an electronic itemization and tabulation Excel spreadsheet available on the project webpage: https://calsta.ca.gov/subject-areas/reports

Ownership data was arranged in sequential order running the length of the rail corridor from south to north. Data fields represented in the spreadsheet include specific references to each of the acquisitions identified as part of the original assemblage of the NCRA right-of-way corridor and include the related preliminary report or policy of title insurance; right of way corridor valuation map; engineering survey stations; regional location; mile post; grantor; grantee; conveyance document type (fee, easement, lease, or other agreement); document date, recording book, and page; acreage; and remarks from the Property Schedules found on the valuation maps. Electronic links to the preliminary reports or policies of title insurance, grant deeds, and valuation maps are embedded within the electronic spreadsheet and are available on the project webpage: https://calsta.ca.gov/subject-areas/reports

County Assessor maps along the 316-mile rail corridor were also assembled sequentially, aggregated from south to north in an Adobe Acrobat file format. Where needed, the maps were augmented to include approximate location of the railway corridor. This digital file is available on the project webpage: https://calsta.ca.gov/subject-areas/reports

NCRA's previous property manager, FEC Real Estate Services LLC, provided the Task Force with all its leases, licenses, permits, and other agreements related to FEC's management and mitigation of encroachments affecting NCRA's corridor. These agreements affect property owned in fee by NCRA located north of the Sonoma-Mendocino county line (mile post 89), some of which are income generating and have been reported in the OSAE *Calculated Value of Net Assets Report* in Appendix C.

Collectively, the data and documents compiled are intended to be utilized by SMART and NCRA, or its successor agency, during the proposed conveyances and are anticipated to provide efficient and cost-effective benefits to the buyer, seller, and title company.

Equipment, Rights-of-Way, and Other Capital Assets

NCRA's capital assets primarily consist of land, buildings, track structures, heavy equipment, rolling stock, motor vehicles, and unused signal equipment. DGS compiled the inventory of parcels, while Ascent Environmental gathered data on track structures and freight rail equipment along the line. OSAE determined the existence and completeness of NCRA's own inventory of equipment, including heavy equipment, rolling stock, motor vehicles, and unused signal equipment.

Because the inventory of equipment and property was conducted concurrently by the Task Force agencies, reconciling the lists and determining market value for each item was not possible during the study period. For these assets to be liquidated during a dissolution process, the fair market value will need to be determined at that time. The following equipment and capital assets were identified during this assessment:

Equipment — Market Value Unknown

During its assessment OSAE identified 306 pieces of equipment and miscellaneous materials (e.g. rail ties, culverts, etc.), which are detailed in OSAE's *Calculated Value of Net Assets Report* in Appendix C. Items of interest include the following:

- OSAE confirmed 143 pieces of equipment owned by NCRA through observations or third-party confirmation. This included six pieces of heavy equipment and 33 rail cars used as collateral to secure the Federal Railroad Administration RRIF Loan. The 33 rail cars were purchased with a FEMA grant in 1996 and are leased to the Boston Transit Group, of which OSAE confirmed the existence and operating status. The same group of equipment (heavy equipment and rail cars) also served as collateral to the Bridge Financing Agreement, the Marin Consent Agreement, and the

Reopening Project Agreement to secure debts owed to NWPCo, as discussed in OSAE's report. On March 27, 2019, NWPCo filed documents with the Surface Transportation Board asserting its rights to the 33 rail cars, along with the Boston Transit Group lease and lease proceeds therefrom, pursuant to the Marin Consent Agreement. If NWPCo (or the other creditors) exercises its lien on this equipment, NCRA would lose its largest and most reliable source of revenue, a total of almost $12,000 per month.

- Thirty-eight pieces of equipment observed during site visits belonged to third parties or unknown owners. The 38 pieces do not include various liquefied petroleum gas rail cars and Skunk Train rail cars owned by third parties.
- The location and ownership of 125 pieces of equipment could not be determined by OSAE during its assessment. The team identified these pieces of equipment by obtaining equipment-related information from photo albums, internet searches, and available documents. Due to the age and quality of the information reviewed, OSAE determined that the 125 pieces could include equipment no longer owned by NCRA. Additionally, in the absence of identification numbers for the equipment, the 125 pieces may include the 38 pieces described above.

During its field review of the NCRA right-of-way, the State Parks team documented 13 locations throughout the rail corridor where abandoned rail equipment, structures, or railroad debris were observed, See Table C-7 in Appendix C for detail; the locations can be found in Figure 2.6-1 in the Map Book portion of Appendix C. Items of interest include the following:

- rail cars (e.g., cranes, excavators, horse trailers),
- a communications tower,
- crossing debris,
- railroad track switches,
- grease boxes,
- displaced culverts and culvert debris,
- scattered metal debris and pieces,
- residential buildings (such as hunting cabins abandoned homes), and
- failed tunnel portals.

Property, Rights-of-way, and Easements — Market Value Unknown

NCRA's real property, whether owned in fee or held as a railroad easement, was purchased with state and federal funds. (See Appendix B for details on funding program, purpose, and dollar amounts.) The funds transfer agreements

associated with these transportation programs and state bond funds require that any right-of-way acquired remain in public transportation use *in perpetuity*. If the right-of-way is sold or taken out of public transportation use, the proportionate funding participation by the State and other non-recipient generated public funds must be returned or credited to the State. The *pro rata* share is based on fair market value, not necessarily sale price. In lieu of repayment, the *pro rata* share may be dedicated exclusively to a CTC-approved public transportation purpose. The State's *pro rata* share is as follows:

- All right-of-way acquired north of Willits was purchased with 100 percent Prop 116 funds and therefore, 100 percent of proceeds would be returned to the state Public Transportation Account or dedicated to a state-approved public transportation purpose.
- All right-of-way acquired south of Willits and east from Ignacio to Lombard was purchased with a mix of 10 percent state Transit Capital Improvement funds and 90 percent federal Q-funds. Therefore, not less than 10 percent of proceeds would be returned to the state Public Transportation Account or dedicated to a state-approved public transportation purpose. Federal Highway Administration has not sought recovery of the federal share of funding.
- All right-of-way acquired south of the Sonoma-Mendocino county line and east from Ignacio to Lombard is subject to the 90-percent/10-percent proportional share split described above. However, the right-of-way is expected to be transferred to SMART in accordance with Section 17 of SB 1029 (McGuire, 2018) and not available for liquidation if NCRA is dissolved.


NO
MOTOR
VEHICLES

RAILBANKING ASSESSMENT

Description

Railbanking is the legal process by which an unused rail line preserves its right-of-way status as a rail line and allows for an interim use, such as a multi-use trail, when the right-of-way is *not* being utilized to operate rail. If a railroad wishes to convert the trail back into a railroad, the right-of-way has retained its status with the STB as a rail line and the conversion is a straight-forward legal matter.

Procedures for railbanking the NCRA rail corridor were researched utilizing resources from the Rails-to-Trails Conservancy and the STB. Highlights of that process are discussed below, and detailed information can be found in Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report*.

Process

The railbanking process consists of three basic steps, as outlined below.

Step 1: Railroad Files Notice to Begin Abandonment Proceedings

The opportunity to railbank is triggered when a railroad owner formalizes its intention to divest a rail line, or portion of one, by initiating abandonment proceedings with the STB[10]. Within 30 days after the abandonment filing, qualified trail managers may express interest in railbanking the line by filing with the STB. If a freight rail operator is willing to assume responsibility, it has priority over a railbanking proponent.

Step 2: Trail Manager Files Public Use Condition and Interim Trail Use Request

The potential trail manager must submit all filings within the required timeframes, include a map delineating the proposed trail by mile post, and acknowledge its willingness to assume full legal and financial responsibility for the corridor. Any entity that takes on the role of a trail manager must file a statement indicating its willingness to assume full responsibility for: 1) Managing the right-of-way, 2) Any legal liability arising out of the transfer or use of the right-of-way, and 3) The

[10] The Surface Transportation Board is an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail. Created on January 1, 1996 by the ICC Termination Act of 1995, the Board is the successor to the former Interstate Commerce Commission (1887-1995) and was established as a wholly independent federal agency on December 18, 2015.

payment of any and all taxes that may be levied or assessed against the right-of-way.

Step 3: Railbanking Negotiations

Once the potential trail manager has filed a railbanking request, the railroad owner must confirm with the STB that it consents to the proposal. Upon STB approval, the parties then have one year to negotiate the terms of the transition, including, but not limited to, right-of-way transfer through sale, easement, or lease; cost; equipment transfer or construction and maintenance responsibilities, etc.

Once the railbanking process has been completed and ownership of the right-of-way transferred to the trail manager, trail planning and construction can begin. The railroad owner will have the opportunity to remove any tracks, ties, or other property during the negotiation period.

Reversionary Clauses

Railroad alignments in the United States in general, and California in particular, were mostly established in the late 1800s by means of federal legislation, land grants, voluntary sales, and eminent domain. Sales contracts, grant deeds, and railroad easements often included reversionary clauses, which means that fee interests revert to the grantor (or descendants) if the right-of-way ceases to be used for rail purposes. Railbanking is considered a rail purpose because it maintains the integrity of the alignment for future use. *Railbanking therefore ends the abandonment process and avoids the activation of reversionary clauses.* There is also an argument under the shifting public use doctrine that continued use of the corridor for transportation may be enough to avoid reversion.

The alternative to railbanking is abandonment via formal process with the STB, which is usually initiated by the railroad but can be started adversely by others. In abandonment proceedings, the right-of-way is made available to other railroad companies to keep the line operational. If no rail companies are willing to take over operations, reversionary clauses may be triggered. Reversionary clauses vary, so an examination of each contract, easement, and deed would be necessary to determine the likelihood of reversion upon abandonment with STB.

Preservation of Future Rail Options

Based on the experience of NCRA and its predecessors, the costs of preserving the historic NWP rail line north of Healdsburg as a freight railroad outweigh the benefits. Absent a large economic draw on the north coast, such as a resurgence

in the redwood forest products industry or development of the Humboldt Port, it does not make economic sense to invest further public funds into preserving and rehabilitating a freight railroad currently.

Railbanking provides a unique opportunity to use the historic NWP corridor as a public-use, active[11] transportation route, while it continues to be preserved as a rail line for future railroad use. If at some point in the future a large economic draw is developed, a railroad company would have the ability to restore the corridor to rail use by petitioning the STB.

This assessment examined railbanking the northern portion of the NCRA right-of-way as well as the non-railbanking alternative.

Option 1: Railbank the Corridor

If NCRA is dissolved and the right-of-way is designated as a public active transportation corridor, railbanking the corridor is vital to maintaining a successful project. It will preserve the contiguous corridor in its entirety, allow for an interim trail use, and be accessible for future railroad purposes if necessary.

With 252 miles proposed as the Great Redwood Trail, it will be necessary to establish a trail management agency with enough resources to handle the legal process of railbanking while assuming full legal and financial responsibility for the corridor, including, but not limited to, maintenance of the existing right-of-way (such as weed abatement and emergency repairs); maintenance of existing and future contractual obligations; and physical conversion of the railroad corridor to a multi-use path.

Option 2: Do Not Railbank the Corridor

During its compilation of parcel data, DGS identified more than 2,800 parcels in the NCRA rail corridor. Each parcel deed has the potential of containing a reversionary clause and will need to be assessed on an individual basis, if the right-of-way is not preserved as an active railroad or railbanked.

Parcels owned in fee could be sold or retained for use as a trail. Parcels held by easement would likely revert to the underlying property owner, creating breaks in the corridor. If the corridor is intended to be used as a trail, the trail manager would either negotiate a sale price with the underlying property owner or

[11] According to the Centers for Disease Control and Prevention, "active transportation" is any self-propelled, human-powered mode of transportation, such as walking or bicycling. Physical inactivity is a major contributor to the steady rise in rates of obesity, diabetes, heart disease, stroke, and other chronic health conditions in the United States.

condemn at fair market value, adding cost to the project and potentially leaving gaps in the trail that would be expensive to close.

This option would also terminate all future railroad opportunities. Without the protection of railbanking, any use other than as a rail line could constitute abandonment of the railroad, and property owners would have the right to invoke their reversionary clauses. Property owners with fee simple, who own their property outright, would be able to use or dispose of their property in any manner permitted by law.



Figure 5. Aging Railroad Trestle in NCRA Corridor

SUCCESSOR AGENCY GOVERNANCE OPTIONS

Scope of Work

The planning, construction, operation, and maintenance of the Great Redwood Trail in its entirety would likely be a multi-generational effort. Although the primary purpose of this section is to identify potential governance structures for the immediate next steps for the Great Redwood Trail project, this section also recommends looking beyond these steps to identify a long-term management solution for the trail (see SB 1029 Section 2[a][4][A]).

The rail corridor would require certain environmental remediation efforts before and during construction of a trail (see Chapters 2 and 3 of the Trail Feasibility Assessment in Part I of Appendix D). After construction, the Great Redwood Trail would require a comprehensive operations and maintenance plan, as well as a reliable annual operating budget to maintain acceptable trail standards. Identifying the owner and operator of the trail at this early stage would help provide an adequate governance structure to manage the complex future operational and maintenance needs of the trail.

State Parks' *Great Redwood Trail Feasibility, Governance, and Railbanking Report* in Appendix D examined six typical trail management governance structures including:

- Single Government Organization
- Nonprofit Organization
- Cooperative Agreement
- Joint Powers Authority (JPA)
- Commission
- Special District

The governance evaluation for the Great Redwood Trail measured these common trail management structures against the criteria developed for the trail. These criteria examined how well each governance structure could potentially manage the corridor over multiple generations, considered the existing policy field, and the lessons learned from NCRA. Based on this analysis, two criteria — classification and multi-jurisdictional trail — were identified as critical to success.

Because a successful trail governance structure for the Great Redwood Trail must also assume financial and legal responsibility of the corridor, some of the common trail management governance structures identified above, such as a cooperative agreement or nonprofit organization, may not have the capacity to own and manage the corridor alone. As a result, only three of the common

management governance structures were found to be applicable to the Great Redwood Trail project. These include:

- State ownership,
- JPA ownership, and
- Local and nonprofit organization ownership.

A fourth model considers a continuation of the status quo, in which NCRA continues to own the right-of-way but removes railroad operations from its mandate and instead, focuses on trail management. While this option was analyzed and identified as a potential solution, it is not a strong candidate as a trail management agency due to NCRA's existing limitations, including its lack of clear reporting structure, limited financial capacity, and narrow focus.

Analysis Criteria

When conducting its analysis, the State Parks team considered a number of critical elements such as the existing governance structure of NCRA; the ability of a governance structure to railbank and manage the corridor, including environmental remediation, trail construction, and long-term planning; the ability of the governance structure to operate within the policy field in which it is established; and its interactions with numerous concerned stakeholders, such as jurisdictional partners, business interests, and the public.

Measurable criteria were created that examined the ability of governance structures to fulfill the specified tasks and responsibilities of a trail manager.

The following two criteria were identified as critical and are the basis for analysis of all potential governance structure options. If an option did not meet these criteria, it was not considered viable.

1. **Classification:** Identified what type of entity was being proposed. Classifications include local and state agency; multi-agency; joint powers authority; nonprofit; and special districts. The classification is important to determine the agency's legal status and reporting structure. NCRA does not have a clear classification, which made oversight of its operations challenging.

2. **Conducive to Multi-Jurisdictional Trail:** Identified whether the governance structure being analyzed would be conducive to building and maintaining a trail that spans multiple jurisdictional boundaries. All governance structures considered for the Great Redwood Trail meet this criterion.

The following additional, measurable criteria were created to identify typical governance structures that may also be appropriate for this corridor. These included:

- **State Risk**: Measured the potential level of risk and liability to the State.
- **Timeframe for Implementation**: Measured how long the trail would take to implement given the strengths and weaknesses of the proposed governance structure being analyzed.
- **Existing Staff Expertise and Resources:** Measured whether an existing entity would have staff with trail expertise and capacity to manage and maintain the trail; recognizing that the establishment and operation of a new entity would require additional administrative and overhead costs.
- **Trail Consistency:** Measured the ability to build and consistently maintain the trail. Decentralized governance structures or structures without stable funding sources may have limited ability to implement or maintain the trail in a consistent manner.
- **Potential Funding Consistency**: Measured the availability of stable funding sources for trail planning and design, development, and operations and maintenance. Governance structures that relied on membership fees or donations may result in unequal distribution of resources along the corridor.
- **Long-Term Operations & Maintenance Costs:** Measured the level of funds required to operate and maintain the trail.
- **Maintenance Capabilities**: Measured the capacity for conducting maintenance along the trail.



Figure 6. Wild and Scenic Eel River Canyon

Ownership Models

To successfully implement and maintain a potential future Great Redwood Trail, a trail manager must be identified with the ability and capacity to guide the overall vision of the trail; identify funding opportunities and administer funds; coordinate with partner agencies and organizations; oversee planning, design, and construction; manage contractors; and oversee operations and maintenance. The trail manager would also need to railbank the corridor to ensure that it is preserved for public transportation *in perpetuity*. The trail manager that takes on the railbanking process would take on potentially significant liability.

The following ownership models have trade-offs with respect to State risk; timeframe for implementation; access to potential funding sources; staff expertise and capacity; trail consistency and quality; and long-term operations and maintenance costs.

OPTION 1: State Ownership

In this management structure, a single agency manages the transportation corridor. Because the NCRA railroad corridor passes through multiple local agency jurisdictions, the potential for a single local agency to be the manager of the entire trail is complicated.

A state agency could provide strong expertise, which may facilitate quicker and higher quality implementation of the trail. However, it would also create the highest risk to the State in terms of liability and cost and may be subject to competing state efforts.

Great Redwood Trail: Roles and Responsibilities

State ownership of the Great Redwood Trail would vary depending on whether the designated agency is an existing or a newly created agency. While an existing state agency may have the organizational structure and expertise to manage the Great Redwood Trail, it would require substantial additional staffing, equipment, and funding resources to oversee planning, design, construction, and environmental remediation efforts and effectively operate and maintain the trail. It could, however, partner with local jurisdictions to manage trail implementation and maintenance, and with non-profit organizations for advocacy and fundraising efforts.

Role, Responsibility, and Liabilities of the State

In a state-ownership option, the State would be directly involved in all aspects of trail implementation, operations, and maintenance. The State would also, in turn, be responsible for any existing rail infrastructure and associated liabilities along the corridor, which may result in significant increased costs of hundreds of millions of dollars to state taxpayers, potentially even before implementation and operation of the trail. However, not all costs would necessarily fall on the State, as some could be accounted for through innovative financing solutions as well as private, federal, and local sources.

Great Redwood Trail: Funding Stream

To provide funding for trail planning, operations, and maintenance, the State could collect revenue generated through trail user fees, rent from utility companies that have located their infrastructure (cell phone towers, fiber optic cable, water lines, telephone lines etc.) within the rail corridor right-of-way, and lease agreements from encroaching neighbors. This revenue is not expected to cover support staff costs; environmental remediation and mitigation; capital projects; and future maintenance. Additional study is needed to determine the estimated funding gap between projected revenue and annual trail management expenses.

Supplemental revenue could be obtained through state and federal appropriations and/or grants. Local agency and nonprofit partners could provide local funds, in-kind support, and volunteers to supplement state and federal funds.

See Figure 8 for the organizational diagram and Part II (Section 6) of Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for additional detail.



Figure 7. Stranded Rail Car and Equipment in NCRA Corridor

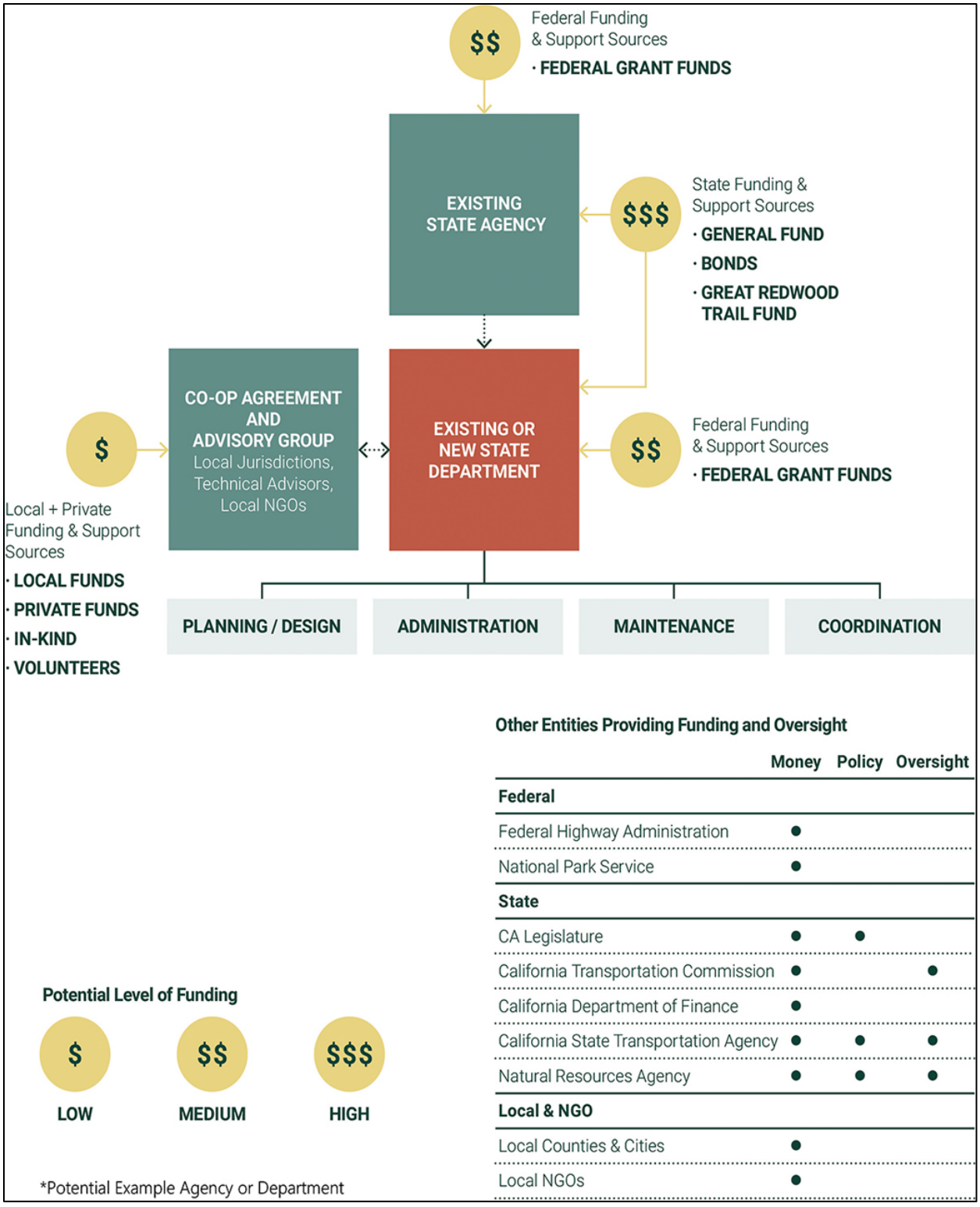


Figure 8. State Agency Organizational Chart

OPTION 2: Joint Powers Authority

A Joint Powers Authority (JPA) is an entity that allows its member agencies to jointly exercise common powers. The structure allows for one entity to oversee a trail crossing multiple jurisdictions and is typically funded by its member agencies or can pursue donations and grants as well as issue bonds. Because it requires creating a new entity, a JPA governance structure for the Great Redwood Trail would include initial administrative and other overhead costs.

This structure would enable agencies to formally partner by creating a new legal entity to oversee trail implementation and maintenance. The JPA would own the corridor in fee or easement; manage trail planning and implementation; and ultimately, manage trail operations and maintenance.

Great Redwood Trail: Roles and Responsibilities

For the Great Redwood Trail, the JPA option is considered a local-only option made up of the local counties and cities. It could, however, also be established using local and state agencies. Anticipated member agencies could include local counties, such as Humboldt, Trinity, Mendocino, Sonoma, and Marin, and local cities, including Blue Lake, Arcata, Eureka, Fortuna, Rio Dell, Willits, Ukiah, Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Petaluma, and Novato.

The JPA should be overseen by a Governing Board of Directors consisting of appointed Directors from each member agency and could include a Governor-appointed ex-officio member to provide state-wide representation. Member agencies would appoint or hire staff to manage the various responsibilities of the corridor, which, based on a review of other case studies, is estimated to be up to ten staff members including a full-time trail coordinator, planning and engineering staff, administrative staff, and program management staff.

Role, Responsibility, and Liabilities of the State

The State could play a role in the JPA by appointing an ex-officio member to sit on the JPA's board, but it is not required. The JPA, rather than the State, would own the corridor in fee or in easement; would be responsible for implementing the trail; and would assume all liability and risk associated with the trail. If a state agency were to be part of the JPA, the State would be responsible only for its portion of the Joint Powers Agreement, not the corridor itself. This would limit state investment and risk in trail development and operations.

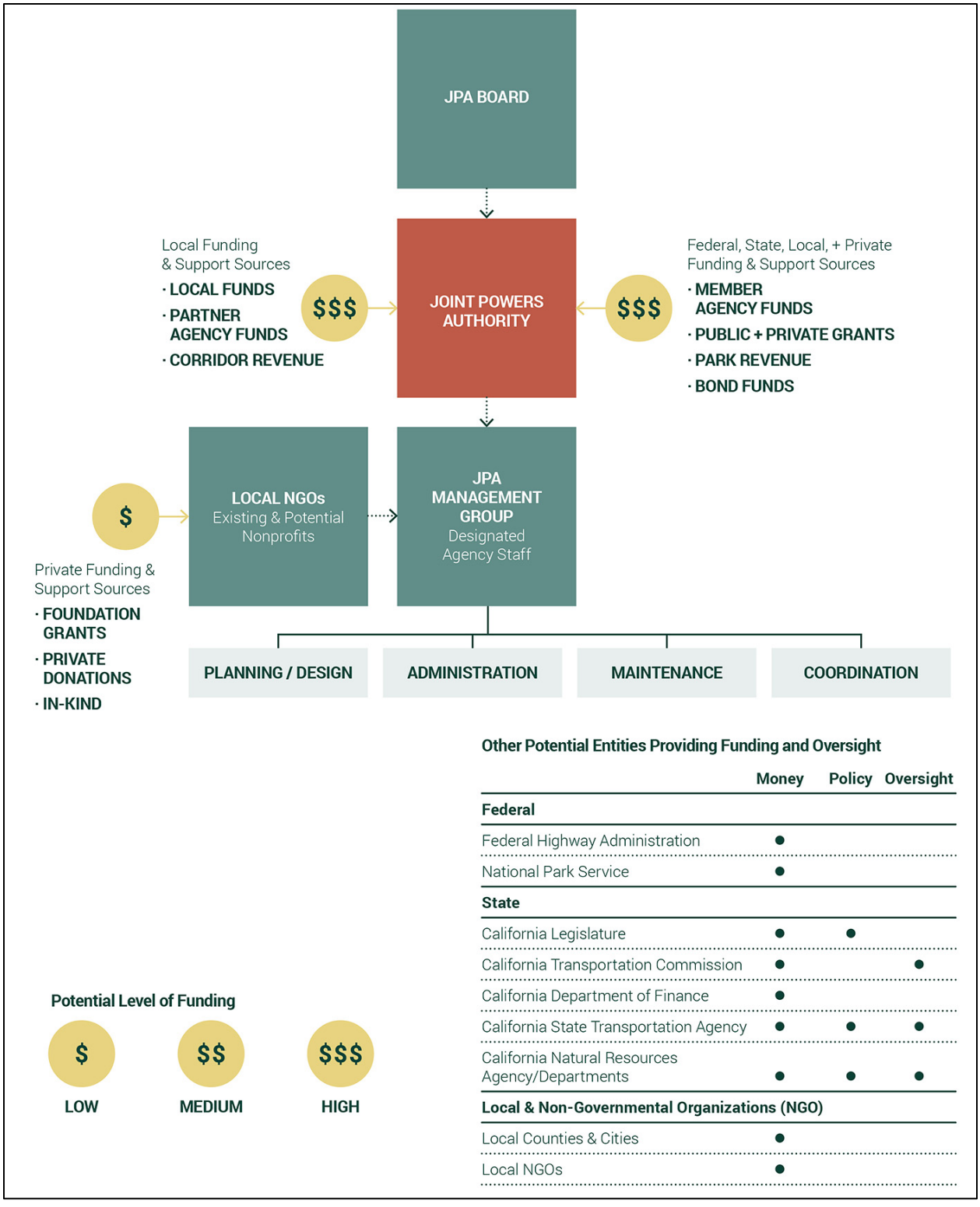


Figure 9. Joint Powers Authority Organizational Chart

Great Redwood Trail: Funding Stream

The JPA could receive annual funds from each of its member agencies; state and federal grant funds; and corridor user-fee revenue. It could also partner with a nonprofit to provide additional funds through private donations. Finally, the JPA member jurisdictions could request their local tax base to vote on a special ballot measure and commit a portion of local sales tax revenue.

See Figure 9 for the organizational diagram and Part II (Section 8) of Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for more detail.

OPTION 3: Nonprofit and Local Jurisdiction Ownership

A nonprofit can draw funding from a large pool of sources, including private funding, and provides flexibility with program development, advocacy, and communications. However, it typically does not have the authority of an elected body or landowner and lacks a dedicated funding source without assistance from local, state, or federal funding mechanisms. Smaller nonprofits may not have the resources required to manage a corridor of this magnitude without support from another entity.

Great Redwood Trail: Roles and Responsibilities

A trail manager for this project could be found within an existing nonprofit organization that is passionate about the Great Redwood Trail or it may be a new nonprofit created to oversee trail implementation.

The nonprofit would guide the overall vision and implementation of the project and partner with various local agencies to build and maintain different sections of the trail. The nonprofit would be led by an Executive Director and overseen by a Board of Trustees and an Advisory Board consisting of representatives of both the local and state levels. It is estimated that additional staff would be needed for regional operations, programs, communications, membership and fundraising, and administration.

The nonprofit organization would be responsible for coordinating trail planning and design; implementation; and programming. Local jurisdictions such as the counties and cities would own the right-of-way and oversee trail construction, operations, and maintenance.

In this option, the trail manager duties would be shared among different entities. The nonprofit organization would provide a strong centralized structure in terms of trail planning, coordination, and implementation. However, because

nonprofits generally do not have a stable funding source; the expertise required to operate and maintain a trail; or the capacity to assume the risk associated with owning the right-of-way, ownership, operations, and maintenance are left to local jurisdictions.

Although Option 3 provides an opportunity to receive funds from a wide array of sources, it would likely have less consistent funding than Options 1 and 2 and could result in a longer timeframe for trail implementation and less trail consistency.

Role, Responsibility, and Liabilities of the State

To efficiently railbank the corridor, it would be beneficial for the State to consider managing the railbanking process with one centralized trail manager to initially assume the right-of-way and to ensure all legal requirements are met. The State would also be liable for the corridor during this temporary period. Specifically, any entity that takes on the role of a trail manager must file a statement indicating the willingness to assume full responsibility for 1) managing the right-of-way, 2) assuming any legal liability arising out of the transfer or use of the right-of-way, and 3) paying any and all taxes that may be levied or assessed against the right-of-way.

The State may have some oversight over the nonprofit to the extent that state representatives serve on the Advisory Board.

Great Redwood Trail: Funding Stream

In addition to private funds, the nonprofit could also seek local, state, and federal grants.

Local jurisdictions could contribute local funds, corridor user-fee revenue funds, and local sales tax revenue and could apply for federal and state grant funds for trail construction, operations, and maintenance.

See Figure 10 for the organizational diagram and Part II (Section 10) of Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for additional detail.

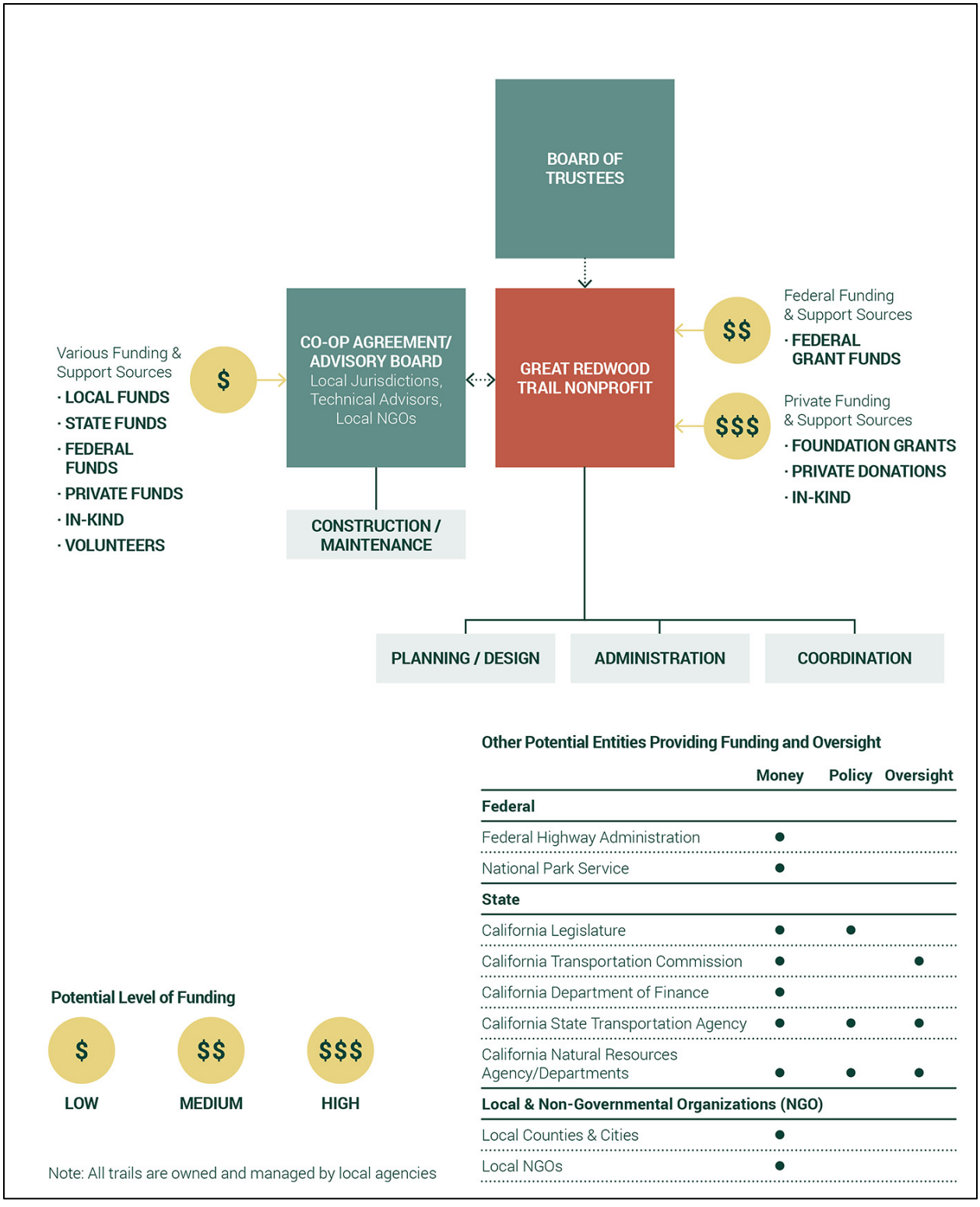


Figure 10. Nonprofit and Local Jurisdictional Organizational Chart

OPTION 4: NCRA Status Quo

Organizational Structure

NCRA's structure and authority are codified in the Public Utilities Code. NCRA's organizational structure is shown in Figure 12 on page 52. Although it was established as a public agency, it was not designated as a state or a local agency and as such did not have a clear reporting body from its beginning. NCRA is subject to STB and Federal Railroad Administration jurisdiction at the federal level.

NCRA's staff includes an executive director and an administrative assistant. The County of Sonoma provides legal counsel and accounting support to NCRA for a fee. In addition, NCRA also has on-call contracts with a resident engineer and transportation planner. While staff-level decisions are made by the executive director, major decisions require board approval and pursuant to SB 1029, the CTC. (See page 12.)

The Board of Directors is made up of nine members: two representatives each from Humboldt, Mendocino, Marin, and Sonoma Counties and one city representative.

Funding

NCRA's regular revenue comprises individual payments for encroachment permits, lease agreements, and the commercial rental of 36 boxcars. In FY 2019- 20 NCRA's budget anticipated $381,080 and in FY 2020-21 NCRA budgeted $361,115 in locally derived revenue. Budgeted annual agency expenditures for baseline operations for FY 2019-20 and FY 2020-21 exceeded NCRA's revenue by almost $300,000 each year. NCRA does not have a dependable source of outside funding to supplement this revenue.

State project funding that NCRA received in the past was appropriated by the Legislature, approved and allocated by the CTC, and administered by Caltrans. These funds were project specific and not a regular source of funding for the agency. Local funds are collected and overseen solely by NCRA.

Some local entities utilize NCRA right-of-way without paying a fee, instead covering operations and maintenance of a section of the corridor. For example, the City of Ukiah holds a license agreement with NCRA that enables it to construct and maintain a multimodal rail-with-trail path within NCRA's corridor in the city limits. The City utilizes its own resources to provide maintenance and weed

abatement along its path within NCRA's right-of-way and charges NCRA for additional weed abatement services outside of the multimodal path footprint.

Existing Management Challenges

The primary NCRA management challenges are summarized below.

1. NCRA was not designated as a local or state agency when it was established and as a result, was not provided with a clear reporting body. Because it has not clearly been subject to a regulating authority, there has been little oversight over its decision-making and financial transactions.

2. NCRA does not have sustainable funding to support its operating expenses. The decline of the timber industry reduced demand for railroad operations and ultimately led to the railroad's bankruptcy under private ownership prior to NCRA. Without a thriving industry behind it to drive demand, the complexity of the corridor meant that without a sustainable funding source NCRA could not maintain railroad operations. NCRA was created to assume financial and legal responsibility of the bankrupt railroad but was not provided with adequate funds to meet its mandate. As a result, NCRA has been unable to hire and retain qualified staff and has been forced to contract out work. These on-call contracts have ultimately proven to be overly expensive and have limited NCRA's ability to manage the existing right-of-way, address concerns along the corridor, and make improvements to failing infrastructure.

3. Because NCRA's board is made up entirely of local representation, it has historically made decisions that mostly benefit local interests. While the board has worked to protect the right-of-way as a singular transportation corridor, it has done so primarily for local economic interests.

Considerations for the Great Redwood Trail

Because NCRA has long struggled financially due to a lack of available funding and low revenue stream, it has acquired significant debt. If NCRA were to be transformed into a new trail agency, the new agency would retain this debt, complicating environmental remediation efforts, trail development, and maintenance. Disposing of this debt and transferring NCRA's assets to either an existing entity or a new trail agency created for the purpose of developing the Great Redwood Trail would provide a governance structure that could efficiently manage these tasks.

Funding for NCRA as a Trail Manager

Most local funds that NCRA receives are for rail equipment that NCRA rents out to other companies. This revenue source would likely not be available to a future trail manager because the equipment may be sold, or collected as collateral on outstanding debts, during the dissolution of NCRA. In addition, there are numerous existing encroachments on NCRA right-of-way that are not currently approved by NCRA and therefore, no fees are collected by NCRA. The trail manager for the Great Redwood Trail should review all unapproved, unpaid encroachments and charge an annual fee for any that may remain.

One potential source of expanding revenue for NCRA, could be from existing and future utility lines that utilize the corridor.

Other Liabilities

There are additional environmental constraints associated with the corridor for which the trail manager would be liable and which the chosen governance structure should be equipped to handle. These constraints include, but are not limited to, infrastructure, such as bridges, tunnels, culverts; other structures in need of repair; and areas with hazardous materials that may require environmental remediation. These environmental constraints are detailed starting on page 54 and in Chapters 2 and 3 of Appendix D, Part I.



Figure 11. Deferred Maintenance in NCRA Corridor

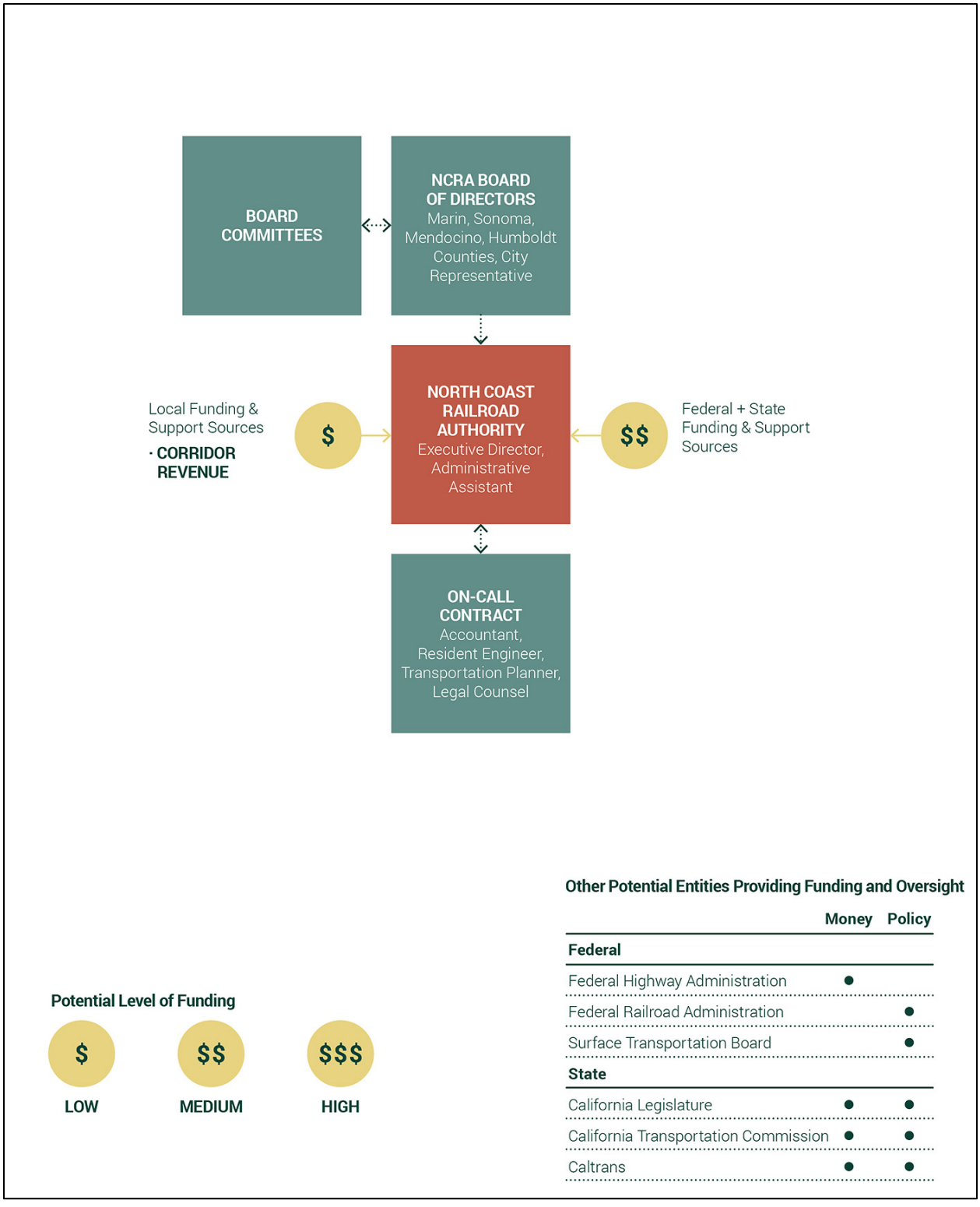


Figure 12. NCRA Organizational Chart



RAIL-TRAIL CONSTRUCTABILITY

Scope of Work

State Parks' assessment examined the viability and constructability of a trail developed on the entirety, or a portion of, the property, right-of-way, or easements owned by NCRA. This effort included, among other things, an analysis of physical contraints, environmental remediation requirements, and planning level cost estimates. The study methodology and findings are briefly described below; detailed information can be found in Appendix C, *Great Redwood Trail Feasibility, Governance, and Railbanking Report.*

Methodology

SB 1029 divided NCRA's corridor into "northern" and "southern" sections. This assessment set the delineation line for the Great Redwood Trail at mile post 87, two miles south of the Sonoma-Mendocino county line. If the southern section is transferred to SMART, the southern two miles (mile posts 87 - 89) of the trail would be in SMART's right-of-way.

The northern section was evaluated for repurposing a 252-mile portion of the rail right-of-way into a trail, by means of a rail-to-trail conversion where rail service would cease and the rail corridor would become a public multi-use path. The corridor evaluated extends from Healdsburg in Sonoma County to Blue Lake, northeast of Arcata in Humboldt County, passing through the cities of Healdsburg, Cloverdale, Ukiah, Willits, Fortuna, Rio Dell, Eureka, Arcata, and Blue Lake, and dozens of unincorporated communities. (See Figure 13.)



Figure 13. Rail-with-Trail and Rail-to-Trail Sections

The southern section, from Healdsburg to Cloverdale, was evaluated for the potential of a rail-with-trail, where a rail facility and trail would share the corridor; consistent with SMART's existing rail-with-trail operations south of Healdsburg and SMART's plans to develop passenger service to Cloverdale in the future. (See Figure 13.)

The NCRA rail corridor was further divided into five major sections. (See Figure 14) Analysis of the trail sections included an assessment of the rail corridor right-of-way in its current state, i.e., its "existing condition." Rail infrastructure and other features were inventoried along with known environmental constraints, known cultural sites, soil stability, and ease of public access. Potential trail development types were analyzed for constructability given the segment's physical condition and proximity to urban centers, and "feasibleness" was determined based on a ranking of all the criteria. Costs were developed on a high-level preliminary basis for planning purposes only. Actual cost is variable and will change depending on details of the project design, environmental remediation requirements, and market rate of construction materials.

Several methods were used to gather information about the existing condition of the rail corridor, including searches of publicly available data sources and review of existing reports related to the corridor. To help inventory and assess the condition of existing structures (such as bridges and culverts) and features along the rail corridor, small teams conducted field assessments from Healdsburg to Arcata and the Carlotta, Samoa, and Korbel branches of the rail corridor.

Great Redwood Trail Feasibility

The potential trail corridor contains significant feasibility challenges in certain locations, particularly in remote segments within and close to the Eel River Canyon. Key constraints include segments with steep, unstable slopes that destabilize hundreds and occasionally thousands of feet of the corridor; existing right-of-way obstructions that in some locations fully block the corridor; former rail infrastructure (i.e., bridges, trestles, tunnels, and major culverts) that have been dilapidated or destroyed by years of deferred maintenance; and the significant cost of developing a public trail.

Despite these constraints most of the 252-mile corridor is generally intact with good physical conditions for trail construction. State Parks' assessment confirmed that the corridor's gentle grades lend themselves to interregional non-motorized trail use. If fully developed, the Great Redwood Trail could create an outdoor recreation opportunity and commuter corridor that would connect Northern California communities with the Bay Area.



Figure 14. Trail Assessment Corridor Sections

User Demand Projections

As expected, high trail-use estimates occur in segments within or near urban communities or towns along the corridor. Likewise, trail use through the more remote segments (generally between the cities of Willits and Ferndale) is anticipated to be low and oriented toward serious, long-distance cyclists and hikers, or perhaps occasional day-use by visitors driving to remote access points for short hikes.

Parts of the rail corridor already have fully developed rail-with-trail segments constructed adjacent to the rail bed. These are in more-populated areas, such as around Humboldt Bay near the cities of Arcata and Eureka, and continue to support regular, daily use. Only one developed segment, the Ukiah Rail Trail in Ukiah, has received a formal Great Redwood Trail designation.

Estimated trail use demand in the southern section of the rail corridor indicates the trail would experience substantial high-volume non-motorized use, including commuters and recreational users of all ages and abilities. This is expected to occur in Sonoma County where rail-with-trail could be implemented and near the larger communities, such as the cities of Ukiah and Willits in Mendocino County. Likewise, trail use demand projections are strong in the far northern part of the NCRA rail line; the corridor between the cities of Ferndale and Fortuna; and the corridor between the cities of Eureka and Arcata around Humboldt Bay.

Physical Constraints

The major constraints within the rail corridor that most influence trail feasibility include geomorphic challenges (landslides, high-risk slopes), large right-of-way encroachments (particularly those that are authorized and leased by NCRA), failing infrastructure (bridges, trestles, culverts, and tunnels), and previous contamination or hazardous material sites where remediation is required. In addition, the presence of wetlands and special-status species, historic structures, areas of archaeological sensitivity, and tribal lands also may present significant constraints to trail development.

The presence of wetlands and special-status species in the corridor may influence the time and cost to implement the trail if extensive permitting, corridor re-routes, or compensatory mitigation are required.

Cultural Resources

Identification and designation of potential archaeological and tribal cultural resources along the corridor would require cultural records research and regular

and consistent coordination with tribal representatives. If cultural resources are present and avoidance or mitigation measures are needed, the project may require a longer schedule and result in higher overall costs.

Historic Structures

The presence of historic structures along the corridor is a minor benefit in the opportunity and constraints analysis because the resource offers an opportunity for interpretive signs and public education. There are, however, possible challenges associated with permitting and zoning requirements for historic sites. If building renovations are needed, for instance, the process for obtaining relevant permits and approvals may pose a challenge to trail development. In addition, historic buildings can pose liabilities associated with safety hazards, if they are in poor condition. While these constraints would not be insurmountable, they would substantially increase the cost of trail construction and maintenance, which could result in schedule delays and higher overall cost.

Remote, Hard to Access Corridor

Development of the long center sections generally starting in the vicinity of the City of Willits and then continuing north through Trinity and northern Mendocino Counties to the area near the City of Ferndale in Humboldt County would involve significant environmental remediation and construction costs. Combined with low trail use demand projections, these remote sections may be difficult and financially challenging to fully develop with construction and maintenance costs expected to be high. Appropriate trail types for steep, sometimes unstable terrain should be emphasized in these sections, such as narrower, soft-surface recreational trail facilities instead of a hard-surface trail (Class I).

Significant costs and long-term maintenance challenges are related mostly to major stabilization of slopes; rebuilding or replacing deteriorated rail infrastructure; and possible rerouting around major obstructions. Rerouting can reduce costs in some locations, compared to replacing infrastructure, but can also result in additional costs to obtain access rights for the public access trail.

Eel River Canyon

The Eel River Canyon poses unique challenges and opportunities. It has some of the greatest constraints in the corridor, including difficult geophysical conditions and dilapidated, unmaintained infrastructure. It is isolated and rugged, and the slopes are unstable. The substantial costs of construction and long-term maintenance in this highly dynamic landscape are noteworthy. Abandoned rail

cars and other rail debris are also present in this section, including in the river. However, approximately 75 percent to 85 percent of the NCRA rail corridor through the Eel River Canyon is in good physical condition for trail construction. This section of the trail offers some of the most spectacular views of the entire corridor, including the scenic values reflected in its Wild and Scenic River designation.

Due to its designation as both a federal and state Wild and Scenic River[12], rigorous environmental protective measures would need to be incorporated into the trail design and construction. Trail development may also consider inclusion of river restoration opportunities, such as removal of collapsed rail infrastructure and rail cars from the river, enhancing the value of the trail and therefore its potential feasibility. At this preliminary assessment stage, it is unknown whether environmental restoration would be a requisite part of trail development, which would need further investigation to be determined. Due to access challenges, the costs to remove abandoned rail debris would be high. Recognizing the complexity of this section of the corridor, an alternative narrow, soft-surface trail may be readily developed and maintained over time, compared to a Class I hard-surface trail.

Interregional Active Transportation Route

If fully developed, the Great Redwood Trail would become an interregional trail providing outdoor recreation and active transportation experiences. It would connect a major urban metropolitan area, the northern extent of the Bay Area, with the natural and scenic resources of the landscape along the North Coast to Humboldt Bay.

Most Feasible Trail Segments

With limited physical, environmental, and cultural constraints; access to nearby communities with potential non-motorized users; and low construction costs; the following sections of the rail corridor are identified as the most feasible to develop:

- Rail-with-trail sections in Sonoma County,
- Trail segments near towns and urban communities (including Willits and Ukiah) in Mendocino County,

[12] The National Wild and Scenic Rivers System was created by the Wild and Scenic Rivers Act of 1968 (Public Law 90-542[1]), enacted by the U.S. Congress to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations.

- Humboldt County segments from Ferndale to Korbel, and around Humboldt Bay.

Rail-with-Trail Segments

- This southern section from Healdsburg (mile post 68.22) to Cloverdale (mile post 87), included in the transfer of freight rights to SMART, is well suited for rail-with-trail development. The corridor width in this section varies between 50 feet and 100 feet; can accommodate rail-with-trail infrastructure; and has no major physical, environmental, or cultural constraints. Trail development in this segment will be the responsibility of SMART and could be implemented in conjunction with SMART's plans to develop passenger service to Cloverdale. This section would be recommended for priority project planning, design, and environmental review as possible next steps, if trail planning proceeds.
- Development of rail-with-trail along a stretch of the rail corridor surrounding Humboldt Bay is preferred. Local jurisdictions have already constructed rail-with-trail multi-use paths to the north and south of the bay, and the County of Humboldt has plans to construct the final rail-with-trail segment in the middle, closing the north-south gap. In addition, the rail corridor is currently used by the Timber Heritage Association for recreational rail operations (speeder crew car rides) in Eureka and Samoa. Additional proposals for a tourist excursion train and rail bikes have been discussed. Continuing to develop the rail-with-trail option around Humboldt Bay could expand the recreational and active transportation opportunities in the region and enhance economic opportunities.

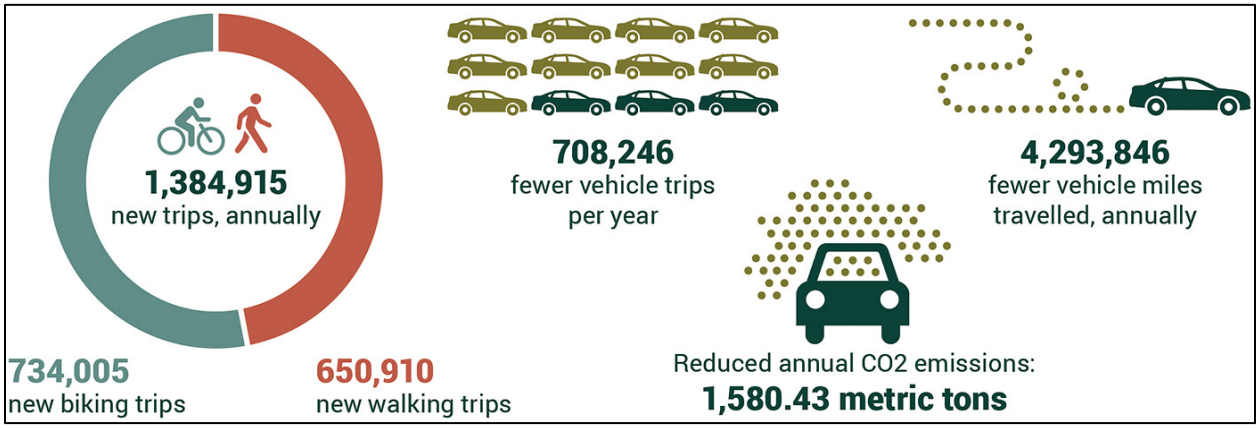


Figure 15. Economic and Social Benefits of a Fully Developed Trail

Economic and Public Health Benefits

If the trail were fully developed, it is projected to spur economic activity in the region and generate roughly $24 million in local revenue annually. Public health benefits include reduced vehicle trips and vehicle miles traveled; a reduction of 1,580.43 metric tons of carbon dioxide emissions; and an increase of 1,384,915 walking and biking trips annually. (See Figure 15)

Trail Cost Estimates and Project Phasing

Planning-level cost estimates are based on assumptions about the planned trail facility and general cost factors applied to the associated infrastructure. Cost estimates are provided by corridor segment and by project priority, as well as for the entire corridor, and have been rounded to the nearest hundred dollars.

While an overall corridor cost estimate is provided, the total cost for fully developing the corridor would not be incurred all at once. Trail development is expected to be long-term, and costs would be spread over the course of decades, depending on project phasing and fund availability. The costs described below do not include estimates of environmental remediation efforts that may be required prior to construction. As previously discussed, remediation costs may be substantial.

Project Phasing

Based on a review of the inventoried trail features and results of the condition and user demand assessments, development of the rail corridor has been divided into four logical phases. (See Figure 16.) These phases include projects that are grouped by their level of difficulty for development and anticipated trail demand, and include near-term, mid-term, and long-term implementation priorities. While these project phases represent priority projects when looking at the entirety of the corridor, the phases are not binding and can be modified as needed.



Figure 16. Project Phasing

Full-Development Project Cost Estimates

While cost is not considered to be a measure of the technical feasibility of trail development, it is the main factor in determining whether and to what extent the trail can be built. This section presents cost estimates by project phase to illustrate how the trail could be developed over time, limiting the amount of investment required at any one time. For more detailed discussion see Chapter 5 of Appendix D, Part I, *Great Redwood Trail Feasibility, Governance, and Railbanking Report*.

Planning-level costs for trail development of the entire 252-mile corridor are estimated at:

- $749,259,900 in 2020 dollars
- $900,685,200 in 2025 dollars
- $1,082,713,500 in 2030 dollars

Cost estimates were also calculated for each of the four project phases (segments grouped into near-term, mid-term, and long-term phases) described above. Total cost for each phase is a sum of the estimated budgets for each trail segment included in that phase. These cost estimates are organized by trail typology and include construction costs; planning and management costs; contingency; and escalation.

Phase 1 has an estimated total cost of $190,974,700 in 2020 dollars and $275,967,000 in 2030 dollars. It includes 62 miles of urban trail, 24 small access points, and seven large access points. Route design alternatives could result in cost reductions of nearly $11 million.

Phase 2 has an estimated total cost of $296,230,500 in 2020 dollars and $428,065,900 in 2030 dollars. It includes 48 miles of urban trail, 13.7 miles of rural trail, and five small access points. Route design alternatives could result in cost reductions of nearly $56 million.

Phase 3 has an estimated total cost of $194,628,100 in 2020 dollars and $281,246,200 in 2030 dollars. It includes 62 miles of rural trail, seven miles of urban trail, and 11 small access points. Route design alternatives could result in cost reductions of nearly $19 million.

Phase 4 has an estimated total cost of $67,826,500 in 2020 dollars and $98,012,400 in 2030 dollars. It includes 22 miles of urban trail and four small access points, including one new long-span bridge. There are no route design alternatives.

Cost estimates are based on potential trail types that were applied to specific conditions along the corridor for cost estimating purposes with planning, design, management costs, and contingencies included. Percentages were used to estimate the planning, design, and management costs for the corridor, which include survey, technical studies, and engineering design; environmental analysis, documentation, and permitting; project administration; construction management; mobilization; and design services during construction. A 30-percent contingency amount was added to account for unknown factors that may influence the overall cost of the trail. The State Parks assessment estimates environmental costs of the trail as a soft cost or percentage of the construction costs. The cost to remediate environmental liabilities in remote locations (such as rail cars in the Eel River) has the potential to be extraordinary, and project-level costs have not been estimated. A detailed discussion of environmental liabilities begins on page 64, and additional studies would be needed to further refine all costs.

Potential reroutes of the trail outside of the rail corridor and onto surface roads to bypass areas with major geologic challenges or failing infrastructure provide opportunities to reduce costs. Potential reroutes were identified that could result in an estimated $86 million in cost reductions.

For a full description of the assessment findings, trail segment feasibility results, and planning level cost estimates, please refer to Appendix D, Part I, Great Redwood Trail Feasibility, Governance, and Railbanking Report.



Figure 17. NCRA Corridor, Southern Section

ENVIRONMENTAL LIABILITY

The NCRA railroad corridor pre-dates both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) by roughly 100 years and contains environmental waste contaminants deposited along the corridor which have been passed down through generations to its current owner, NCRA.

To understand the environmental issues, it is helpful to clarify terminology. In this report, the following terms are used:

- Remediation – This term is often used to describe the process of cleaning to its purest, natural form a site that has been found to have environmental contaminants.
- Mitigation – This term is used in reference only to projects and is a required element of NEPA and CEQA. It attempts to lessen the environmental impact of an infrastructure project by taking a separate action that would benefit the environment. A project could be required to both remediate and mitigate.
- Liability – In this project context, liability is referenced for legal risk, financial risk, and environmental remediation risk. Unless otherwise specified, liability is the assumption of responsibility for the risk, without necessarily having identified all possible risks. In the context of environmental liability, NCRA or its successor agency may be held responsible for the remediation (or the cost of remediation) of the rail corridor for known contaminants and contaminants discovered later. Environmental studies on portions of the NCRA corridor have been conducted and referenced in Appendix F. This process has identified many environmental hazards as an aggregate, but project-level studies will identify specific concerns and may result in additional cost. If NCRA or its successor refuses to accept this liability (where applicable), it could result in litigation.
- Planning-level cost estimates – Projects such as the Great Redwood Trail begin as ideas, which are then examined with enough detail to get a rough idea of the level of effort and cost required to bring the idea to fruition. This assessment report is that first flush, precursory examination; all costs, including environmental liability, are estimates from that high, planning-level vantage point. These cost estimates are then used to develop an overall budget and schedule for the life of the project. Planning-level estimates give project managers an idea of the economy of

scale the project will need, but there is too much variation in the estimate for it to be a completely accurate number.

- Project-level cost estimates – As the project moves forward and detailed environmental studies and design work are conducted, the planning-level cost estimates are amended and narrowed down to increasingly accurate, project-level cost estimates. These more-realistic estimates can be used to establish project budgets and seek funding.
- Preliminary analysis – As described with planning-level cost estimates, projects begin with a first look to determine if there are enough resources and strong enough justification to continue pursuing the project. The preliminary environmental analysis for this assessment examined existing reports and databases for known environmental concerns, in addition to information gathered by a field crew that walked the length of the corridor. This preliminary analysis allowed State Parks to determine areas of concern needing additional study. If the trail project moves forward, more-formal NEPA/CEQA studies and documentation will be necessary.
- Hazardous waste material – This term includes any industrial by-product or discarded commercial product that is potentially harmful to the environment or people and other living organisms because it is ignitable, corrosive, reactive, or toxic. In the NCRA corridor, this is anticipated to be mostly abandoned, decaying rail equipment and chemical contaminants that leaked or were dumped along the corridor during regular operations.

Preliminary Analysis

NCRA has conducted project-level environmental remediation when required, but has not conducted a thorough, corridor-wide, environmental remediation effort. To accurately assess the level of contamination for the entire 252-mile corridor proposed for trail conversion, additional focused study will be required.

This assessment effort conducted a preliminary analysis for high-level, policy planning purposes only. Environmental studies, findings, and cost estimates included here represent a preliminary examination of the existing conditions visible in the corridor during field visits; literature reviews of prior environmental studies, databases, and consent decrees; cost comparisons with similar projects; and knowledge of current environmental regulation placed on state agencies conducting projects in this region.

Because of the level of uncertainty surrounding environmental liability through the corridor, it was assessed by 1) OSAE in the financial analysis (page 20 and

Appendix C), 2) State Parks in the trail feasibility analysis (Appendix D), and 3) Caltrans in a separate memo prepared for discussion purposes with the Task Force (Appendix F). An effort was made to complement other teams' studies, but there are some areas of overlap in the cost estimates. A comprehensive environmental study of the whole corridor is necessary to remove overlapping costs and narrow them down to corridor-wide project – level estimates.

Environmental liability assessed by State Parks includes planning – level soft costs for trail construction and general environmental studies, with some hazardous waste removal, but does not include potential wetland mitigation or detailed hazardous material clean – up (which Caltrans' addressed) or a number of other contingent liabilities (which OSAE analyzed). As part of its analysis, State Parks' assessment rolled environmental planning into its full – development planning – level cost estimates as described on page 61. These costs address only the 252-mile portion of NCRA's corridor currently proposed for use as the Great Redwood Trail (Healdsburg, Sonoma County to Korbel and around Humboldt Bay, in Humboldt County).

OSAE identified areas of concern for potential liability due to environmental conditions. Cost estimates for these are itemized in Table 3 on page 27 and described in detail below. These items are applicable to NCRA's entire 316 – miles of right-of-way, including the portion proposed to be transferred to SMART. Caltrans' memo based its analysis on full build-out of the 252-mile trail corridor used in State Parks' report, including both the rail-to-trail and rail-with-trail portions, and follows the project phasing recommended by the State Parks analysis (page 61 and Appendix D).

Financial Liability

Many NCRA depots and maintenance facilities along the rail line may need environmental clean-up, regardless of the corridor's future use. The following list of potential liabilities was identified by OSAE during its assessment and additional detail can be found in Appendix C, *Calculated Value of Net Assets Report*.

Environmental Consent Decree

NCRA contracted with an environmental professional services firm to assess NCRA's level of compliance with the requirements, laws, and regulations pursuant to the Environmental Consent Decree and to develop a plan for regulatory approval for compliance. The estimated costs associated with future rail operations, clean-up, and remediation activities ranged from $4.3 million to

$6.9 million according to the assessment report dated July 2002 (see table 3, page 27). These costs have not been updated to 2020 market rates. It is unknown to what extent NCRA has fulfilled all obligations pursuant to the Environmental Consent Decree as of December 31, 2019.

Eel River

Although no legal claims have been identified, additional liability may exist for environmental related issues involving abandoned rail cars and equipment in the Eel River and other sites. As described in table 3 on page 27, costs are unknown and need additional study to accurately estimate cost of removal. For more detail, please see Appendices C and D.



Figure 18. Rail Cars and Collapsed Tunnel in Eel River Canyon

Local Jurisdiction Complaints

NCRA received a legal notice from the City of Eureka in December 2014 stating that the presence of rail equipment in Eureka's yard constituted a public nuisance under Eureka's Municipal Code. The City of Eureka required NCRA and a private party to remove all rail equipment from the Eureka yard. OSAE research and communication with the private party equipment owner indicated that the equipment was not removed as of December 31, 2019. This may result in monetary sanctions against NCRA. Further, in July 2015, a northern California news article reported that work to remove trains from the Eureka yard (known as the "Balloon track") was stopped due to workers becoming sick from exposure to contaminants. This may also present legal exposure to NCRA, or a successor agency. As described in table 3 on page 27, costs are unknown and need additional study to accurately estimate cost of removal. For additional detail, please see Appendix C.

Liquified Petroleum Gas

NCRA faces unconfirmed potential costs and obligations associated with safety improvement of the hazardous material storage of liquefied petroleum gas cars stored in the Schellville Depot.

This potential liability was identified in a complaint against NCRA filed on May 28, 2019, with Sonoma County's Permit and Resource Management Department, Code Enforcement Division. Costs associated with the safety improvements may range from $5.2 million to $7.2 million according to the September 2019 complaint. (See table 3, page 27.)

Based on the Letter of Intent between NCRA, NWPCo, and SMART entered on February 15, 2017, NCRA agreed to assume all risks and fully indemnify, defend, and hold SMART harmless with respect to any claim, damage, or liability resulting from transporting hazardous materials on the tracks and/or storing liquefied petroleum gas at the Schellville Depot. This section of right-of-way is proposed to be transferred to SMART, as discussed beginning on page 71. For additional information, please see Appendix C.

Environmental Remediation and Mitigation

Caltrans' North Region Division of Environmental Planning utilized State Parks' draft report as the basis for its analysis of the corridor. Caltrans approached this analysis from the perspective of a state agency required to comply with state and federal regulations and examined the environmental liability issues that could be anticipated for the Great Redwood Trail if the trail conversion project moves forward. Two main areas of concern for this corridor were identified: wetland mitigation and hazardous material remediation. These areas of concern were analyzed for planning-level costs, resulting in an overall environmental liability of $4 billion for full-development of the 252 – mile trail corridor. This cost is dependent on project design, level of remediation required, and market costs at time of construction. Additional studies are required to get an accurate and detailed cost estimate. Caltrans' assumptions are described below, and costs are itemized by State Parks' trail development phases in Table 4. Further information on Caltrans' assumptions can be found in its memo (Appendix F).

Wetland Mitigation

Wetland mitigation estimates are based on Caltrans knowledge of the North Coast region and the NCRA corridor specifically. The cost estimate of $103 million relied on data gathered and reported in the State Parks' draft Great Redwood Trail Feasibility Study to determine locations where mitigation is likely to be

required. Wetland mitigation liability may be lessened if the trail project does not progress and the right-of-way continues to exist in its current form.

Hazardous Material Remediation

Hazardous waste remediation focused on the potential contamination of an aquifer used for drinking and the possibility of soil and sediment contamination. Chemicals of concern include PCE, Arsenic, PCP, TPHs, heavy metals, petroleum (diesel, gasoline, and waste oils), chromium, PAHs, solvents, benzene, ethylbenzene, toluene, xylene, chlorinated hydrocarbons, non-petroleum hydrocarbons, pesticides, fumigants, dioxin/furans, heating oil, copper, lead, nickel, PCBs, and distillates. These chemicals are common contaminants for this type of land use and were identified in previous studies of the corridor.

Caltrans assumed that full remediation of the rail bed would be required before public trail construction could begin. This makes up the bulk of the cost estimate because if Caltrans were to undertake the trail project, the project would be subject to code requirements and would likely require removal of all ballast (aka gravel) from the railroad bed on the entire 252-mile corridor. The ballast would be treated as hazardous waste (if the railway ballast contains the concentrations of lead and arsenic typically found in ballast), which would require transportation to a cleaning facility and disposal. The trail proponent may be able to mitigate these costs if the resource agencies overseeing toxic substances and hazardous waste were to allow the ballast to remain in place, covered with clean soil or another hard surface treatment (aka "capping" the rail). Costs were estimated based on total removal of ballast for the entire 252-mile corridor.



Figure 19. Abandoned Debris in the Eel River Canyon

A second major cost assumed in this estimate relates to the accessibility of heavy equipment and whether it (and waste debris) could be delivered by truck or would require being airlifted to/from the site. Costs are provided for accessible and inaccessible areas. When calculating costs for ballast and tie removal, it was assumed that 50 percent of the project limit was accessible, and 50 percent was not.

For a full explanation of assumptions used, and a detailed breakdown of items included in the estimate, please see Appendix F.

Table 4. Caltrans Environmental Liability Cost Estimate for the NCRA Corridor

Item	Cost Estimate (Low)	Cost Estimate (High)
Wetland Mitigation	$103,566,500	$103,566,500
Hazardous Waste Remediation	$3,960,342,000	$4,007,700,500
Whole Corridor Environmental Liability TOTAL	**$4,063,908,500**	**$4,111,267,000**
Per Mile Environmental Liability TOTAL	**$16,255,634**	**$16,445,068**



Figure 20. Deferred Maintenance of Tunnel in NCRA Corridor

FREIGHT RIGHTS IN THE SOUTHERN SECTION

Section 17 of SB 1029 appropriates the sum of $4 million to SMART for the acquisition of freight rights and equipment from NWPCo to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service. NWPCo has agreed to accept this payment provision but is under no obligation to SMART or the State if another buyer were to make an offer before the transaction agreement is executed.

If the State does not take advantage of this unique opportunity, future capital costs to extend and increase passenger service in the context of a different freight operator may be prohibitive, putting expansion of passenger service on the existing corridor at risk. Using the SB 1029 appropriations to facilitate the acquisition is likely to result in significant cost savings.

Rail Network Connectivity

The California Legislature created SMART in 2002 to operate passenger rail service in the Sonoma-Marin region. This publicly owned rail transit agency operates passenger rail from the Larkspur Ferry Terminal to the Sonoma County Airport and plans to extend its service north to Cloverdale. In addition, SMART owns railroad rights-of-way east from Novato through Ignacio to the Napa Junction at Lombard and has long-term plans to provide passenger rail service to alleviate congestion on State Route 37 (SR 37), a vital regional connector route between Marin and Contra Costa Counties and the Central Valley, that experiences high demand for business, freight, and recreational travel during weekday peak and weekend off-peak hours. SR 37's western terminus begins at its intersection with US 101, just north of Ignacio, and heads east, where it terminates at Interstate 80 in northern Vallejo.

The State has explored developing the east-west corridor for passenger rail transit to alleviate major congestion on SR 37. Caltrans' Traffic Concept Report for SR 37[13] describes long-term planning strategies that include considerations for multi-modal facilities and public transit options to help achieve the operational concept for the corridor. In addition, the 2018 California State Rail Plan[14] identified this corridor as a significant gap in the statewide passenger rail service network. Finally, SMART conducted a study in 2019 in partnership with CalSTA and

[13] https://hwy37.ucdavis.edu/files/upload/resource/TCR%2037-FINAL-SIGNED.pdf
[14] https://dot.ca.gov/programs/rail-and-mass-transportation/california-state-rail-plan

Caltrans to determine the feasibility of rehabilitating existing rail infrastructure for passenger service between Novato and Suisun City. Currently, there is no full-corridor public transportation service in the corridor, and development of the rail network will help to fill this transit gap for the region.

The 2018 California State Rail Plan also identified the State's interest in the Novato - Napa line as a key segment required for the development of a SMART passenger rail link to Napa and Solano counties. Service goals as identified in the plan are intended to deliver service on strategic interregional corridors that provide critical connections for economic mobility and equitable access to jobs, housing, and medical facilities. The SMART corridor is a critical link for the region and state. Therefore, the 2018 California State Rail Plan set the following service goals:

- By 2022: Establish integrated express bus services to connect the communities north of Windsor with SMART and to connect the Napa Valley with intercity services in Solano County and Martinez.
- By 2027: Provide integrated regional rail service from Larkspur to Cloverdale, increasing the utility of the service and providing a rail link between northern Sonoma County and North Coast communities, including integrated express bus services between Napa County and Suisun-Fairfield.
- 2040: Provide half-hourly peak and hourly off-peak service between Cloverdale and Larkspur and hourly service between Suisun City and Novato, with timed connections to service between Cloverdale and Larkspur.

The acquisition of freight rights in the SMART corridor would secure a significant interregional transportation corridor and close a critical gap in the statewide rail network, as identified in the 2018 California State Rail Plan and the SMART Feasibility Study. The acquisition will foster a rail connection between the Solano and Sacramento regions to the North Bay Area and provide resiliency and redundancy along the congested and flood-prone SR 37 corridor.

Operational and Capital Investment Efficiencies

A public transit agency owning both the passenger and freight rights consolidates control of the corridor. Split ownership of rights on the corridor not only increases operational costs for the public transit provider but can also cause delays and otherwise degrade performance. Because SMART does not own the freight easement, it cannot ensure that it receives a financial benefit from the freight operations on its track to offset increased maintenance costs. This arrangement

limits the ability of the passenger operator to efficiently operate a service that is convenient and attractive to passengers.

Currently, the right-of-way between Healdsburg and the Sonoma-Mendocino county line is owned by NCRA. Depending on how NCRA is dissolved and its assets disposed, this arrangement could cause complications for SMART. Common railroad industry practice when a publicly owned passenger service operator does not own the underlying right-of-way is for the host railroad to charge fees above and beyond maintenance and rehabilitation, as well as the cost of any requested improvements in the corridor. Often, the public agency incurs additional costs to pay for projects the host railroad wants completed, regardless of relevancy to the passenger improvements, and regardless of whether the freight operator will make significant use of the improvements. This is specifically relevant to the cost of capital investments that will be needed as SMART extends north to Cloverdale. With SMART owning the freight rights as well as the passenger rights, investments in infrastructure can be tied directly to their immediate usefulness for both freight and passenger movement, and not be invested in prematurely.

Increasingly, the State is moving towards access agreements, whereby the State, the operator, or another public entity pays the host railroad an access fee for dedicated time slots in the host's operations schedule. This is likely to reduce overall project delivery cost but still require payment to a third party. Additionally, there are delays in delivering projects through a host railroad as all modeling and service improvements must be approved by the host railroad. The proposed transfer of freight rights and right-of-way from NCRA to SMART in the southern section insulates the passenger rail service from this additional cost. Likewise, it helps to solidify its role on the east-west corridor and protect against future conflicts.

Emergency Response

Exclusive ownership of the railroad corridor, including all associated rights-of-way and operations (freight and passenger) by a public passenger rail agency such as SMART would provide increased flexibility and sustainability for the railroad owner and operator. Passenger and freight railroads have different operating characteristics and passengers require on-time performance and useful schedules, whereas a small freight operation can be planned around the passenger schedule. By transferring all rights and ownership to SMART, SMART can better manage the railroad to prioritize on-time-performance and adapt schedules to meet changing market demands. Importantly, on the east-west corridor, SMART's exclusive ownership will also strengthen its important emergency

response role in transporting key personnel and meeting evacuation needs during public emergencies. SMART has been a critical part of the region's emergency response to wildfires in the North Bay in the past. It is anticipated that exclusive ownership of the railroad tracks and rights will provide necessary redundancy, resiliency, and emergency support for future climate change impacts, such as flooding and fire, or other emergency freight or passenger transportation needs.

Secondary Benefits

SMART has established a successful public-private partnership with a broadband internet utility provider. Through this partnership, the utility can economically install fiber optic cable and SMART receives additional funding for rail rehabilitation. Full build-out of the SMART system promises to deliver broadband internet along with passenger rail service to rural communities in the northern part of Sonoma County. The current COVID-19 crisis has demonstrated that internet access is as important for daily life as any other utility. Development of the SMART passenger rail service would be a cost-effective way to deliver physical mobility together with broadband internet to rural Californians.

Assets, Rights, Liabilities, and Abilities to be Transferred

SMART owns the real property from Corte Madera north to Healdsburg and east from Ignacio to the Napa Junction in Lombard, as well as passenger rights as far north as Willits. NCRA owns the real property from Healdsburg north to Humboldt County and the freight rights for both sections of right-of-way. (See Figures 1 and 4, on pages 2 and 16, respectively)

Using state funds, SMART will acquire the freight rights in the active SMART corridor and the east-west freight-only corridor between Ignacio and the Napa Junction (aka Napa River), near Lombard. It will also acquire, through a quit-claim deed from NCRA, both the real property and freight rights between Healdsburg and the Sonoma-Mendocino county line.

As described in the *Background* section of this report, NCRA contracts its freight rights to NWPCo, which is an active, low-volume, short-line, privately held, railroad company. NWPCo has agreed to transfer its rights to SMART, thereby transferring its 99-year lease with NCRA and ceasing its operations as a private rail enterprise south of mile post 89.

SB 1029 amended Public Utilities Code Section 105095 to give SMART the authority to provide both freight and passenger rail service. In May 2020, its Board of Directors adopted a Resolution to acquire the NWPCo freight contract and

manage its freight customers. During this transition period the following actions will, or have already, occurred.

1) SMART will enter into a Baseline Agreement with CalSTA that outlines the deliverables of the freight rights acquisition and provides for the transfer of funds to SMART.

2) SMART will enter into an Asset Transfer Agreement with NWPCo to solidify the terms of the agreement and describe assets, rights, responsibilities, and liabilities to be transferred.

3) NWPCo will formally transfer its freight operations to SMART. This is to include management of the existing freight customers; all freight equipment and railcars; maintenance responsibilities for the railroad right-of-way and crossing signals; and coordination responsibilities with local, state, and federal jurisdictions.

4) NWPCo will formally transfer its freight license, issued by the STB, to SMART for the designated right-of-way.

5) NCRA's Board of Directors adopted a Resolution in May 2020, to approve the transfer of freight rights for the entire SMART corridor south of Healdsburg and the transfer of real property between Healdsburg and the Sonoma-Mendocino county line to SMART.

6) SMART will conduct its own market and feasibility studies to explore continued and/or expanded freight service in its corridor.

While SMART is acquiring a private enterprise with the ability to generate revenue, it is also accepting additional responsibilities and costs. As a public agency, the passenger service operator will have the right to expand its freight customer base and use the profits from freight operations to help cover long-term maintenance costs on the entire rail line, including the freight and passenger portions of the right-of-way. Short-term maintenance, however, will require initial funding.

Measure Q, the voter-approved local ordinance that funds and governs SMART activities within the Counties of Sonoma and Marin, provides funding for the design, construction, implementation, operation, financing, maintenance and management of a passenger rail system and a bicycle/pedestrian pathway connecting the 14 rail stations from Cloverdale to Larkspur. It does not contemplate an east-west passenger rail service, and therefore, cannot fund activities in the Novato to Suisun City corridor without additional funding.

Maintenance activities on the freight-only right-of-way from Novato to the Napa River near Lombard are contractually assigned to NWPCo as its only active rail

operator, and some repairs have been deferred. While SMART is acquiring the NWPCo business, it is also assuming responsibility for an aging infrastructure needing an estimated $10.5 million in one-time track and signal maintenance repairs and an estimated $450,000 in annual flood, fire, track, and signal maintenance, as well as potential safety repairs.

Cost

As previously described, Section 17 of SB 1029 appropriates $4 million to SMART for the purchase of freight rights from NWPCo. In addition, the Legislature appropriated $2 million[15] in Assembly Bill 74, Budget Act 2019-20 to CalSTA for SMART to be used on safety upgrades and maintenance upon acquisition of a freight contract.

Assembly Bill 74, Budget Act of 2019-20 also appropriates $8.8 million for expenses related to dissolving NCRA, including operations, maintenance, and the retirement of outstanding debts. CalSTA was given discretion over the use of those funds and plans to use $2.4 million to retire the Federal Railroad Administration RRIF Loan. Settling this outstanding debt will release both NCRA and NWPCo, as co-borrowers, from their ongoing quarterly payment obligation to the Federal Railroad Administration.

[15] Item 0521 – 101 - 0001 in Assembly Bill 74, (Ting) Budget Act of 2019



SCENARIO ANALYSES

This section describes five plausible scenarios considered by the Task Force during this assessment and lists other alternative options for further exploration.

Scenario 1: NCRA is dissolved, and its right-of-way is liquidated

Scenario 2: NCRA is dissolved, and its right-of-way is converted to a trail

Scenario 3: NCRA is not dissolved, and its mission is amended

Scenario 4: Do nothing

Scenario 5: A new railroad company buys out NCRA

It is important to note that these scenarios address the northern portion of the NCRA rail line, from the Sonoma-Mendocino county line north to Humboldt Bay and Korbel. The southern portion, including real property and freight rights south of the Sonoma-Mendocino county line and east from Ignacio to Lombard is proposed to be transferred from NCRA to SMART, as described previously in this report.

Considerations for Dissolution of NCRA

Scenarios 1, 2, and 5 contemplate dissolution of NCRA. If one of these options is chosen, it will be necessary to address the following issues.

Outstanding Debt

As of December 31, 2019, total known liabilities were $7.4 million. In addition, one outstanding lawsuit was settled by NCRA in May 2020, which will accrue interest until it is paid. NCRA does not have a revenue stream to cover these debts.

Liquidation

Liquidating NCRA's real property and equipment to pay off these debts requires consideration of the following.

1. All property was purchased with state and federal funds. The Funds Transfer Agreements governing those purchases contain language which requires the property to remain in public transportation use or Title IV projects *in perpetuity*. Alternatively, in the event of sale or other alienation of the property, the State and Federal Highway Administration may demand a return of their *pro rata* share of fair market value or may permit their *pro*

rata shares of fair market value be redirected towards other eligible projects. Generally, south of Willits, the State's share is 10 percent and north of Willits is 100 percent. When NCRA has sold excess property in the past, the CTC has sought reimbursement while the Federal Highway Administration has not. See page 32 for details.

2. This assessment did not include an appraisal or market analysis of the potential revenue that could be generated from the liquidation of assets or of the portion of proceeds that could be retained after the State has been reimbursed. Therefore, additional study would be needed to determine if this revenue would be enough to satisfy the outstanding debt, while also allowing state and federal government programs to recoup their investments.

3. This assessment effort did not include acquisition of individual property title reports and therefore, this assessment report does not have documentation of property liens. However, it is anticipated that liens exist on certain parcels, and in its review of contracts, OSAE did identify equipment that was offered as collateral by NCRA. Specifically, this equipment includes 33 rail cars that are the source of NCRA's most reliable revenue for agency funding.

Conversion to Trail

If the property is used for public transportation purposes and the corridor is converted to a trail, the successor agency will likely not assume all the outstanding debts of the dissolved rail entity. (Some liabilities, such as environmental, may remain with the right-of-way.) Absent available funding, a dissolving agency such as NCRA with outstanding debt will likely be forced into bankruptcy. This option is discussed in more detail with Scenario 4, beginning on page 88.

Lease Agreements and Encroachments

With the transfer of real property and freight rights south of the Sonoma-Mendocino county line, SMART will assume responsibility for maintaining any lease agreements that may exist at the time of NCRA's dissolution. Lease agreements on the 252-mile corridor that spans Humboldt, Trinity, and Mendocino Counties, however, will require legal review.

NCRA maintains approximately 127 paid property lease agreements. These include encroachments from neighboring properties or municipalities that may use excess NCRA land or at-grade-crossings. They also include permanent utility leases, such as AT&T phone lines, PG&E power lines, and cell towers. While NCRA established some leases on its own, it did contract with a professional property

manager, by the name of FEC, for several years. This contract requires payment to FEC of 30 percent of all fees collected on leases negotiated by FEC on NCRA's behalf. The lease payments from all sources constitute NCRA's main source of local funding.

In addition, there are unpermitted encroachments that NCRA has not pursued or abated. Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* describes encroachments encountered during field assessment of the corridor, and a list of permitted encroachments was provided by NCRA. This assessment did not cross reference the lists. Dissolution activities will require identifying, addressing, and enforcing property boundary lines.

Liquidation

If NCRA's right-of-way is liquidated at the time of its dissolution, existing lease agreements will need to be assessed on an individual basis depending on the underlying property status. Property that is owned in fee may be offered to the leaseholder to purchase. Property that is owned as a railroad easement may revert to the underlying property owner, who will need to assume or cancel existing lease agreements.

Conversion to Trail

If NCRA's right-of-way is converted to a trail, these agreements will transfer to the successor agency for continued administration and could be a source of minimal agency funding.

Licenses and Permits

As an "active" railroad, NCRA is governed and regulated by the Surface Transportation Board, the Federal Railroad Administration, the California Public Utilities Commission, and various resource-permitting agencies. If the rail line north of the Sonoma-Mendocino county line is dismantled, either to be liquidated or converted to a trail, all three government agencies must be consulted and involved in the process.

- The STB is an independent federal agency charged with the economic regulation of various modes of surface transportation, primarily freight rail. For a railroad to dissolve, it must also file a legal petition for abandonment through the STB[16]. The process is lengthy and involves a public comment period where shippers, receivers, and others have an opportunity to oppose the petition for abandonment. NWPCo currently has fewer than ten regular shippers that it services, and all freight is moved on the southern portion of rail line owned and

[16] In accordance with 49 CFR Part 1152.

managed by SMART. The freight license on the northern portion of the line would need to be addressed as part of the abandonment process and may be denied by the STB.

- The Federal Railroad Administration issues, implements, and enforces railroad safety regulations; invests in rail corridor development and rehabilitation; and is involved in railroad research and technology development.
- The California Public Utilities Commission is the state agency that oversees rail safety in California. The oversight it provides can be broken down into three areas: 1) Railroad Safety; 2) Rail Transit Safety; and 3) Rail Crossing Safety.

Environmental Liability

The NCRA rail corridor contains several types of environmental liabilities which may have to be addressed regardless of a future rail or trail project. As discussed in the *Environmental Liability* section of this assessment report, starting on page 64, overall environmental liability is estimated to be around $4 billion.

While removal of abandoned equipment and rail cars is a high priority for all scenarios considered, the level of subsurface remediation needs more investigation than could be performed during this assessment. It is important to note when considering dissolution of NCRA that the sale of right-of-way containing hazardous material may be complicated and costly and may not relieve NCRA of the liability.

Liquidation

To sell property in California when environmental contamination is a known possibility, a due diligence assessment should be done. Based on the assessment, 39 locations along NCRA's right-of-way were identified to as containing hazardous material. In addition, there may be future locations discovered which, like the known sites, will need further examination and possible remediation prior to liquidation. As the prior property owner, NCRA may be held liable for the cost to remediate contaminants, which may result in a negligible net profit from the sales.

Conversion to Trail

While the station sites identified in the Environmental Consent Decree will need to be remediated, and abandoned equipment removed from the Eel River and along the line, a full remediation may not be required along most of the corridor. Full remediation includes removal, cleansing, and disposal or return of ballast from the railbed. Areas where the track remains intact may not need full remediation and may be capped (covered with soil) instead. More-detailed project design and environmental studies will determine the exact level of contamination and

remediation required for the proposed use. Please see the *Environmental Liability* section starting on page 64 for more detail.

Transitional Administration

Given NCRA's tenuous financial circumstances, it has been contemplated that NCRA may dissolve immediately and its holdings transferred to an interim agency for administration and to manage the liquidation or railbanking process. This option may complicate rather than simplify matters because of NCRA's outstanding debt, potential environmental liability, known and unknown litigation, and numerous lease agreements. Therefore, if NCRA is dissolved, it would be prudent to have a plan in place to address all outstanding issues as well as to manage, liquidate or transfer its assets.

Scenario 1: NCRA is Dissolved, Right-of-Way is Liquidated

In addition to the dissolution considerations described above (outstanding debt, lease agreements and encroachments, licenses and permits, and environmental liability), there are conditions unique to liquidation that must be considered.

Future Rail Opportunities on North Coast Will Be Dissolved Along with NCRA

Acquisition of a contiguous corridor that has low sloping grades, meandering curves conducive to railroads, and connects the Bay Area with Humboldt Bay was difficult in the 1880's due to private property ownership and existing development. Contemplating the possibility of recreating this corridor at some point in the future is daunting. If the NCRA right-of-way is liquidated, the likelihood of acquiring a similar corridor for any use is expected to be astronomically more expensive, time consuming, and complex than retaining the existing corridor.

This policy decision will have far reaching effects for future freight and passenger rail, as well as the current proposed interim use as an active transportation commuter and recreational path.

Title Searches & Reversionary Clauses

If the corridor is liquidated, a detailed examination of individual title reports will be necessary. Based on the DGS assessment, there are more than 2,800 parcels that will need to be reviewed for reversionary clauses prior to disposition. This is discussed in detail on pages 29 and 35.

Sale of Property Owned in Fee

As previously discussed on page 32, fair market value proceeds from the sale of property and equipment purchased with public funds must be returned to the State in the *pro rata* proportion used in the original acquisition (or directed to eligible public transportation projects) and may result in a negative net value when assets are liquidated.

Existing Lease Agreements and Contracts

NCRA maintains many long-term lease agreements and contracts with public utilities, local jurisdictions, private property owners, and other railroads. These agreements may be transferrable to the new owner and will need to be assessed on an individual basis. There may be zoning restrictions enacted by local jurisdictions to protect existing permitted infrastructure (i.e. constructed rail-with-trail segments, and public utilities) that could limit legal uses of the liquidated right-of-way. Federal regulations may govern the assignment or transfer of contracts, depending on their substance. Specific contract review and concomitant research is necessary to resolve this issue.

Impacts on the State

Rail Connectivity

Liquidation of the NCRA right-of-way would eliminate freight and passenger railroad service possibilities in the existing rail corridor through Humboldt, Trinity, and Mendocino Counties from the Bay Area to Humboldt Bay. Liquidation would eliminate a contiguous transportation route that could serve multi-modal purposes, such as an active transportation commuter path and recreational trail, as well as a possible alternate parallel route to US 101 in the region.

Cost to State vs Cost to Local Jurisdictions

Because It is not clear if NCRA is a "local" or "state" agency, or a "special district" it becomes difficult to determine which jurisdiction would manage liquidation of the right-of-way. Liquidation is further complicated because NCRA is a regional railroad with federal oversight under the Federal Railroad Administration and the Surface Transportation Board.

If the right-of-way were to convert to local control, as it does for other local agencies or special districts, the state Government Code provides for the management under The Cortese-Knox-Hertzberg Local Reorganization Act of 2000 (Government Code Section 56036, et seq.). This statute defines a "district" as "an agency of the state, formed pursuant to general law or special act [*id est* Cal. Gov. C. § 93020 et seq.], for the local performance of governmental or

proprietary functions within limited boundaries and in areas outside distinct boundaries when authorized… pursuant to (Government Code) Section 56133[17]".

Because Local Agency Formation Commissions (LAFCO) are organized by county, all four counties with NCRA right-of-way (Humboldt, Mendocino, Trinity, and Sonoma) would have to participate. The individual LAFCOs would need to coordinate and either 1) reach a consensus that one county would take the lead management role or 2) Balkanize the alignment, which would complicate any attempt to railbank.

Alternatively, if a state-legislated railroad with federal oversight dissolves, management is likely to fall back on the State. Generally, DGS takes on management of abandoned state-owned right-of-way. Considering the length of the railroad and complicating factors, this would be a significant new responsibility for DGS.

Scenario 2: NCRA is Dissolved, Right-of Way Converted to a Trail

In addition to the dissolution considerations described above (outstanding debt; lease agreements and encroachments; licenses and permits; and environmental liability), there are conditions unique to conversion to a trail that must be addressed.

Designating a Successor Entity and Determining Effective Trail Governance

Before railbanking and converting the right-of-way to a trail can be pursued, a trail manager must be identified. As described in the *Governance Structure Options* section starting on page 41, the trail management entity, or successor agency, must have enough resources to: 1) handle the railbanking process; 2) maintain the 252-mile corridor, including weed abatement and emergency repairs; 3) maintain existing lease and contractual agreements; and 4) work with local, state, and federal agencies to properly study, remediate, and construct the trail.

As NCRA's organizational structure has shown, the successor entity will need financial support if it is to be successful in its ongoing mission to convert the rail to trail. Please refer to Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for additional details.

[17] Cal. Gov. C. § 56036(a)

Railbanking Process and Transfer of Assets/Liabilities to a Successor

Due to the property ownership complications described earlier, specifically the reversionary clauses, NCRA's right-of-way will need the additional protections afforded a railbanked corridor and financially viable successor agency before it is converted from a rail to a trail corridor. If this step is missed, the corridor is anticipated to lose significant gaps in ownership to underlying property owners, and the proposed trail would abruptly end at the property line or be forced to find alternate routes around the obstructions. Trail proponents would be met with additional complications and cost, while out-of-way travel would significantly increase for trail users, including commuters. Please see Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for additional details.

Environmental Hazards of Converting a Railroad to a Trail

Trail design is a significant factor in determining the level of environmental remediation required. Allowing members of the public to walk on former railroad grades and infrastructure may expose them to potential environmental hazards that they would not be exposed to otherwise. If the rail corridor is converted to a trail, a master planning process would include developing preliminary plans and design leading to the initiation of environmental studies. The environmental hazards identified in this assessment (*Environmental Liability,* starting on page 64*)* are based on previous studies and observed conditions during field visits. Further detailed assessments will be necessary for each section of trail.

Trail Master Planning, Stakeholder Involvement, and Cost

Before additional environmental studies or trail conversion can take place, NCRA's successor agency will need to develop a thorough trail master plan. This – 1-year to –3-year process will allow trail proponents to work with stakeholders on identifying opportunities and constraints; establish project development partnerships; and develop an overall theme for the trail; or sections of the trail. It must also identify a funding source to cover the expenses associated with trail development and eventual trail construction. See Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report* for additional detail.

Impacts on the State

Rail Connectivity

Scenario 2 proposes to stop all railroad services north of the Sonoma-Mendocino county line. Rail has not operated in this section of the corridor for 25 years, so rail connectivity concerns that currently exist will continue. It would be beneficial to

the state's rail network in the long-term to preserve and maintain NCRA's right-of-way through the railbanking process for future railroad use when it becomes economically viable to rehabilitate freight and/or passenger rail in the region.

Public Health and Greenhouse Gas Emissions

Currently, trains are not running in the corridor or emitting greenhouse gases on the northern segment of NCRA's rail line. Therefore, conversion of the rail to a trail will have a negligible impact on air emissions. However, the trail would have public health benefits. As an easy-access multi-use commuter and recreational trail, this active transportation corridor is estimated to attract approximately 1.4 million annual trail users, or 3,800 daily users. Please see the discussion *Economic and Public Health Benefits* on page 60 and Appendix D, for additional detail.

Cost to State vs Cost to Local Jurisdictions

As discussed previously in the *Governance Structure Options* Section starting on page 41 and in more detail in Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report,* the organizational structure chosen for the trail management agency will determine costs to the State versus costs to local jurisdictions. For Scenario 2, which is to convert the rail to a trail, it is important for the project's success to establish a strong, fiscally viable, successor agency that has the staff resources to meet its mandate.

Scenario 3: NCRA is Not Dissolved, and its Mission is Amended

Another potential scenario involves amending the legislative mandate to allow NCRA to railbank its own right-of-way and convert it to a trail. See the discussion starting on page 49 and Appendix D, *Part II*, for a detailed discussion of NCRA's existing governance structure.

In this scenario, NCRA is both the railroad owner *and* the trail management successor agency. NCRA would need to file abandonment of the railroad with the STB and then proceed with the Railbanking process. While the Task Force found no legal issues to preclude NCRA from taking this action, it did identify the following issues to address for a successful trail development project.

Staff Expertise

During the year and a half that this assessment was being conducted, NCRA's Board of Directors underwent a complete overhaul, with new members having knowledge or experience with trails rather than railroad and freight industries.

Staffing has also undergone some changes, with NCRA's long-time legal counsel being replaced with County Counsel from Sonoma County.

NCRA maintains two full time staff (Executive Director and Administrative Assistant) with additional support from on-call contractors (accountant, engineer, legal, property management etc.). See Appendices B and D for more detailed information on the finances and existing governance structure of NCRA.

For a trail management agency to successfully railbank and implement a trail in NCRA's corridor, it would need to hire staff with expertise in environmental studies, public outreach, master trail planning, and trail construction. While much of the specialized work could be contracted out, it is estimated that NCRA would still require in-house staff with subject matter knowledge to adequately manage the contracts and oversee the effort.

However, NCRA's existing local revenue may not be sufficient to support the necessary skilled and professional staff. (See page 49 for additional information.)

Capital Project Funding

With a new mandate focused on trails, NCRA could qualify to apply for capital project funding that it has not had access to in the past. Because NCRA will be a new grantee to these state and federal programs, it is anticipated that NCRA would need to submit to pre- and post- award audits. NCRA previously received a designation of "High-Risk Grantee" by Caltrans Office of External Audits and Investigations and would need to demonstrate effective financial management to be competitive for capital funding.

Other Issues

As described in the first two scenarios, NCRA, the trail manager, would need to address the following:

1. Outstanding Debt
2. Lease Agreements and Encroachments
3. Licenses and Permits
4. Environmental Liability

Structural Adjustment of NCRA

As described in Part II, Appendix D, *Great Redwood Trail Feasibility, Governance, and Railbanking Report,* NCRA's creation left its staff with the challenge of rehabilitating an aged and decrepit railroad with no dedicated funding source.

The result was an ineffective, quasi-governmental agency that limped along on a shoestring budget for nearly 30 years.

If NCRA is expected to shift gears and take on a new trail management mandate, it is vital that NCRA be restructured to avoid the management and oversight problems discussed starting on page 49 and in Appendix D, Part II. A restructured NCRA should 1) clarify the type of entity it is (local, state, private, special district etc.); 2) identify a source of funding to satisfy all outstanding debt; 3) identify a reliable funding source to adequately cover ongoing staffing and maintenance needs; and 4) identify potential sources of capital project funding. Any public fund involvement should include an oversight agency, be auditable, and assist NCRA to lift its "High-Risk Grantee" designation from Caltrans.

Scenario 4: NCRA Maintains Status Quo

If NCRA is not dissolved, sold, or converted to a trail manager, it is reasonable to assume that NCRA could be forced into bankruptcy. With a calculated net value of (-) $7.2 million, a lack of revenue generating options, a growing list of potential litigants, and a shifting political environment, it is not likely that NCRA will continue to survive on its own.

A Chapter 9 bankruptcy filing could allow NCRA to retain its assets. However, it would need to establish itself as a "municipality" as defined in federal Bankruptcy Code 11 U.S.C. §101(40). Alternatively, a Chapter 11 filing for corporations may require an organizational restructuring and liquidation of assets, in which case, the rail corridor, and the State's investment ($102 million over the last 30 years), could be lost through liquidation by the trustee. A bankruptcy lawyer should be consulted for more detailed information.

Creditors affected by a bankruptcy proceeding are described in the *Financial Assessment* section starting on page 20 and detailed in Appendix C, *OSAE Calculate Value of Net Assets Report*. For the most part, debt holders are independent contractors and small, disadvantaged businesses, with one exception; the Federal Railroad Administration RRIF Loan. While the State is not a co-borrower on the loan, it is not advisable to allow the loan to default.

Deferred maintenance along the corridor would continue to challenge local jurisdictions. Weed abatement, for example, is often conducted by cities and counties on NCRA's right-of-way to reduce fire hazard and vagrancy, which NCRA is billed for after the fact.

Local jurisdictions in Humboldt and Mendocino counties are actively planning and building rail-with-trail segments on NCRA right-of-way. Several segments

have been completed within the last few years and more are close to construction. As described on page 59, it is anticipated that within the populated areas around Humboldt Bay, and within the cities of Ukiah and Willits, local jurisdictions will continue to implement rail-with-trail projects.

Finally, environmental rehabilitation at station sites and in the Eel River Canyon are expected to continue being unaddressed.

Scenario 5: New Railroad Buys Out NCRA

NCRA could sell its right-of-way to a private rail operator. However, with no strong economic draw on the north coast, the associated environmental liability, and costs to rehabilitate the line, the probability of a private railroad company acquiring NCRA is low. The Task Force did not analyze this scenario and no interested parties reached out during the assessment period.



Figure 21. Overgrown foliage



Figure 22. Scenic Eel River Canyon

CONCLUSION

This assessment examined NCRA's known assets and liabilities to inform the Legislature and provide alternatives for dissolving the railroad, dispensing its assets, addressing its liabilities, and examining the constructability of a Great Redwood Trail on the NCRA alignment.

OSAE conducted a *Calculated Value of Net Assets* assessment (Appendix C) by examining NCRA's financial and inventory records; reviewing existing contracts, lease agreements, and legal settlements; and estimating contingent liabilities where possible. OSAE concluded that NCRA has a negative calculated value of net assets of (-) $7.2 million as of December 31, 2019.

The State Parks assessment (Appendix D) evaluated the feasibility of converting the railroad line to a 252-mile multi-use trail and examined options for successor agency governance structures. The assessment included an examination of physical, environmental, and cultural constraints as well as opportunities and planning-level cost estimates. State Parks concluded that although the NCRA railroad corridor is conducive to trail construction and would provide a scenic tourist attraction and active transportation commuter route, the proposed Great Redwood Trail presents significant engineering challenges and high costs. Planning level, full-buildout cost estimates for the entire trail are approximately $1 billion with a cost reduction potential of $86 million. These estimates do not include potentially significant environmental remediation costs estimated at $4 billion that may be required prior to project construction. State Parks also concluded that a central governance structure is preferred to most efficiently meet the railbanking requirements to manage and maintain a multi-jurisdictional trail. A central governing agency should own the entire corridor, have a clear reporting structure, and have a consistent annual funding stream.

The Department of General Services compiled two databases, 1) NCRA – Fee Right-of-way BOE Surveyor Maps Reference, and 2) NCRA Agreements and Contracts. The first database includes 1,800 lines of parcel data for NCRA's right-of-way. The second database is focused on NCRA's agreements and contracts. Both databases have been converted to Adobe Acrobat and are available for viewing on the project website: https://calsta.ca.gov/subject-areas/reports.

The five scenarios explored and assessed consider the dissolution of NCRA, the significant fiscal and legal challenges, and the potential to change the landscape of rail transportation on the North Coast for many years to come.

While the proposed Great Redwood Trail would require significant capital expenditures to restore NCRA right-of-way for use as a trail, it would preserve the rail corridor for future rail use and provides a unique active transportation route for local commuters and recreational tourists.

Next Steps

Because NCRA was created by legislation, its dissolution will likewise require legislation. In addition to dissolving or recasting NCRA, dissolution legislation should address whether to liquidate, sell to another railroad company, or railbank the right-of-way; identify or create a successor trail management agency with a clearly defined governance structure and oversight mechanism; and identify a reliable revenue stream to support that agency. NCRA's right-of-way spans five counties and any changes in use will directly or indirectly affect residents of the entire North Coast region. Prior to liquidation or conversion of the right-of-way, it would be prudent to incorporate stakeholder concerns into the next phase of the project.

While NCRA's fate is considered by the Legislature, NCRA will need to continue to manage the right-of-way, honor existing lease agreements, and complete the railbanking process together with a successor agency.

This report and all appendices are available to the public on the CalSTA website at: https://calsta.ca.gov/subject-areas/reports

Hard copies of this report can be requested from CalSTA at (916) 323-5400.

APPENDIX A.
Statutory Reporting References

GOVERNMENT CODE 13978.9

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA
DIVISION 3. EXECUTIVE DEPARTMENT
PART 4.5. TRANSPORTATION AGENCY

CHAPTER 1. General Duties and Powers

Section 13978.9 (a) Upon the appropriation of moneys by the Legislature for these purposes, the Transportation Agency, in consultation with the Natural Resources Agency, shall conduct an assessment of NCRA to provide information necessary to determine the most appropriate way to dissolve NCRA and dispense with its assets and liabilities. The Transportation Agency shall report to the Legislature before July 1, 2020, on its findings and recommendations from the assessment. The report shall include, but not be limited to, all of the following:

(1) An assessment of NCRA's debts, liabilities, contractual obligations, and litigation.

(2) An assessment of NCRA's assets, including property, rights-of-way, easements, and equipment.

(3) An assessment of NCRA's freight contractor lease, including the contractor's assets and liabilities to the extent that information is available.

(4) A preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by NCRA, and recommendations relating to the possible construction of a trail, including both of the following:

(A) Options for railbanking and the governance structure or ownership structure for a new or successor entity that is necessary to railbank property, rights-of-way, and easements along the rail corridor.

(B) A preliminary assessment of which portions of the terrain along the rail corridor may be suitable for a trail.

(5) An assessment of the options for transferring the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail.

(b) The Transportation Agency and the Natural Resources Agency may request the Department of General Services, the Department of Finance, or any department within their agencies, or contract with other entities, to perform the

work the agencies deem necessary to carry out the duties described in this section. Any work done by the Department of General Services, the Department of Finance, or any department within the agencies pursuant to such a request may be conducted using the power and authority of the requested department.

(c) The Transportation Agency shall prioritize the assessment of the southern portion of the rail corridor and may separately report information related to the potential transfer of the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District. It is the intent of the Legislature that information and recommendations regarding the potential transfer of the southern portion of the rail corridor to the Sonoma-Marin Area Rail Transit District be provided as expeditiously as possible and not be delayed due to the potential complexity of assessing the northern portion of the rail corridor.

(d) (1) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2024.

GOVERNMENT CODE 93000-93005

TITLE 12. NORTH COAST RAILROAD AUTHORITY

CHAPTER 1. General Provisions

Section 93000. This title shall be known and may be cited as NCRA Closure and Transition to Trails Act.

Section 93003. The Legislature finds and declares that it is in the public interest to dissolve the authority, and to transfer its rights-of-way to other entities for the purpose of potentially developing a trail that could include railbanking and continuing freight where it was operational on January 1, 2018.

GOVERNMENT CODE 93010-93012

TITLE 12. NORTH COAST RAILROAD AUTHORITY

CHAPTER 2. Creation of Authority

Section 93010. (a) The authority is hereby created, having a service area comprising the Counties of Humboldt, Mendocino, Sonoma, and Trinity.

(b) The County of Marin may elect to join the authority and, if that election is made, the authority is expanded to include that county.

GOVERNMENT CODE 93020-93025

TITLE 12. NORTH COAST RAILROAD AUTHORITY

CHAPTER 3. Powers and Duties of Authority

Section 93020. (a) The authority has all of the following powers:

(1) To acquire, own, operate, and lease real and personal property reasonably related to the furtherance of the purposes of this title, the planned transfer of all of its assets, and its dissolution. Any sale, easement, or lease entered into by the authority after August 1, 2018, shall be approved by the California Transportation Commission.

(2) To operate railroads along the rights-of-way where they were in operation on January 1, 2018.

(3) To accept grants or loans from state or federal agencies.

(4) To employ an executive officer, other staff, and consultants deemed appropriate for support of the activities of the authority, to further the purposes of this title.

(b) The authority shall do all of the following:

(1) In coordination with state agencies, immediately begin planning for the transfer of all of the authority's assets and liabilities and for the dissolution of the authority.

(2) Cooperate with its freight contractor to continue freight operations along the rights-of-way where they were in operation on January 1, 2018.

(3) Cooperate with, and provide information upon request to, the Transportation Agency, Natural Resources Agency, or other state or local agencies or contractors working at the direction of the Transportation Agency or Natural Resources Agency.

(4) Cooperate fully with the assessment conducted pursuant to Section 13978.9.

Section 93021. The authority may acquire, own, lease, and operate railroad lines and equipment, including, but not limited to, real and personal property, tracks, rights-of-way, equipment, and facilities, to further the purposes of this title.

Section 93022. The authority shall cooperate with the assessment conducted by the Transportation Agency and Natural Resources Agency pursuant to Section 13978.9, and shall provide access to all authority records, files, documents, accounts, reports, correspondence, and financial affairs to the agencies, and any entity conducting the assessment for the agencies, pursuant to Section 13978.9.

PUBLIC UTILITIES CODE 105095

DIVISION 10. TRANSIT DISTRICTS
PART 16. SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
CHAPTER 4. Powers and Functions of the District
ARTICLE 4. Rail Transit Facilities and Services

105095. The district may provide a rail transit system for the transportation of passengers and their incidental baggage by rail and provision of freight service by rail.

APPENDIX B.
Public Investment in the NCRA Rail Corridor

The California State Legislature has committed more than $100 million to the NWP line since NCRA was created in 1989. The following breakdown identifies the source and year of funding; the dollar amount programmed and allocated; and the purpose for the expenditure. These historical records of fund disbursement have been gathered by the Task Force and verified by Caltrans, California Transportation Commission, and NCRA. Public Fund Investment in the NCRA Rail Corridor 1989-2020.

Table 5. Public Fund Investment in the NCRA Rail Corridor 1989-2020

Date	Purpose	Fund	Source	Agency	Amount
Property and Equipment Acquisition					
1991-1992	**Willits to Korbel** *Title acquired in the name of NCRA*	Prop 116	State	NCRA	$ 6,100,000
1996	**"Willits Segment"** (Healdsburg to Willits and 4 stations) *Title acquired in the name of NCRA*	TCI / TP&D	State	NCRA	$ 596,031
1996	**"Willits Segment"** (Healdsburg to Willits) *Title acquired in the name of NCRA*; and "**Healdsburg Segment"** (Novato to Healdsburg) and **"Lombard Segment"** (Ignacio to Lombard) *Title acquired in the name of NWPRA*	Q-Fund Loan	Fed	NCRA	$ 12,000,000
2003	36 Freight Rail Cars, Emergency Repairs to Black Point Bridge	FEMA / OES	Fed	NCRA	$ 7,900,000
1995	**"Healdsburg Segment"** (Novato to Healdsburg) and **"Lombard Segment"** (Ignacio to Lombard) *Title acquired in the name of NWPRA*	HR2 Demo Project	Fed	NWPRA	$ 9,770,649
1995		ISTEA Demo Project	Fed	NWPRA	$ 6,179,351
1995		TCI / TP&D	State	NWPRA	$ 1,488,500
1995		TCI / TP&D	State	NWPRA	$ 765,469
				SUBTOTAL	**$ 44,800,000**

Table 5. (continued)

Rail Rehab / Capital Projects - Humboldt					
1991	*Appropriated, not allocated*	Prop 116	State	NCRA	$ 72,285
1993-1994	Phase II Capital Improvements - Humboldt	Prop 116	State	NCRA	$ 1,885,923
2004	Tie Replacements (Northern Projects)	Prop 116	State	NCRA	$ 410,706
1996	Short-Line Rail Rehab (Northern Projects)	TCI / TP&D	State	NCRA	$ 703,990
1995	Willits to Eureka- Phase IV Rehab Project	TCI / TP&D	State	NCRA	$ 150,000
1995	Willits to Eureka- Phase IV Rehab Project	TCI / TP&D	State	NCRA	$ 240,000
1995	Willits to Eureka- Phase IV Rehab Project	TCI / TP&D	State	NCRA	$ 456,730
1996	Short line Rehab phase IV-C Project	TCI / TP&D	State	NCRA	$ 48,472
2010	Novato Quiet Zones, Signal Repair, Black Point Bridge Automation	ISTEA Demo Project	State	NCRA / SMART	$ 8,572,172
				SUBTOTAL	**$ 12,540,278**

Rail Rehab / Capital Projects - Mendocino					
1993-19994	Phase II Capital Improvements – Mendocino	Prop 116	State	NCRA	$ 1,257,282
2004	Tie Replacements (Northern Projects)	Prop 116	State	NCRA	$ 273,804
1995	Willits to Eureka- Phase IV Rehab Project	TCI / TP&D	State	NCRA	$ 150,000
2000	TCRP 32.2 - Rail Rehab Windsor to Willits	TCRP	State	NCRA	$ 600,000
2006	TCRP 32.4 - Marin Levee Repairs/Rehab	TCRP	State	NCRA	$ 1,475,000
2007	TCRP 32.4 - Fields Landing Levee Repair	TCRP	State	NCRA	$ 690,000
2007	TCRP 32.4 - Schellville Rail Levee Repair	TCRP	State	NCRA	$ 2,084,000
2007	TCRP 32.9 - Russian River Crossing Signals	TCRP	State	NCRA	$ 1,530,000
2007	TCRP 32.9 - Russian River Crossing Signals	TCRP	State	NCRA	$ 7,495,000
2007	TCRP 32.9 - Tracks Windsor to Lombard	TCRP	State	NCRA	$ 13,588,000
2008	TCRP 32.9 - Russian River Rehab	TCRP	State	NCRA	$ 1,561,000
2011	Windsor to Lombard Rail Rehab	RRIF Loan	Fed	NCRA / NWPCo	$ 3,200,000
				SUBTOTAL	**$ 33,904,086**

Table 5. (continued)

Rail Rehab / Capital Projects - Marin					
1996	Marin Station Site Improvements	TCI / TP&D	State	NWPRA	$ 2,300,000
				SUBTOTAL	**$ 2,300,000**

Plans, Specs, & Estimate / Project Approval & Environmental Documents					
2000	TCRP 32.3 Capital Assessment Willits North	TCRP	State	NCRA	$ 400,000
2006	TCRP 32.3 - Russian River EIR	TCRP	State	NCRA	$ 600,000
2001	TCRP 32.4 - Capital Assessment	TCRP	State	NCRA	$ 100,000
2006	TCRP 32.4 - Russian River EIR	TCRP	State	NCRA	$ 651,000
2000	TCRP 32.5 - Env. Consent Decree Remediation (Programmed, not Allocated)	TCRP	State	NCRA	$ 2,665,000
2001	TCRP 32.5 - Env. Consent Decree Studies	TCRP	State	NCRA	$ 100,000
2002	TCRP 32.5 - Env. Consent Decree Remediation	TCRP	State	NCRA	$ 1,046,000
2006	TCRP 32.5 - Env. Consent Decree Studies	TCRP	State	NCRA	$ 289,000
2006	TCRP 32.9 - Russian River EIR	TCRP	State	NCRA	$ 6,826,000
				SUBTOTAL	**$ 12,677,000**

Debt Reduction					
2000	Q-Fund Trust Account	TCI / TP&D	State	NCRA	$ 810,550
2000	TCRP 32.6 - Debt Reduction	TCRP	State	NCRA	$ 10,000,000
				SUBTOTAL	**$ 10,810,550**

Defray Administrative Costs					
2000-2001	TCRP 32.1 - Defray Admin Costs	TCRP	State	NCRA	$ 1,000,000
				SUBTOTAL	**$ 1,000,000**

Local Match for Federal Aid Awards					
2001	TCRP 32.8 - (Allocation returned to State)	TCRP	State	NCRA	$ 5,500,000
				SUBTOTAL	**$ 5,500,000**

Dissolution Expenses - SB 1029					
2020	Assessment Studies	2018-19 Gen Fund	State	CalSTA to Task Force	$ 3,000,000
2020	SMART acquire freight rights (Healdsburg to Lombard)	2019-20 PTA	State	CalSTA to SMART	$ 4,000,000
2020	2019/2020 NCRA Agency Operating Costs	2019-20 Gen Fund	State	CalSTA to NCRA	$ 500,000

Table 5. (continued)

2020	Rail Rehab	2019-20 Gen Fund	State	CalSTA to SMART	$ 2,000,000
2020	Legal Fees - EIR Consent Decree	2019-20 Gen Fund	State	CalSTA to Litigant	$ 2,000,000
2020	RRIF Loan Payoff	2019-20 Gen Fund	State	CalSTA to FRA	$2,400,000
2020	Dissolution Expenses - TBD	2019-20 Gen Fund	State	CalSTA	$ 3,900,000
				SUBTOTAL	**$ 17,800,000**
		TOTAL State Investment		$102,281,914	
		TOTAL Federal Investment		$39,050,000	
		TOTAL Public Investment in NWP Line		**$141,331,914**	

*Except for the SB 1029 appropriations, the total expended on the NWP Line does not include funds that may have been granted to, or expended by, SMART after the dissolution of NWPRA.

State Programs

Proposition 116 *$10,000,000*

The Clean Air and Transportation Improvement Act of 1990, also known as Prop 116 is a voter-approved state proposition which designates $1.99 billion for specific projects, purposes, and geographic jurisdictions, primarily for passenger rail capital projects. In the NWP Corridor, these funds have been used for right-of-way acquisition for both NCRA and NWPRA/SMART, as well as rehabilitation projects.

Transit Capital Improvement (TCI / TP&D) *$7,509,742*

Transportation Planning & Development (TP&D) Funds are generated from sales tax on diesel fuel, sales tax due to state tax on gasoline above nine cents per gallon, and "over spill" sales tax (4.75 percent tax on taxable goods, including gasoline, in excess of revenue generated from 5 percent state sales tax on all taxable good, except gasoline). Transit Capital Improvement Program is an annual state program funded by the California Transportation Commission with TP&D and Article XIX (state gas tax) funds. Eligible uses include abandoned railroad rights-of-way acquisition; bus rehabilitation; fixed guideway/rolling stock for commuter rail, urban rail, and intercity rail; grade separation; intermodal transfer stations serving various transportation modes, ferry projects, vessels, and terminals; and short-line railroad rehabilitation. In the Northwestern Pacific Railroad corridor these funds were used as "local match" to leverage federal aid funds to acquire right-of-way south of Willits and for rehabilitation projects along the line.

Traffic Congestion Relief Program (TCRP) *$60,000,000*

The Traffic Congestion Relief Program was in effect during the years 2000 – 2018. It was created by the Legislature to provide funding for transportation projects that would improve traffic mobility and relieve congestion; connect transportation systems; and provide for better goods movement. A total of $60 million was appropriated to NCRA and was split into nine different projects (32.1 – 32.9) for use on the entire rail line. These projects covered administration costs; outstanding debts; environmental consent decree projects; "local match" for appropriations in the federal reauthorization bill of 1991, The Intermodal Surface Transportation Efficiency Act (better known as ISTEA); Q-fund trust deposit (see below for more detail); environmental studies; and long-term stabilization/rehabilitation projects.

Public Transportation Account (PTA) *$4,000,000*

The Public Transportation Account is comprised of bond proceeds allocated to capital projects and the sales tax on diesel fuel and can be used for either capital projects or agency operations. SB1029 appropriated these funds to CalSTA for SMART to purchase NWPCo's freight rights and rail equipment.

General Fund *$13,800,000*

The state General Fund makes up the bulk of the annual California State budget (with 75 percent of all appropriations) and allocating monies to state operations and payments to localities. A total of $13.8 million has been appropriated to CalSTA in the State Budget Act of 2019-20 for conducting this assessment; for track rehabilitation in the SMART corridor; and for expenses related to the dissolution of NCRA.

Federal Programs

ISTEA (Fund 368) *$15,000,000*

The federal transportation reauthorization bill, or Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), appropriated funds in Section 1108, Project 13 for Intermodal projects in Northern California for the purchase of right-of-way and to develop a transportation corridor in the existing rail right-of-way from Larkspur to Korbel, and Novato to Lombard. Roughly $4 million of this appropriation was used for right-of-way acquisition, and the remaining $11 million funded rail and depot rehabilitation projects, such as the Ukiah Depot building, in both NCRA and NWPRA corridors.

Q-Fund Loan *$12,000,000*

The federal Q-Fund Loan program provided funding from the Federal Highway Administration Right-of-Way Revolving Fund as authorized by 23 CFR, Chapter I, Subchapter G, Part 712, Subpart G, also known as "Q- Funds." The purpose of the

April 1996 loan was to match state funding in the acquisition of the historic Northwestern Pacific Railroad right-of-way from Larkspur to Willits and Novato to Lombard, also known as the "Willits," "Healdsburg," and "Lombard" segments. As previously described, NCRA retained the Willits segment while NWPRA retained the Healdsburg and Lombard segments and NCRA assumed the entire $12,000,000 loan liability. In the Traffic Congestion Relief Program created in 2000, the Legislature appropriate $5.5 million to help alleviate this debt. The Traffic Congestion Relief Program funds were transferred to a trust fund account, the balance of which was expected to grow with accrued interest and regular deposits by NCRA. The trust account remitted periodic payments on the debt until the balance of the Q-Fund Loan was forgiven under Section 1915 of the 2005 federal transportation reauthorization bill, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (commonly referred to as SAFETEA-LU), and the remaining state funds were returned to the Traffic Congestion Relief Program.

HR2 (1987) Demonstration Projects (Funds 307, 309) *$9,770,649*

These federal demonstration funds were provided in Section 149(a)(41)(B) of the 1987 federal transportation reauthorization bill, The Surface Transportation and Uniform Relocation Assistance Act adopted in April 1987. The legislation directed the US Secretary of Transportation to carry out a highway project for the purpose of demonstrating the extent to which traffic congestion is relieved on a major north-south segment of the Federal-aid primary system by construction of high occupancy vehicle lanes along a right-of-way which is parallel to a north-south arterial which connects Santa Rosa and Petaluma and connects San Rafael and Healdsburg. These "Demonstration Funds" were used on the Healdsburg and Lombard segment right-of-way acquisitions for NWPRA.

Railroad Rehabilitation & Improvement Financing (RRIF) *$3,180,000*

The Railroad Rehabilitation and Improvement Financing (RRIF) program was established by the 1998 federal transportation reauthorization bill, The Transportation Equity Act for the 21st Century (TEA-21). Under this program, the Federal Railroad Administration is authorized to provide direct loans and loan guarantees up to $35 billion to finance development of railroad infrastructure. Direct loans can fund up to 100 percent of a railroad project with repayment periods of up to 35 years and interest rates equal to the cost of the borrowing by the government. NCRA and NWPCo are co-borrowers on this loan, which funded the final rehabilitation of Windsor to Lombard. This is discussed in more detail in the *Liabilities* section.

APPENDIX C.
OSAE Calculated Value of Net Assets Report

The report titled *North Coast Railroad Authority Calculated Value of Net Assets as of December 31, 2019"* is available for viewing on the project website: https://calsta.ca.gov/subject-areas/reports.

APPENDIX D.
Great Redwood Trail Feasibility, Governance, and Railbanking Report

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Due to file size, both Part I and Part II of the *Great Redwood Trail Feasibility, Governance, and Railbanking Report* are available for viewing on the project website: https://calsta.ca.gov/subject-areas/reports.

APPENDIX E.
DGS Databases

DGS compiled two separate databases, 1) NCRA – Fee Right-of-way BOE Surveyor Maps Reference, and 2) NCRA Agreements and Contracts.

The first database includes 1800 lines of parcel data for NCRA's right-of-way. This information is a compilation of data from surveyors maps and includes the following data: map references, Grantor, Grantee, type of land acquisition and date, record date, acreage, and deed number.

The second database focused on NCRA's agreements and contracts. Data included in this spreadsheet include: purpose of the agreement, county, reference links, type of agreement, options included, and payment terms.

Both databases have been converted to Adobe Acrobat and are available for viewing on the project website: https://calsta.ca.gov/subject-areas/reports.



APPENDIX F.
Environmental Liability of the NCRA Corridor

The memorandum titled "Environmental Liability of the North Coast Railroad Authority Corridor" is available for viewing on the project website: https://calsta.ca.gov/subject-areas/reports.



BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 7 –

"Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update"

Responses to Frequently Asked Questions Regarding NCRA and NWP Co.
December 7, 2010 Update

Sources:
Allan Hemphill, Chairman NCRA
Mitch Stogner, Executive Director NCRA
John Williams, President NWP CO.

Q. What is NCRA and what is its mandate?

The legislation that created the North Coast Railroad Authority (NCRA) was signed into law in 1989, Government Code Sections 93000, et seq. The Act was intended to ensure continuation of railroad service on the Northwestern Pacific (NWP) rail line, and envisioned the railroad playing a major role in the transportation infrastructure serving the North Coast. In creating the NCRA to restore and preserve rail service, the Legislature recognized that California's North Coast region suffers from restricted access and limited transport options.

Q. What is NWP Co. and what is its relationship to NCRA and the railroad asset?

NWP Co. was incorporated in California in 2006 to lease, manage, and operate trains on the NWP line. On September 13, 2006, NWP Co. entered into the lease agreement governing its contractual relationship with NCRA to provide train service. This agreement has an initial term of 5 years with options to extend the term under the same terms and conditions. As decided by the Surface Transportation Board (STB) on September 7, 2007, NWP Co. is now the exclusive common carrier of all freight trains, and passenger excursion trains on the NWP line between Lombard (national rail interchange) and Willits.

Q. ***How was NWP Co. chosen by NCRA?***

NWP Co. was selected by the NCRA Board of Directors following a Request for Proposals (RFP) process and an extensive interview process, culminating with NCRA Board selection in September 2006.

Q. Does NWP Co. or any of its principals have any ownership interests in any rock quarries on or near the railroad?

The NWP Co. does not have any ownership interest in any rock quarries on or near the NWP railroad line. No one affiliated with NWP Co. has any interest in any rock quarries on or near the NWP railroad line.

Q. Does NCRA receive any government funding for operations or administration?

Although the NCRA serves as the policy board overseeing rail operations, is responsible for all repairs and maintenance on the 316 mile line prior to the onset of operations, and responsible for securing capital funding once rail service resumes, the

NCRA receives no operational funding from the state or any other governmental agencies.

Q. How does NCRA support itself?

NCRA's agency budget is comprised of property leases along the NWP line, the lease of rolling stock and equipment, and advance lease payments made by the Operator, NWP Co.

Q. Does NWP Co. receive any subsidy funds from NCRA or other agencies?

NWP Co. does not receive any funding from NCRA or any other governmental agencies. NCRA's mission is to repair the infrastructure with public funds so that NWP can begin providing train service. Since 2007, NCRA has invested $68 million in state and federal funds to repair the first 62 miles of the NWP line from the national rail interchange South of Napa (Lombard) to Windsor in Sonoma County. NCRA has applied for federal funds to continue this repair effort North to Willits, the terminus of the Russian River Division.

Q. What are the separate operating divisions of the NCRA's railroad?

The Russian River Division of the NWP line extends from Lombard in Napa County, West to 101 near Novato, and then North to Willits, a total distance of 142 miles. The Eel River Division begins North of Willits, through the Eel River Canyon to South Fork in Humboldt County. The final leg of the Eel River Division extends from South Fork around Humboldt Bay to Samoa, a distance of approximately 67 miles.

Q. When and how will NCRA and NWP Co. resume service on the Russian River Division?

Repairs to signals, bridges, and trackwork on the first section of the Russian River Division (Lombard-Windsor) were substantially completed in fall 2009. NWP Co. financed the final "punch-list" repairs totaling approximately $2 million which were completed in November 2010. After the FRA inspects and certifies all of the repairs, and the NCRA Board certifies the RRD EIR, freight operations are scheduled to commence from Lombard to Windsor in the first quarter of 2011. Repairs north of Windsor to Cloverdale and on to Willits will take place in 2011 – 2012 with federal and private funds.

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Q. ***When and how will NCRA and NWPCo resume service on the Eel River Division***?

With respect to the Canyon portion of the Eel River Division, the NCRA will consider restoration of service through the Eel River Canyon when the following issues are fully addressed:

- A Business Plan is developed by the Operator (NWP Co.) which identifies freight volume sufficient to justify the costs of repairs and maintenance of the NWP line through the Eel River Canyon;

- The funds necessary to repair the NWP line to at least Class II level (25 mph) through the Eel River Canyon have been identified;

- An Environmental Impact Report (EIR) that evaluates the costs to repair the infrastructure and operate trains, and evaluates the environmental impact of such repairs and operations through the Eel River Canyon, is prepared and certified by the NCRA Board of Directors.

Q. When and how will the NCRA and NWP Co. resume service on the Eel River Division? (see previous answer regarding Canyon portion of the ERD)

With Respect to the far Northern portion of the Eel River Division (South Fork to Samoa), the NCRA and NWP Co. would like to repair and initiate service on a belt line from South Fork, around Humboldt Bay to Samoa as soon as funding for repairs can be secured, and environmental clearance to initiate repairs can be obtained. NWP Co. has estimated that about $30 million is needed to repair the 62-67 miles from South Fork to Samoa. NWP Co. believes this belt line could be used for shipment of lumber, construction materials and aggregate. A rail–barge transfer would be desirable to successfully implement this service. Additionally, NWP Co. is committed to providing operational and financial support to the Timber Heritage Association (THA) for its proposed excursion service between Eureka and Samoa.

Q. What is NCRA's relationship with the Port of Humboldt Bay?

NCRA has several challenges and goals in common with the Humboldt Bay Harbor, Recreation and Conservation District. Both Agencies were created by the legislature to, among other things, promote the utilization of the port assets and rail assets respectively around Humboldt Bay. Both agencies and their respective staffs are working cooperatively with the goal of developing a belt line that connects South Fork to the Port of Humboldt Bay, as well as excursion service around the Bay. Both agencies understand that rail service through the Eel River Canyon will require a Business Plan that justifies such service, the identification of funding necessary to make repairs to at least Class II standards (25 mph), and the certification of an EIR/EIS that evaluates the impacts of repairs and operations, and the environmental mitigations necessary to repair the line and restore service through the canyon.

Q***. Is NCRA opposed to bike and pedestrian paths on the railroad right of way?***

The NCRA is not opposed to bike and pedestrian paths on its right-of-way. The NCRA has reviewed many comments following issuance of Draft Trail Guidelines in July 2008. In response to the comments received, on May 13, 2009 the NCRA Board of Directors decided to abandon a rigid setback requirement, in favor of a case-by-case review of trail proposals submitted by public agencies. The case-by-case analysis of individual trail proposals will provide the opportunity to incorporate the lessons learned from rails-with-trails projects already in existence, as trail projects are designed and submitted to the NCRA by public agency applicants. The rail operator may provide comments to the NCRA Board relative to trail proposals, but the authority to accept or reject individual trail proposals resides solely with the NCRA Board of Directors.

Q. What is the "Environmental Consent Decree" which NCRA is a party to?

The Environmental Consent Decree (ECD) is a is a 1999 Court directive to clean-up abandoned rail yards, collect debris along the line, and develop management plans for future operations on the NWP line. The issues cited in the Environmental Consent Decree were largely problems created by UP and SP decades ago.

Q. What is the status of compliance with the Consent Decree?

NCRA has utilized $1.146 million to develop an Assessment plan and complete the surface clean-up of the Hopland Station and 8 abandoned rail yards north of Willits. NCRA's environmental consultant, Kleinfelder, will use the remainder of the $2.954 in state funds provided for this effort, to undertake subsurface site characterization and remediations plans, and develop management plans for future use. Collection of the remaining debris along the line will be addressed after rail service is restored, as this is the most efficient and cost effective means of removing old rail ties etc.

Q. Does the NCRA and NWPCo support the use of the railroad for passenger service?

NCRA and its Operator (NWP Co.) support all forms of rail service:

- Freight service which NCRA hopes to restart in summer 2011, initially from interchange (Lombard) to Windsor;
- Excursion service around Humboldt Bay and anywhere else in the rail corridor where there is a demand for such service;
- Scheduled commuter service during peak travel times such as planned by SMART between Larkspur (Marin County) and Cloverdale;
- As well as intercity AMTRAK Service such as the Capital Corridor service from Oakland to Sacramento.

Q. If Southern Pacific could not run the railroad at a profit why is the NWP line worthy of public investment today?

One freight car removes 4 big rigs from Highway 101. One gallon of diesel can move 1 ton of freight over 400 miles. Trains are good for the environment, good energy policy, and good for the economy. A public/private partnership, in which the public sector invests in a rail corridor the public owns, and the private sector operates the trains and maintains the line, is a model that works throughout the United States. This Public/Private rail partnership has been touted by the Obama Administration in Washington, DC as one of the most cost-effective and efficient methods of promoting environmentally friendly goods movement throughout the United States. Rail transportation is experiencing an exciting renaissance, and the NWP rail corridor is an ideal candidate for public investment in a priceless public asset.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 8 – Excerpts from that report, Rails with Trails, Best Practices and Lessons Learned, March 2020



RAILS WITH TRAILS

Best Practices and Lessons Learned

U.S. Department of Transportation
Federal Railroad Administration

U.S. Department of Transportation
Federal Highway Administration

MARCH 2020

Cover: Blackstone River Bikeway, Lincoln/Cumberland, RI (Photo courtesy of Rails-to-Trails Conservancy)

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Jared Fijalkowski, Gina Filosa, Jamie Young (Volpe Center); Anthony Lucivero (Digital iBiz); Andrea Ferster, Eli Griffin, Kelly Pack (Rails-to-Trails Conservancy)

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Washington, DC 20037

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13. ABSTRACT (Maximum 200 words)
This updated Rails-with-Trails: Lessons Learned report documents how the state of the practice, perspectives, and context for rails-with-trails has evolved since 2002 and identifies updated effective practices for each phase of a rail-with-trail project, from development to design to construction, operation, and maintenance.

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Rails-with-trails, shared-use path, trail, multi-use path, multi-use trail

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SI* (MODERN METRIC) CONVERSION FACTORS

APPROXIMATE CONVERSIONS TO SI UNITS

Symbol	When You Know	Multiply By	To Find	Symbol
		LENGTH		
in	inches	25.4	millimeters	mm
ft	feet	0.305	meters	m
yd	yards	0.914	meters	m
mi	miles	1.61	kilometers	km
		AREA		
in^2	square inches	645.2	square millimeters	mm^2
ft^2	square feet	0.093	square meters	m^2
yd^2	square yard	0.836	square meters	m^2
ac	acres	0.405	hectares	ha
mi^2	square miles	2.59	square kilometers	km^2
		VOLUME		
fl oz	fluid ounces	29.57	milliliters	mL
gal	gallons	3.785	liters	L
ft^3	cubic feet	0.028	cubic meters	m^3
yd^3	cubic yards	0.765	cubic meters	m^3
	NOTE: volumes greater than 1000 L shall be shown in m^3			
		MASS		
oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2000 lb)	0.907	megagrams (or "metric ton")	Mg (or "t")
oz	ounces	28.35	grams	g
		TEMPERATURE (exact degrees)		
°F	Fahrenheit	5 (F-32)/9 or (F-32)/1.8	Celsius	°C
		ILLUMINATION		
fc	foot-candles	10.76	lux	lx
fl	foot-Lamberts	3.426	$candela/m^2$	cd/m^2
		FORCE and PRESSURE or STRESS		
lbf	poundforce	4.45	newtons	N
lbf/in^2	poundforce per square inch	6.89	kilopascals	kPa

APPROXIMATE CONVERSIONS FROM SI UNITS

Symbol	When You Know	Multiply By	To Find	Symbol
		LENGTH		
mm	millimeters	0.039	inches	in
m	meters	3.28	feet	ft
m	meters	1.09	yards	yd
km	kilometers	0.621	miles	mi

Continued, next page

SI* (MODERN METRIC) CONVERSION FACTORS

APPROXIMATE CONVERSIONS TO SI UNITS

Symbol	When You Know	Multiply By	To Find	Symbol
		AREA		
mm^2	square millimeters	0.0016	square inches	in^2
m^2	square meters	10.764	square feet	ft^2
m^2	square meters	1.195	square yards	yd^2
ha	hectares	2.47	acres	ac
km^2	square kilometers	0.386	square miles	mi^2
		VOLUME		
mL	milliliters	0.034	fluid ounces	fl oz
L	liters	0.264	gallons	gal
m^3	cubic meters	35.314	cubic feet	ft^3
m^3	cubic meters	1.307	cubic yards	yd^3
mL	milliliters	0.034	fluid ounces	fl oz
		MASS		
g	grams	0.035	ounces	oz
kg	kilograms	2.202	pounds	lb
Mg (or "t")	megagrams (or "metric ton")	1.103	short tons (2000 lb)	T
g	grams	0.035	ounces	oz
		TEMPERATURE (exact degrees)		
°C	Celsius	1.8C+32	Fahrenheit	°F
		ILLUMINATION		
lx	lux	0.0929	foot-candles	fc
cd/m^2	candela/m^2	0.2919	foot-Lamberts	fl
		FORCE and PRESSURE or STRESS		
N	newtons	0.225	poundforce	lbf
kPa	Kilopascals	0.145	poundforce per square inch	lbf/in^2

**SI is the symbol for the International System of Units. Appropriate rounding should be made to comply with Section 4 of ASTM E380. (Revised March 2003)*



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Executive Summary

In 2002, the U.S. Department of Transportation (DOT) published its first *Rails-with-Trails: Lessons Learned* report, which summarized the state of the practice and lessons learned regarding the development, construction, and operations of rails-with-trails. This updated *Rails-with-Trails: Lessons Learned* report documents how the state of the practice, perspectives, and context for rails-with-trails have evolved since 2002 and includes updated effective practices. The information presented in this report is based on extensive research into existing and planned rails-with-trails that involved interviews with railroad officials and trail managers; a literature review of previous rail-with-trail studies; a review of trail planning guidance documents; and input from various railroad and trail professionals.

The term "rail-with-trail" describes a shared-use path or trail open and developed for public use that is located on or adjacent to the rights-of-way of an active railroad or rail transit corridor. The term includes shared-use paths and trails located on or near railroad property which has tracks in place and property used by a railroad company or transit operator for storage, operations, maintenance, or security. Rails-with-trails are fundamentally distinct from "rails-to-trails," in which all rail service has been discontinued or abandoned, tracks and other rail infrastructure are removed, and the entire right-of-way is converted to a shared-use path or trail. Trail users generally prefer separation from active rail lines; however, there are occasions when typography constraints, overpasses, utilities, and other obstacles may require trails to traverse a railroad right-of-way, when permitted.

Of the eight Class I railroads (the nation's largest railroads), four have official written policies of not permitting adjacent bicycle, pedestrian, or multiuse trails within the railroad's right-of-way. The other four Class I railroads do not have official policy regarding rails-with-trails. However, those companies noted that in practice they do not encourage or do not allow parallel trails within the rail right-of-way except on a very limited basis when a proposal meets specific criteria.

Given this context, by the end of 2018, there were 343 identified rails-with-trails in the United States, totaling 917 miles of rails-with-trails in 47 States. The majority of rails-with-trails (68 percent) are located along Class I, II, or III railroads. However, since 2000 there has been an increasing trend of building rails-with-trails along passenger rail and rail transit lines with adequate separation distances (including heavy rail and light rail).

Bicycling and walking for transportation and recreation are growing trends. As more communities develop and expand their bicycle/pedestrian and trail networks, active railroad corridors are often identified as potential locations for trails due to the desirable characteristics of such corridors. However, private freight railroads generally do not permit trails within the railroad right-of-way (i.e., within the private property limits owned by the railroad). Freight railroad companies appear to view trails as an incompatible use within the right-of-way of an active railroad, primarily due to the perceived safety risks to railroad workers and the public; increased liability risk to the railroad; and potential impacts to future rail operations. While public transportation agencies share some of these same concerns, they often recognize that rails-with-trails can be an asset to not only the surrounding communities but to the public transit network. Many public transportation agencies actively coordinate with local communities to improve access between existing trails and transit and are increasingly working with communities to develop rails-with-trails along their rail right-of-way, often in conjunction with the development of new or expanded transit lines.

This report identifies effective practices for each phase of a rail-with-trail project, from development to design to construction, operation, and maintenance.

Rail-with-Trail Development Effective Practices

Interviews with, and data from, over 100 rail-with-trail managers, representing nearly 30 percent of all rails-with-trails, make clear that there is no standard or uniform rail-with-trail development process. Rather, the process varies widely depending on many factors, most importantly the location of the trail relative to the active railroad right-of-way, the intensity of the active railroad operations, and the corridor owner. Effective practices for the rail-with-trail development process include:

- **Railroad Coordination:** Trail developers should engage railroads early and often. In addition to the railroad right-of-way owner, trail developers should also engage rail operators and freight customers. Railroad officials should be encouraged to voice their concerns or suggestions, and trail developers should be prepared to provide design and management solutions to address these concerns. In addition, understanding what might incentivize the railroad's approval or support, such as infrastructure improvements at crossings, eliminating at-grade crossings, improving access to the corridor for track

maintenance, installing new signage to address safety concerns, and financial compensation, can help lead to a successful project.

- **Determining Feasibility:** A proposed rail-with-trail project may need to undergo a comprehensive feasibility analysis to determine if the project is feasible, and, if so, how best to implement it. The feasibility analysis should address land ownership and acquisition methods, existing physical and environmental conditions, stakeholder engagement, design and construction considerations, trail use and maintenance, and funding mechanism(s).
- **Locating Rails-with-Trails:** Prior to planning a rail-with-trail, identify and analyze alternatives that avoid locating the trail within a railroad's right-of-way. The planning process should consider whether routing the trail or segments of the trail outside of the railroad right-of-way is feasible, since doing so may simplify some aspects of corridor acquisition and trail development. If there are no viable alternatives to routing the trail within the active railroad right-of-way, plan the trail while considering the effective practices outlined in this report.
- **Involving Stakeholders:** Identifying and involving stakeholders early in the rail-with-trail development process can help create an inclusive and open atmosphere, saving time and energy and helping to avoid conflicts down the line. Stakeholder groups that should be involved include utility companies; State and local transportation, parks and recreation, and health departments; law enforcement officials; adjacent landowners; trail user groups; community groups, and the general public.
- **Environmental Review:** Become knowledgeable of required Federal, State, and local environmental review and permitting processes and design standards. If needed, analyze the environmental impacts prior to acquiring land and designing the rail-with-trail.
- **Consider Involving Intermediaries:** In the early stages of planning, identify the best agency or entity to lead negotiations and/or manage the project. Rail-with-trail project managers may benefit from intermediaries, such as a State DOT, negotiating with a railroad on their behalf.
- **Right-of-Way Acquisition:** Governmental trail developers interested in pursuing a rail-with-trail should acquire the affected railroad property for public ownership whenever feasible, particularly if State law affords governmental entitles greater protection from liability than private landowners.

Risk Management Effective Practices

Liability is frequently raised as a concern in rail-with-trail projects; however, to date, there is very little real-world information on the frequency or outcome of claims involving rails-with-trails. Effective practices for managing risk associated with rails-with-trails include:

- **Legal Research:** Those interested in implementing a rail-with-trail should conduct initial legal research as early in the process as possible. Important information to address includes ownership, easement, and license agreements in the railroad corridor; legal protections available at the State level (e.g., indemnification, applicable State statutes, and trespassing laws); local or State property rights ordinances and information; and trail management organization insurance protection.
- **Indemnification Agreements:** To the extent practicable and reasonable, consider using indemnification agreements to address liability concerns arising out of potential injuries related to trail activities on railroad property. Both trail managers and railroad companies should review State statutes to ensure the validity of indemnification agreements.
- **Trespassing History:** It is important to have corridor-specific information about the frequency and location of trespassing on the corridor, the history of injuries sustained by trespassers and the locations where they occurred, and the number and information about the safety of existing crossings.
- **Signs and Markings:** The *Manual on Uniform Traffic Control Devices* defines the standards for signs, signals, and pavement markings on all shared use paths, including rail-with-trail facilities.
- **Safety Education and Training:** Staff responsible for oversight of trail construction and maintenance should consider developing rail safety training or education programs to ensure that these work activities are conducted safely, without undue risk to workers, and without interfering with train operations.
- **Liability Insurance:** Trail managers should obtain comprehensive liability insurance for key personnel, including directors and officers, and in an amount sufficient to cover foreseeable liability costs unless, as a public agency, it can be determined that there is adequate self-insurance already in place.

Design Effective Practices

There are no national standards or guidelines on rail-with-trail facility design. Instead, trail planners and developers often use guidance from other standards related to shared-use paths, pedestrian and bicycle facilities, railroad facilities, and roadway crossings of railroad rights-of-way. The design of a rail-with-trail project should be based on specific site conditions, trail user needs, State and Federal regulatory requirements, local trail planning and construction guidelines, engineering judgment, and the requirements of the railroad owner(s) and operator(s). Trail planners, designers, and engineers must work closely with railroad staff, including those in the real estate, legal, operations, and maintenance departments, early and often to achieve a suitable rail-with-trail design.

Effective practices for the design of rail-with-trail facilities include:

- **Regulatory Requirements:** Trail developers must adhere to all applicable Federal, State, and local requirements. This applies to all subsequent design recommendations.
- **Setback:** Rails-with-trails should be set back from railroad tracks as much as reasonably possible. When constructed within the railroad right-of-way, the trail should be built on the far edge of the property, where conditions allow. Setback determinations should consider various factors including:
  - » Train frequency, speed, and type of freight transported;
  - » Current and future rail maintenance and operational needs;
  - » Track curvature
  - » Topography and other environmental and physical constraints;
  - » Separation type;
  - » Any applicable State standards; and
  - » Historical patterns of trespassing or vandalism.
- **Separation:** Separation between the rail-with-trail and railroad tracks, which aims to reduce trespassing on the tracks, often takes the form of fencing, ditches, berms, vegetation, or any combination of the these options. When fencing is needed, corridor characteristics, such as the setback distance, location of legal at-grade crossings, and the type, speed, and frequency of rail service will influence the appropriate fencing style, including height and material.
- **At-Grade Crossings:** New at-grade trail-rail crossings are discouraged and railroads often do not allow them. They should only be proposed where there is no other reasonable alternative. In many cases, a more cost-effective and appropriate solution may be to use existing grade crossings. All affected grade crossings should be reviewed to determine which traffic control devices are required to provide warning and guidance for trail users. All signs, signals, and pavement markings need to conform to the *Manual on Uniform Traffic Control Devices.*
- **Grade-Separated Crossings:** Overcrossings (bridges or trestles) or undercrossings (tunnels or routing a trail under an existing railroad bridge) are another solution for rails-with-trails if an existing crossing is not available. However, these types of grade-separated crossings are expensive to construct. Overcrossings and undercrossings should be designed with approach grades that comply with Americans with Disabilities Act (ADA) guidelines, along with fencing and lighting as appropriate.
- **Accommodating Future Tracks and Sidings:** A rail-with-trail should be designed and located so as not to preclude potential future rail expansion, if expansion is anticipated. Where corridor width, topography, and other factors allow, the rail-with-trail should be located on the opposite side of the railroad, away from proposed track or siding expansion.
- **Access to Stations:** Rails-with-trails along passenger rail lines should be designed to promote access to rail and transit stations, taking into account both accessibility and safety. To facilitate multimodal transportation, secure bicycle parking should be installed near the stations in coordination with the rail or public transportation agency.
- **Drainage:** Consider the impact the rail-with-trail may have on the adjacent rail line's drainage system. In certain cases, a new or modified drainage system might need to be installed to serve both the railroad and trail.

Construction, Operations, and Maintenance Effective Practices

Close coordination among stakeholders during the construction, maintenance, and operations of rails-with-trails is important

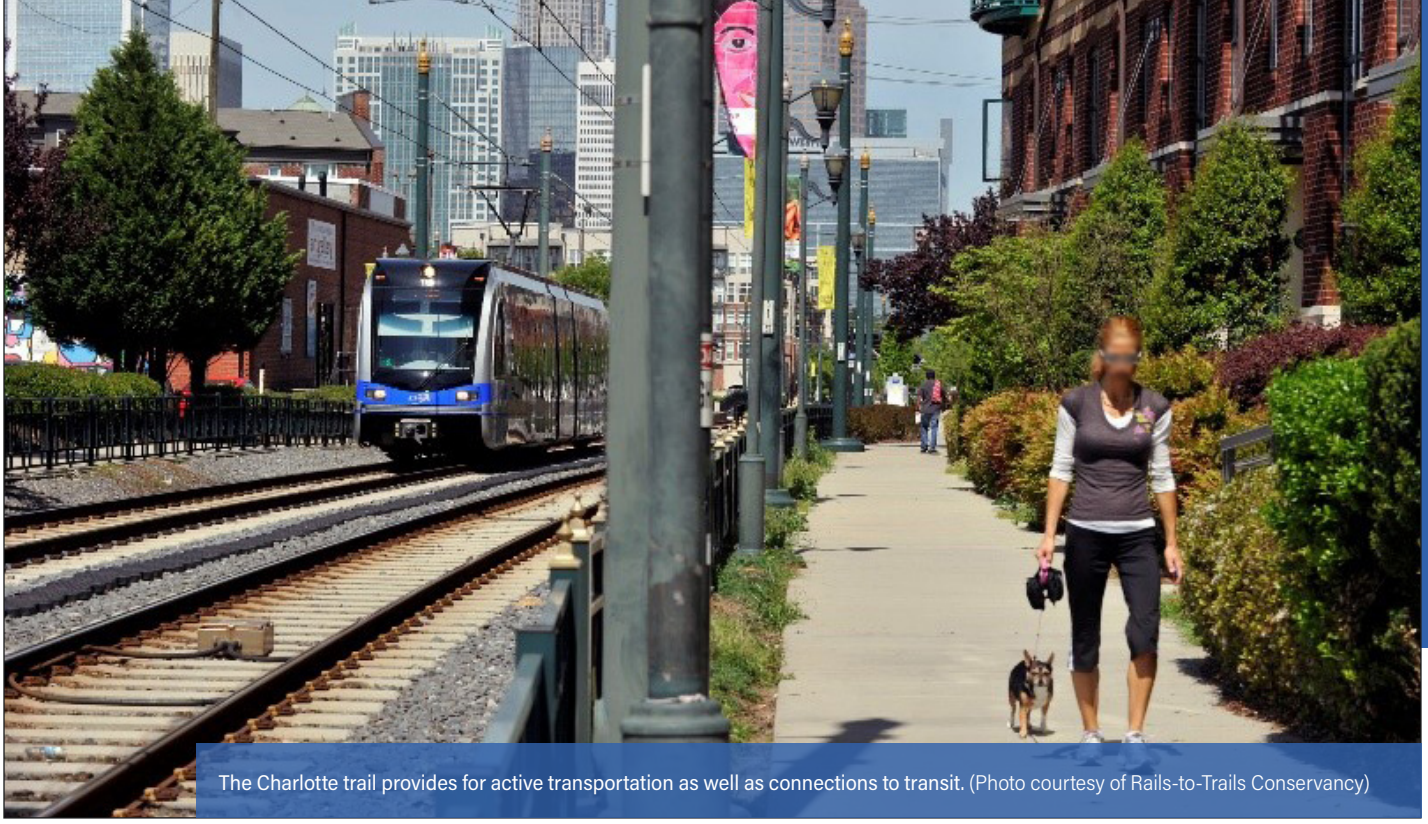
to ensure that the trail continues to meet the needs of its users while addressing the safety and security requirements of the railroads. Once open, a rail-with-trail should minimize impacts on the adjacent railroad while offering a safe experience for both trail users and railroad operators.

Effective strategies for constructing, operating, and maintaining rails-with-trails include:

- **Construction Coordination:** Because of the trail's proximity to active rail lines, planning for the construction of a rail-with-trail should be done in coordination with the railroad owner and operator(s). Trail developers should engage railroads as early as possible so that their feedback can be incorporated into a detailed plan for the trail construction phasing and overall construction schedule.
- **Railroad Requirements:** When engaging in construction activities, the trail developer will need to coordinate with the adjacent railroads to address issues related to public safety, potential impact on operations, and protection of rail facilities.
- **Trail Maintenance:** The trail manager should have a comprehensive operations and management plan that details the procedures and responsibilities for both the railroad and trail manager. The plan should include:
  - » Trail closure procedures and details for removing and reinstalling fences or other barriers, including identification of the entity responsible (and any compensation to be provided), if the trail is damanged or destroyed during rail maintenance activities, and
  - » Defined roles for maintaining vegetation, including how often it is maintained and any shared responsibilities.
- **Education:** The trail manager should consult the railroad to determine whether trail user education related to the adjacent railroad activities is necessary. In many cases, railroads and trail developers may agree that signage, adequate setback, and separation between the trail and tracks is sufficient. If more active education is desired or required, the trail developer could conduct online or in-person safety trainings, safety briefings in advance of organized walks, runs, or rides, or direct outreach to schools and workplaces.
- **Security, Crime, and Vandalism:** In many cases, the presence of a rail-with-trail channelizes would-be trespassers onto the trail, reducing trespassing and vandalism. In locations where security remains a concern, the trail manager, in coordination with local police, could establish organized activities and trail patrols. Strategies such as the clearing of vegetation or installation of lighting or damage-resistant fencing can also be effective to help address security concerns along a rail-with-trail, provided regular maintenance is also performed.

Summary

Well-designed rails-with-trails have the potential to provide safe, accessible infrastructure that encourages and enables people to walk and bike for both transportation and recreation as part of their daily lives. Rails-with-trails are not appropriate in every situation, and developing one requires a collaborative approach among railroads, trail developers, and communities to address safety, capacity, and liability issues. Ultimately, successful rail-with-trail design delicately balances the operational, maintenance, and safety requirements of a railroad with the specific needs and characteristics of trail users and the surrounding community.



The Charlotte trail provides for active transportation as well as connections to transit. (Photo courtesy of Rails-to-Trails Conservancy)

Section I: Introduction

Background and Purpose

The term "rail-with-trail" describes a shared-use path or trail open and developed for public use that is located on or directly adjacent to an active railroad or rail transit corridor. The term includes shared-use paths and trails located on or near railroad property that has tracks in place and is used by a railroad company or transit operator for storage, operations, maintenance, or security.[1] Rails-with-trails are fundamentally distinct from "rails-to-trails," in which all rail service has been discontinued or abandoned, tracks and other rail infrastructure are removed, and the entire right-of-way is converted to a shared-use path or trail.

Like all trails, rails-with-trails have the potential to provide benefits to communities, including:

- **Active Transportation:** Rails-with-trails provide safe, accessible infrastructure that encourage and enable people to walk and bike as part of their daily lives.
- **Health and Wellness:** Having access to places for physical activity, such as trails, encourages community residents to participate in physical activity and do so more often.
- **Access:** Trails can bridge gaps within and between communities, creating new access to jobs and services, physical activity, and outdoor recreation, and offering active transportation options to those who are unable or choose not to drive.
- **Economic Development:** As trail systems grow, they spark new investment in trailside businesses and commercial opportunities along the trail route.
- **Protecting the Environment:** Trails contribute to a healthy environment by encouraging active modes of transportation that can reduce air pollution and traffic congestion.

Bicycling and walking for transportation and recreation are growing trends. As more communities develop and expand their bicycle and pedestrian and trail networks, active railroad corridors are often identified as potential locations for trails due to the desirable characteristics of such corridors (e.g., gentle grade, existing and maintained or cleared right-of-way) and the connections they provide between communities or destinations. Since the late 1990s, there has been increasing public interest in using land adjacent to rail lines for public shared-use paths and trails, which requires a collaborative approach among railroads, trail developers, and communities to address safety, capacity, and liability issues.

[1] For the purposes of this report, the term railroad includes any publicly or privately-owned entity which carries freight or passengers (whether or not it is in active status), insular tourist or excursion railroads not connected to the general system, and rail transit.

2002 Report	2018
65 Rails-with-Trails Comprising 279 Miles In 30 States	343 Rails-with-Trails Comprising 917 Miles In 47 States

Because of this increasing public interest, stakeholders identified a need to study rails-with-trails . Focus areas included:

- To determine where these trails are appropriate,
- To recommend design treatments and management strategies,
- To find ways to reduce negative trail impacts on railroad industry and enhance positive impacts, and
- To address other public interest considerations.

In response to this need, in 2002, the U.S. Department of Transportation (DOT) published the comprehensive *Rails-with-Trails: Lessons Learned* **report** ("2002 Report"), which summarized the state of the practice and cataloged lessons learned regarding the development, construction, and operations of rails-with-trails.

Since the 2002 Report, the number of rails-with-trails has continued to increase. As of 2002, there were 65 identified rails-with-trails in the United States, comprising 279 miles of rails-with-trails in 30 States. The analysis conducted for this report identified 278 additional rails-with-trails.[2] In total, as of the end of 2018, there are 343 rails-with-trails in the United States, comprising 917 miles of rails-with-trails in 47 States.

Community demand for trails as part of safer, more integrated multimodal transportation networks has been a continued catalyst for the growth of rails-with-trails in almost every State. In particular, rails-with-trails are often seen as a way to close gaps in off-road nonmotorized transportation networks. However, notwithstanding their continued growth, rail-with-trail developers continue to face many of the same challenges as they did decades ago.

The purpose of this report is to document how perspectives and the context for rails-with-trails has evolved along with the state of the practice since 2002. An updated summary of effective practices, along with examples from a variety of rails-with-trails across the United States, are featured throughout the report.

This report considers the perspectives of railroad officials, public agencies, trail planners, and trail users from across the country.

Note that this report does not constitute a standard, specification, regulation, or an endorsement of rails-with-trails.

[2] Some of the additional rails-with-trails identified opened after the 2002 report was released, and some existed prior to the 2002 Report but were not identified in the report.

Methodology

The information presented in this report is based on extensive research into existing and planned rails-with-trails. This work involved a review of literature and interviews with railroads as well as Federal, State, and local transportation agency representatives. Trail managers from across the United States were also included in this review process. Additionally, a literature review was conducted along with data collection and analysis, interviews, and conference presentations.

Literature Review

The study team reviewed existing literature. See Appendix B for relevant rail-with-trail resources. A primary source of information for this report was the Rails-to-Trails Conservancy's (RTC's) 2013 *America's Rails-with-Trails Report,*[3] which describes trends in the growth of rails-with-trails, safety concerns, community benefits, design coordination with railroads and public transit authorities, and liability and risk management. For this report, the study team reviewed and analyzed surveys and interviews from 88 trail managers included in RTC's 2013 report.

Data Collection and Analysis

Information about rail-with-trail trends is based on information in RTC's comprehensive rail-trail and rails-with-trails database, which includes information obtained directly from trail managers and from geospatial datasets.[4] The study team collected data on basic characteristics of rails-with-trails (e.g., total length of trail, length of trail along active railroad corridor, setback distance of trail from track, presence of crossings) through interviews and, where applicable, verified with satellite imagery of the trails. Open ended questions allowed participants to provide more detail about rail-with-trail development, including acquisition, design and construction, as well as perspectives on the interaction among the trail, its users, and the railroad.

Interviews

The study team conducted telephone interviews with 25 trail managers to collect information about the rail-with-trail development process, including challenges and effective strategies for successful project implementation. The team also conducted interviews with 13 State DOTs to gain insight about State policies for rails-with-trails. The study team chose State DOTs to interview with the goal of obtaining a representative sample based on size, geography, and level of information and experience with rails-with-trails. The study team conducted telephone interviews with representatives from the railroad industry, including the eight Class I railroads, a scenic railroad, and the Association of American Railroads to gather feedback on their experience and views of rails-with-trails. Finally, the study team conducted telephone interviews with eight public transportation agencies for insight into their experience with rails-with-trails located along rail transit. See Table 1 for a complete list of the stakeholders interviewed as part of this study.

[3] https://www.railstotrails.org/resource-library/resources/americas-rails-with-trails/

[4] RTC's trail finder website, TrailLink.com, is hosted on Amazon Web Services and uses Google Maps API to publish trail maps. Other spatial data sources used to verify length and features of rails-with-trails include ESRI, OpenStreets Map, and the Federal Railroad Administration (FRA).

Table 1: Stakeholders Interviewed

Trail Managers		
City of Burlington (VT)	Chester County Planning Commission (PA)	City of Madison (WI)
City of Milwaukee (WI)	City of Orlando (FL)	City of Whittier (CA)
City of Visalia Public Works Dept. (CA)	Denton Parks & Recreation (TX)	Franklin County Metro Parks (OH)
Livingston Depot Center Trail (MT)	Louisville Parks & Recreation (KY)	McHenry County Conservation District (IL)
Midtown Greenway (MN)	Milwaukee County Department of Parks, Recreation, & Culture (WI)	Minneapolis Park & Recreation Board (MN)
Montgomery County Planning Commission (PA)	Pleasure Driveway and Park District of Peoria (IL)	Portage Park District (OH)
Rails to Trails of Wayne County (OH)	Schuylkill River Greenway Association (PA)	Traverse Area and Recreation Trail (MI)
Virginia Capital Trail Foundation (VA)	Washtenaw County Parks & Recreation Commission (MI)	Winneshiek County Conservation Board (IA)
Wisconsin Department of Natural Resources (WI)		

Trail Managers		
Connecticut DOT	Maine DOT	Massachusetts DOT
Michigan DOT	Minnesota DOT	Nebraska DOT
Nevada DOT	New Hampshire DOT	North Carolina DOT
Tennessee DOT	Vermont Agency of Transportation	Virginia DOT
Wisconsin DOT		

Railroad Industry Stakeholders		
Amtrak	Association of American Railroads	BNSF Railway
Canadian National Railway	Canadian Pacific Railway	CSX Transportation
Kansas City Southern	Norfolk Southern	OmniTrax
Union Pacific	Western Maryland Scenic Railroad	

Public Transportation Agencies		
Utah Transit Authority (UT)	Massachusetts Bay Transportation Authority (MA-RI)	Metro-North Railroad (NY-CT)
Metro Transit (MN)	Sound Transit (WA)	TriMet (OR)
Southeastern Pennsylvania Transportation Authority (PA-NJ)	Denton County Transportation Authority (TX)	

Conference Presentations

The study team presented preliminary and final results of the analysis at several conferences, including:

- International Trails Symposium (2017 and 2019)
- National Off-Highway Vehicle Conservation Council and International Off-Highway Vehicle Administrators Association Joint Annual Conference (2017)
- Walk Bike Places (2018)
- National Highway-Rail Grade Crossing Safety Conference (2019)

During the question and answer portions of these sessions, participants asked questions that relate to the content in this report, particularly regarding liability, coordinating with railroads, trespassing, and safety. Some participants provided examples of their experiences on these topics, which informed the research for this report.

Contents

The report is divided into the following sections:

- **Section II** summarizes trends in rails-with-trails from 1960 to 2018.
- **Section III** summarizes the policies and perspectives on rails-with-trails of railroad companies, public transportation agencies, and State DOTs.
- **Section IV** focuses on the rail-with-trail development process, including feasibility analysis, planning, and land acquisition.
- **Section V** addresses liability and legal tools for managing risk, including insurance, legislation, and indemnification agreements.
- **Section VI** offers effective practices for rail-with-trail design, including setback, separation techniques, signage, and crossing treatments.
- **Section VII** offers effective practices for the construction, operation, and management of rails-with-trails.
- **Appendix A** provides definitions for relevant terminology and acronyms.
- **Appendix B** provides relevant rail-with-trail resources.



Photo of the Nashua River Rail Trail and the Groton School Pond in Groton, Massachusetts. (Photo courtesy of Michael A. White—Wikipedia.)

Section II: Rail-with-Trail Trends

As of 2018, there were 343 identified rails-with-trails in the United States, comprising 917 miles of rails-with-trails in 47 States. Of the 343 existing rails-with-trails in the United States, the year they opened is known for 199 of them.[5] Figure 1 shows the cumulative number of rails-with-trails that opened by decade, along with the cumulative mileage of rails-with-trails by decade. Of the 199 rails-with-trails with known opening years, 78 opened between 2000 and 2018, representing a 64 percent increase from 1960–1999. Those 78 rails-with-trails comprised 189.24 additional miles of rails-with-trails, representing a 41 percent increase in trail mileage from 1960–1999.

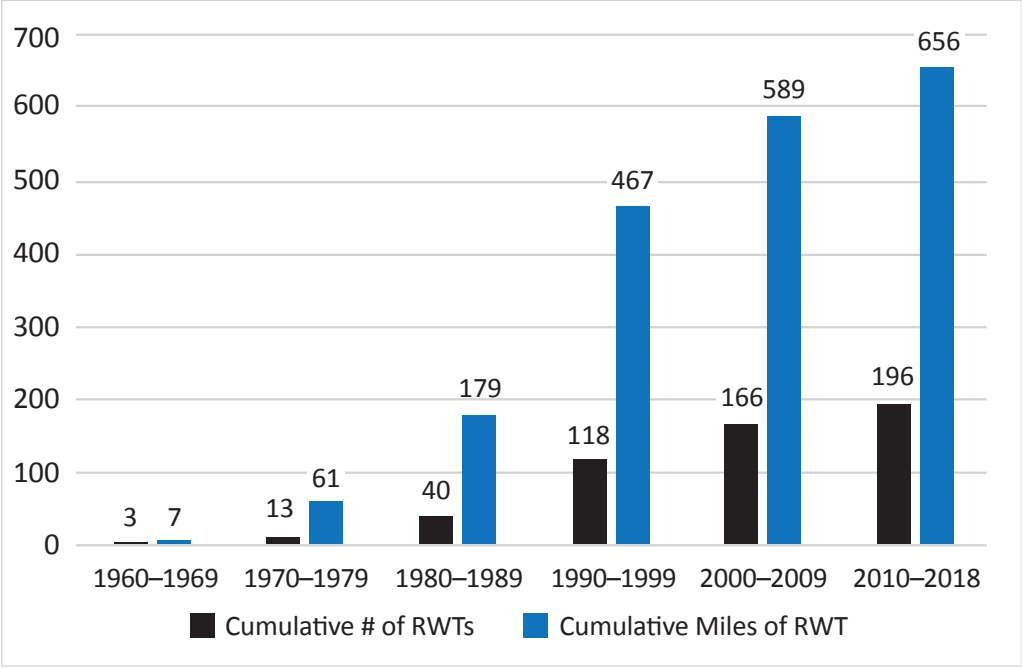


Figure 1: Cumulative Number and Miles of Rails-with-Trails by Decade

[5] Information on the year the trail opened was not available via an online search for 144 trails. The project team attempted to contact a representative for trail to obtain the information; the trail contact was either non-responsive or did not know the year in which the trail opened.

Rails-with-Trails by Region

Region	Number of Rails-with-Trails	Miles of Rails-with-Trails
Northeast	58	164.3
Southeast	45	74.2
Midwest	134	392.3
Southwest	12	44.4
Rocky Mountains	23	51.2
West	73	181.1
Alaska/Hawaii	2	10.0
Total	**347**	**917.5**

Table 2: Number and Miles of Rails-with-Trails by Region

The 343 rails-with-trails are located in 47 States and the District of Columbia. Figure 2 shows a map of rails-with-trails by State, and Table 2 lists the number and miles of rails-with-trails by region.[6] California has the most rails-with-trails, with 43 in the State, followed by Pennsylvania, Illinois, and Indiana each with 25 rails-with-trails. Wyoming, Hawaii, and Mississippi are the only States that do not have identified rails-with-trails. The regions with the most rails-with-trails are the Midwest with 134, the West with 73, and the Northeast with 58. The high concentration of rail-with-trail facilities in the Midwest may be attributed to the greater amount of railroad infrastructure in the region in comparison to other regions.

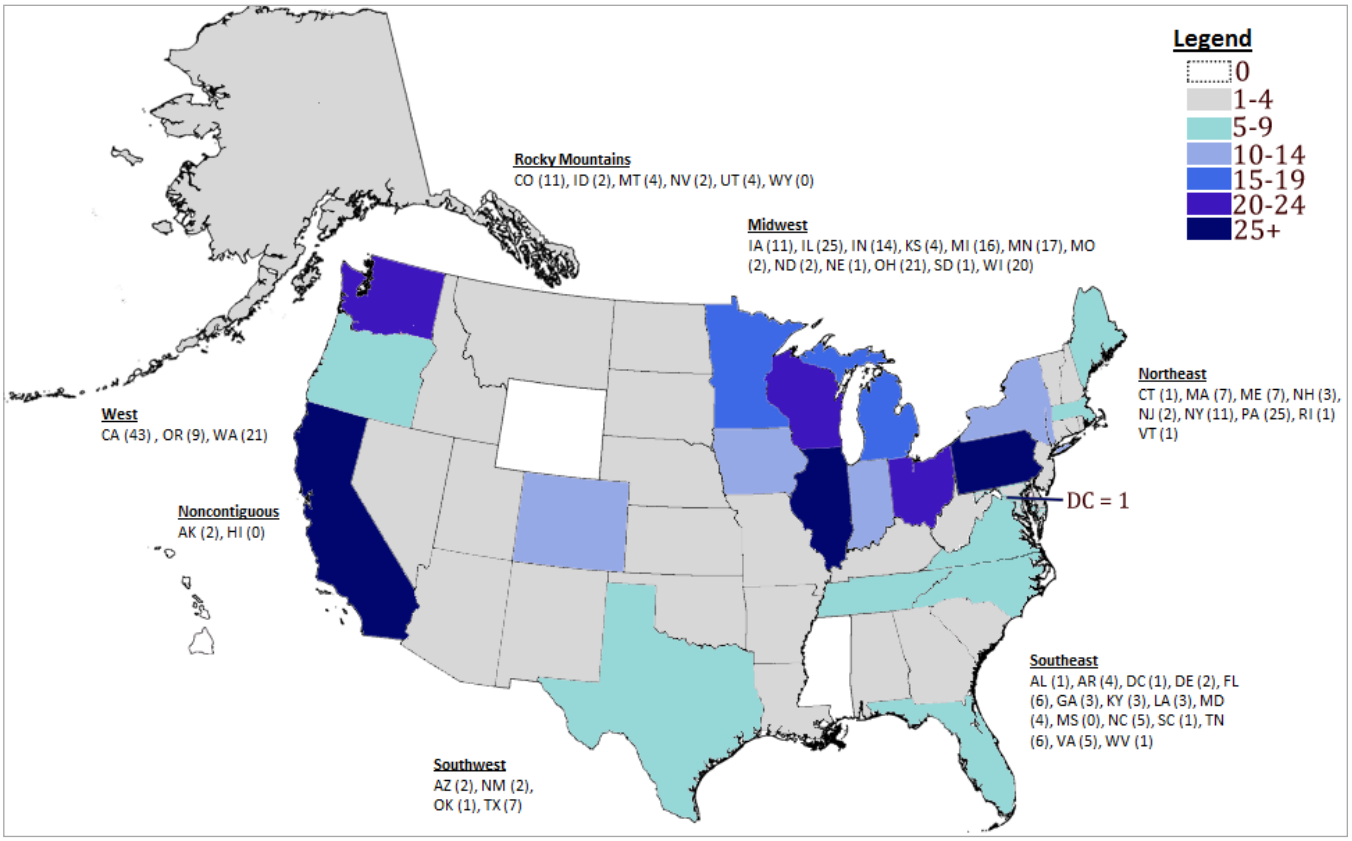


Figure 2: Map of Rails-with-Trails by State

[6] There are four rails-with-trails that cross State lines, which is why the total number is higher than 343.

Rails-with-Trails and Railroad Classes

Based on data for 276 rails-with-trails for which the class of the adjacent railroad is known, over two thirds (68 percent) of rails-with-trails are along freight railroads - including Class I, II, or III railroads.[7] The remaining rails-with-trails (32 percent) are located along passenger rail (Amtrak), tourist or excursion lines, and rail transit (including commuter rail, heavy rail, and light rail). It is important to note that some railroad lines carry multiple railroad classes; for example, a railroad line may have Class I freight and passenger service. In these cases, the primary use of the railroad corridor is used for this analysis.

Figure 3 shows the classes of railroads adjacent to rails-with-trails built between 1960 and 1999, as well as between 2000 and 2018. As indicated in the graph, there has been an increasing trend of building rails-with-trails along passenger rail and rail transit lines and a decreasing trend of building rails-with-trails along freight rail lines. Prior to 2000, only 27 percent of rails-with-trails were built along passenger rail and rail transit lines. Since 2000, 40 percent have been built along passenger rail and rail transit lines.

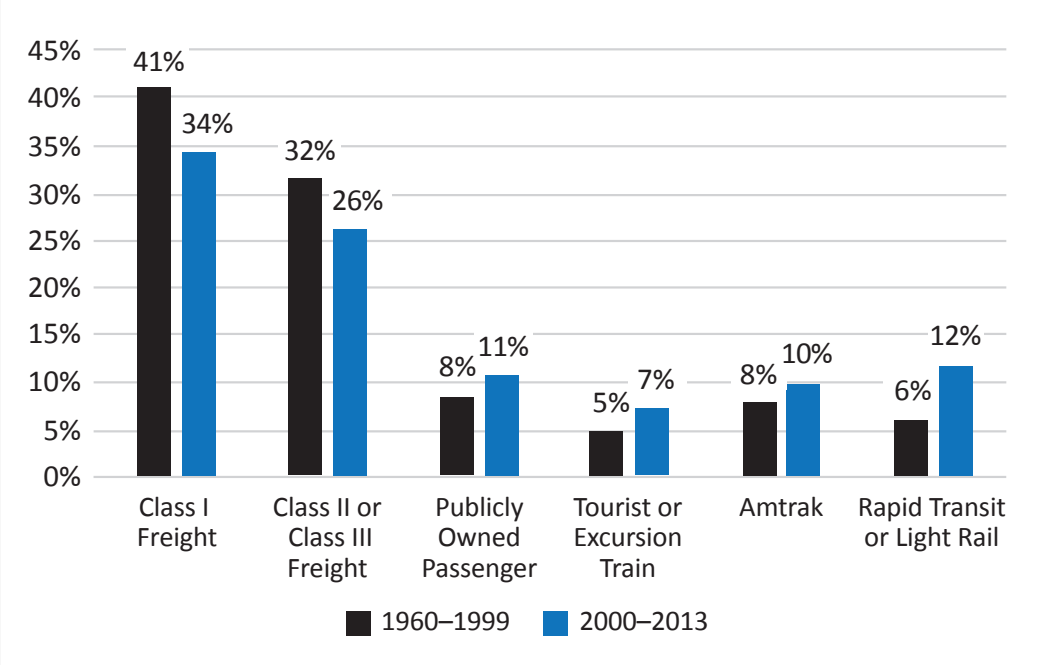


Figure 3: Railroad Classes along Rails-with-Trails: 1960-1999 and 2000-2018 (Sample size: 276)

Location of Rails-with-Trails in Relation to Rights-of-Way

Based on data for 81 rails-with-trails for which the location of the rail-with-trail relative to the railroad right-of-way and the year of opening was available, over half (58 percent) of rails-with-trails are located within the railroad right-of-way[8] or are partially located within the railroad right-of-way. The remainder of rails with trails (42 percent) are located adjacent to but outside of the railroad right-of-way. Figure 4 indicates that, since 2000, a higher percentage of with-trails have been built with segments both within and outside of railroad rights-of-way than before 2000.

[7] In the U.S., freight railroads are designated as Class I, II, or III according to their annual operating revenues. As currently defined by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1-1), Class I railroads have revenues of approximately $447.6 million or more; Class II have revenues less than approximately $447.6 million but greater than approximately $35.8 million, and Class III have revenues of less than approximately $35.8 million.

[8] The railroad right-of-way refers to the private property limits owned by the railroad.

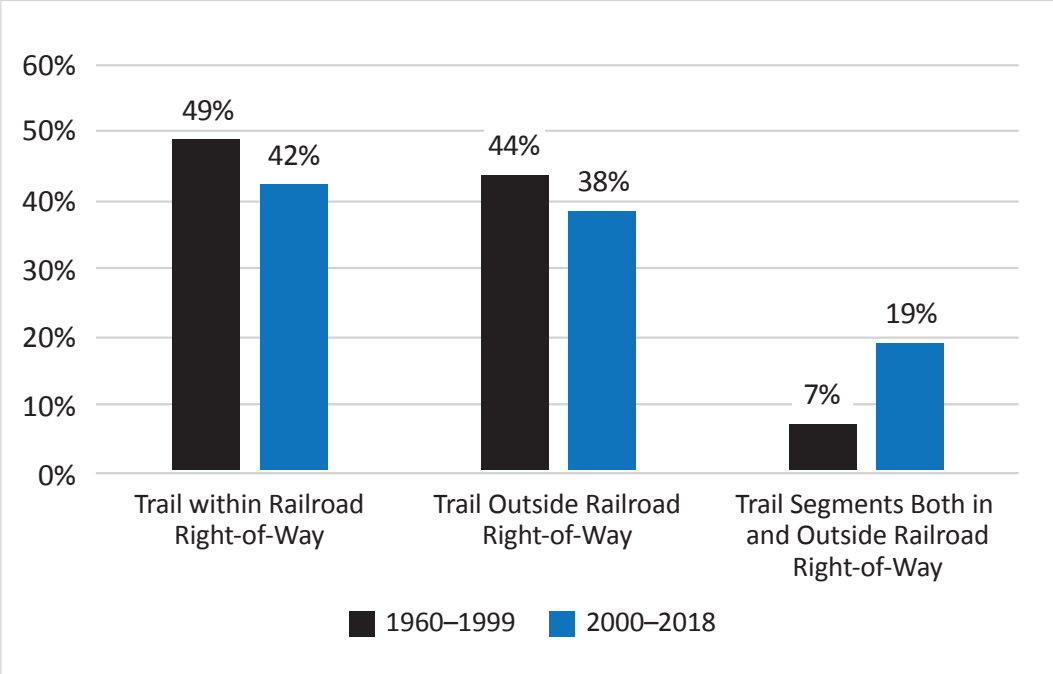


Figure 4: Rail-with-Trail Rights-of-Way: 1960–1999 and 2000–2018 (Sample size: 81)

Class I railroads are less likely than other railroads to have rails-with-trails located within their rights-of-way. Figure 5 indicates that, based on data for 32 rails-with-trails located along Class I railroads for which the location of the rail-with-trail relative to the railroad right-of-way was available, 53 percent are located outside the railroad right-of-way and 47 percent either are are wholly or partially located within the railroad right-of-way.

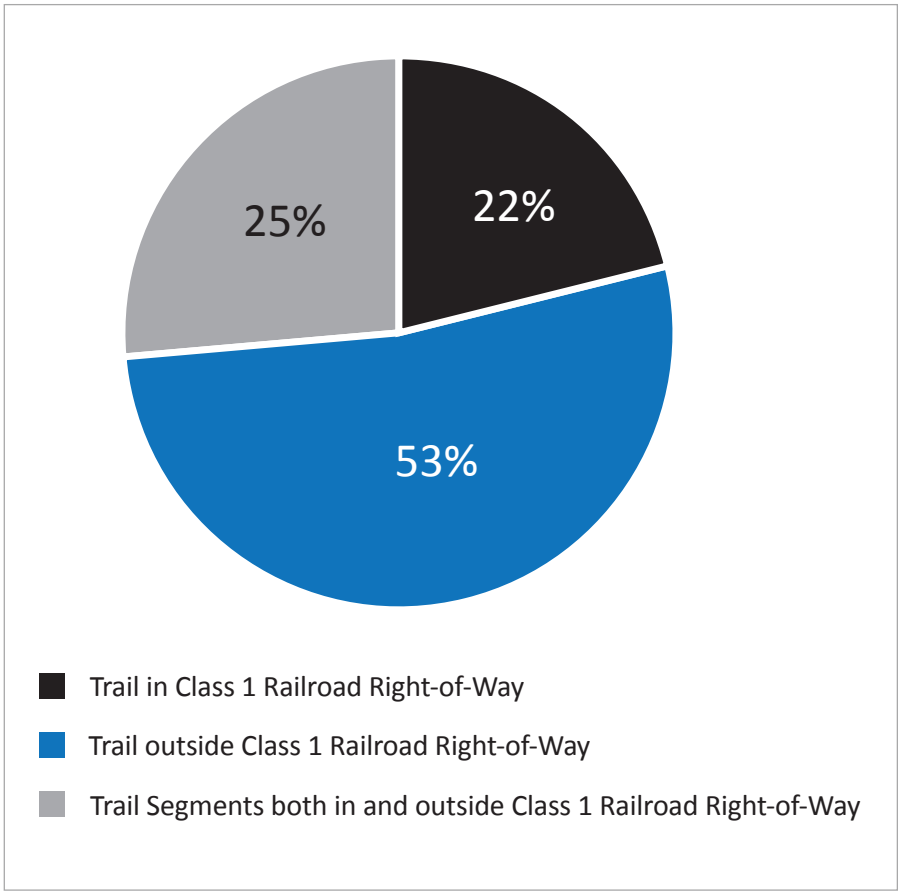


Figure 5: Rail-with-Trail Rights-of-Way on Class I Railroads (Sample size: 32)

International Rails-with-Trails

Rails-with-trails exist in Canada, Australia, the United Arab Emirates, and several countries in Europe. They are sometimes referred to as rail-side trails and occur in a variety of contexts, including alongside urban light rail, freight corridors, tourist trains, and commuter lines.



The E&N Rail Trail Humpback Connector on near Victoria, British Columbia. (Photo courtesy of Capital Regional District)

Canada

Rails-with-trails have been developed in almost every Province that has railroad service, including Nova Scotia, Québec, Ontario, Saskatchewan, Alberta, and British Columbia. They vary in length from less than 100 meters long to several kilometers. Canadian rails-with-trails are built in a variety of contexts: adjacent to corridors with infrequent service as well as busy corridors, along commuter rail lines or freight routes, and along major railroads or spur lines. They are most often smaller segments of a longer trail, with a rails-with-trails portion located on bridges, at choke points, and where the rail corridor was deemed the best alignment for a portion of a trail.

Australia

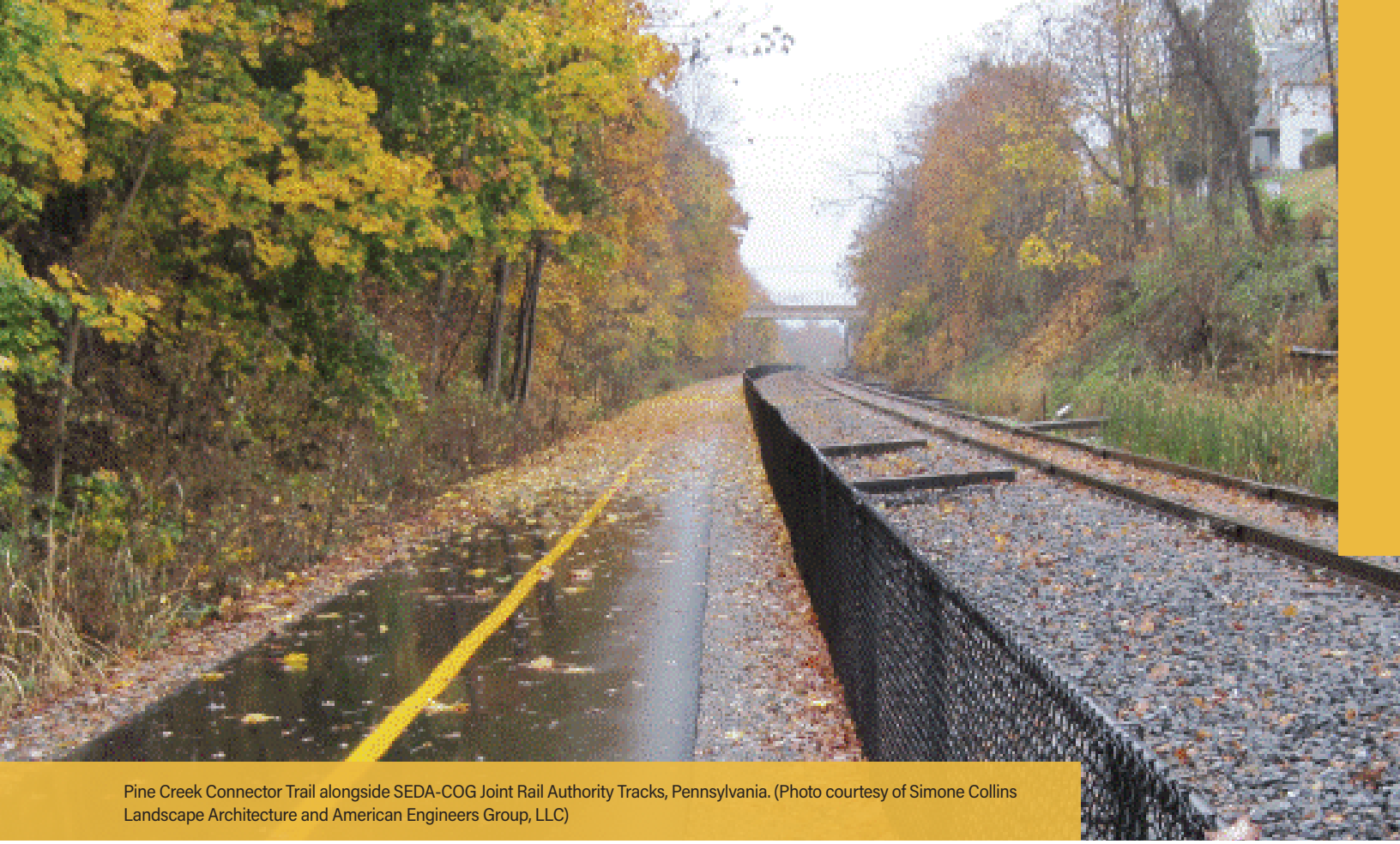
Rails-with-trails in Australia tend to be most common along the publicly owned passenger railways outside of the larger cities, such as Sydney, Melbourne, and Perth. They are often referred to as "rail-side trails" in the Australian context. Many are built on railway land but are managed by councils, either through the city or shire (a local government entity similar to a county or metropolitan area in the U.S.).

United Arab Emirates

Unlike the US, the United Arab Emirates does not have a large network of rail corridors, but rails-with-trails do exist along rail transit corridors as part of an extensive trail network. For example, the Roads and Transport Authority (RTA) constructed a nine-kilometer cycle track alongside the Dubai Tramway that connects stations with Jumeirah Beach and residential areas. The RTA has a goal of more than 900 kilometers of trail infrastructure to be built in the coming years. Since Dubai is largely an urban environment, most of the metro lines are elevated, with some subterranean sections, and the rail-with-trail is alongside the only at-grade tram line. Because of the design of the relatively new rail systems, even though trails may run parallel to rail lines, they most commonly have a grade separation that negates the need for barriers.

Other

Rails-with-trails have been developed throughout Europe. The Netherlands has many urban bike paths that would be considered rails-with-trails by this study's standards, as Dutch urban separated cycle tracks and trams are often located side-by-side. In the Netherlands, England, and Switzerland, there are also rural routes where intercity trains run parallel to multiuse trails.



Pine Creek Connector Trail alongside SEDA-COG Joint Rail Authority Tracks, Pennsylvania. (Photo courtesy of Simone Collins Landscape Architecture and American Engineers Group, LLC)

Section III: Policy and Perspectives

This section provides information on the policies of railroad companies, including freight, excursion, and passenger railroads, public transportation agencies, and State DOTs regarding rails-with-trails. It also highlights their perspectives on rails-with-trails, including common concerns, as well as design considerations to address the concerns.

Railroad Policies and Perspectives

Railroad Policies

In the U.S., freight railroads are designated as Class I, II, or III according to their annual operating revenues. Of the eight Class I railroads, four have official written policies of not permitting adjacent bicycle, pedestrian, or multiuse trails within the railroad's right-of-way (see sidebar). The other four Class I railroads do not have official policy regarding rails-with-trails. However, those companies noted that in practice they do not encourage or do not allow parallel trails within the rail right-of-way except on a very limited basis when a proposal meets specific criteria. Relatively few of the Class II and Class III regional railroads have official policy regarding rails-with-trails.

Class I Railroad Rail-with-Trail Policies

BNSF Railway and Union Pacific Railroad (UP) jointly issued the *Guidelines for Railroad Grade Separation Projects,*[9] which is a set of planning and engineering guidelines that the railroads use to share their policies on several grade-crossing issues, including trail crossings, with external parties. The UP/BNSF guidelines state that the railroads do not allow rails-with-trails parallel to the track on railroad right-of-way (i.e., the private property limits owned or managed by the railroad) or access roads (i.e., a road used and controlled by the railroad for maintenance, inspection, and repair). Trails that are outside the railroad right-of-way should use barriers such as fences, ditches, or berms separate the trail from the tracks to prevent trespassers from entering the railroad right-of-way. UP and BNSF do not allow rails-with-trails on or cantilevered from railroad bridges. The railroads also prohibit new at-grade trail-rail crossings but may allow new rails-with-trails to cross railroad tracks adjacent to existing at-grade roadway crossings. Rail-with-trail overpasses and underpasses are both allowed, but the document provides extensive guidance for them. The document also outlines requirements for setback, drainage, fencing, signs, and lighting for rails-with-trails.

The CSX *Public Project Information*[10] document provides information to help communities plan and implement projects that may involve the CSX rail property. It includes a section titled *Bicycle/Pedestrian Pathways and Crossings,* which includes rails-with-trails. As described in the document, it is CSX policy not to permit private or public parallel bicycle/pedestrian paths within the railroad's right-of-way. However, CSX will cooperate on parallel trails outside of its right-of-way. For parallel trails outside the railroad's right-of-way, CSX encourages safety measures such as fencing and signage. CSX policy restricts all trails (not just rails-with-trails) from crossing tracks at grade except at existing highway-rail at-grade crossings. Grade-separated trail crossings are preferred in all cases, and are required when a trail crosses the tracks outside of an existing highway-rail at-grade crossing. The document outlines requirements for trails that cross the railroad at existing at-grade highway crossings, including appropriate signage, warning systems, and fencing. Two appendices detail CSX's criteria for overpasses and underpasses of all types, including trails.

Norfolk Southern Corporation's (NS) *Public Projects Manual*[11] is a set of planning, engineering, and contracting guidelines that NS uses to share its policies on a variety of projects initiated by others. It includes a brief summary of rail-with-trail policies as well as a sample engineering drawing for overhead protection of trails beneath NS tracks. NS policy does not allow trails that would permit pedestrian, bicycle, and other recreational traffic to move parallel to trains on NS right-of-way or to cross at grade. For parallel trails, outside of the rail right-of-way, NS encourages several safety measures, including the installation of signage and fencing. NS only allows at-grade trail crossings if they are made at existing highway-rail at-grade crossings. NS allows grade-separated trail-rail crossings; the manual provides specific guidelines for overpasses and underpasses of all types.

9 UP and BNSF Railway. January 5, 2016. Guidelines for Railroad Grade Separation Projects. Available at https://www.up.com/cs/groups/public/documents/document/pdf_rr_grade_sep_projects.pdf.

10 CSX Transportation. July 2017. Public Project Information: For Construction and Improvement Projects that May Involve the Railroad. Available at https://www.csx.com/index.cfm/library/files/about-us/property/public-project-manual/

11 Norfolk Southern Corporation. September 2013. Public Projects Manual. Available at http://www.nscorp.com/nscorphtml/pdf/Customers/public_projects_manual.pdf

Sample Class II and Class III Rail-with-Trail Policies

Class II and III railroads include private, public, and quasi-public entity rail operators. The SEDA Council of Governments (SEDA-COG) Joint Rail Authority (JRA)[12], which represents 11 counties in the Susquehanna River watershed in central Pennsylvania, owns five short line railroads. It developed *Rails-with-Trails Standards*[13] as a guidance document. SEDA-COG JRA opposes trail construction on its property in general but allows exceptions under certain conditions and at its discretion. Conditions under which a rails-with-trails may be allowed on JRA
property include:

- The trail is 50 feet or more away from the track centerline.
- A trail may be allowed at no less than 25 feet away if a chain-link 60-inch-high fence is provided and placed at 25 feet distance from track centerline.
- A trail no more than 20 feet away from track centerline may be allowed for distances of less than 400 yards under extreme circumstances when the trail developer proves that no other viable options exist.
- The trail developer must have a governmental body fund the insurance and indemnification of the railroad.
- Except under particular circumstances, no new at-grade pedestrian/bicycle crossings are allowed, and when exceptions are made, pedestrian crossings must be made public by the established process and sanctioned by the Pennsylvania Public Utility Commission.

The North Coast Rail Authority (NCRA), along with its contract operator, Northwestern Pacific Railroad Company (NWP), operates freight service throughout California's northern coast. NCRA's *Policy and Procedures Manual*[14] includes a chapter on trail projects, including rails-with-trails. The manual provides minimum standards and general requirements for the design, construction, safety, operations, and maintenance of rail-with-trail projects within its right-of-way. The chapter on trail projects references several manuals (such as the California Department of Transportation's (Caltrans) *Highway Design Manual*, Chapter 1000 titled *Bikeway Planning and Design*, and FHWA's *Manual on Uniform Traffic Control Devices* (MUTCD)) as documents that rail-with-trail designs should follow for attributes such as trail width, clearance, setback, and markings. Last, NCRA's manual addresses construction, maintenance, and funding, noting that the agency sponsoring the rail-with-trail project will fund, maintain, and construct the trail without interfering with NCRA operations, unless specifically agreed upon. The NCRA's rail-with-trail guidelines also apply to Sonoma-Marin Area Rail Transit (SMART), the regional transportation district that operates rail transit service along a 70-mile corridor in California's North Bay region.[15]

Railroad Perspectives

The representatives of railroad operators interviewed for this report recognize communities' interest in establishing trails along rail lines due to the linear nature of the rail lines and their proximity to developed areas. However, they also expressed the view that in most circumstances, trails are an incompatible use within the right-of-way of active rail, primarily in terms of perceived safety risks to railroad workers and the public. Some of the railroads cited the following issues when discussing safety concerns with rails-with-trails located in the railroad's right-of way or near the tracks:

- **Trespassing:** Railroad companies spend considerable effort to discourage the public from entering the rail right-of-way and walking on or along tracks through active oversight, community engagement, signage, and fencing. Several railroad companies expressed concern that locating a trail parallel to train tracks would reinforce the public perception that the railroad right-of-way is available for public use as a shortcut and thus increase trespassing.

[12] SEDA-COG is the official name. It was originally the Susquehanna Economic Development Association Council of Governments.

[13] SEDA-COG Joint Rail Authority. June 2008. Rails-with-Trails Standards. Available at http://www.sedacograil.org/Documents/Rails%20with%20Trails%20Standards%20with%2008%20amendments.pdf

[14] NCRA. Policy and Procedures Manual. May 13, 2009. Available at http://www.mendocinocog.org/pdf/Rail-Trail/NCRA%20Trail_Guidelines_8-5-09.pdf

[15] The NCRA holds a perpetual freight service easement over the SMART Corridor from Healdsburg to Lombard, while SMART holds a perpetual passenger service easement over the NCRA Corridor from Healdsburg to Cloverdale. All guidelines of the NCRA apply to the SMART and NWP corridors and easements, regardless of track ownership.

- **Work Hazards:** The railroad right-of-way includes not only the rail track, it often also includes underground signals, cables, switch-cases, and other infrastructure needed to operate the rail. Beyond the footprint of the infrastructure, additional land is needed to conduct maintenance work on the underground infrastructure. Locating a trail within the rail right-of-way could create a work hazard if crews who work on the underground infrastructure were not permitted to use the trail to conduct their work or were required to conduct their work closer to the active rail.
- **Quiet Zones:** The railroad companies expressed concerns about an increased safety issue when trails are located in quiet zones. The Train Horn Rule (49 CFR Part 222) provides an opportunity for localities nationwide to mitigate the effects of train horn noise by establishing quiet zones. Quiet zones are designated stretches of track where the routine sounding of train horns while approaching public crossings is not permitted during all or part of the day.[16]

The railroads cited the following additional concerns about allowing with rails-with-trails in their right-of-way:

- **Increased Liability Risk:** In addition to concerns about safety liability, the railroads also expressed concern about being held responsible for any structural or physical damage to the trail resulting from railroad operations. They noted that municipalities often try to hold the railroad liable for damage done to sidewalks as a result of vibration caused by rail operations.
- **Limiting Control over Future Rail Operations:** Railroad companies prefer to reserve the railroad right-of-way for railroad infrastructure to ensure that current customer demands are met and to support possible future expansion. The railroads noted that any type of permanent easement on their right-of-way makes it very difficult for the railroad to expand operations or conduct maintenance work. The railroads also noted that, while they would retain the right to remove a trail if they needed the right-of-way for railroad use, it can be politically difficult to remove or relocate a trail once it is in place.

Despite these concerns, several railroad representatives did indicate that, under certain circumstances, a rail-with-trail may be allowed if the railroad determines that the trail can be developed without negatively impacting the railroad. These railroad representatives identified several conditions that should be met if a rail-with-trail is developed, whether in the rail right-of-way or adjacent to it, including:

- A definitive delineation between the trail and the railroad property with a non-traversable fence. Railroads encourage the trail manager to conduct frequent inspections to ensure that the delineation is clear and that the fencing infrastructure is intact and effective.
- Appropriate lighting to illuminate the trail.
- Limited or no vegetation between the trail and the railroad.
- Placement of "no trespassing" signage every 500 feet between the trail and the railroad tracks.
- Ensuring that trail construction and maintenance does not interfere with railroad operations.
- Providing financial compensation. Railroad representatives felt that trail developers often undervalue the railroad right-of-way and expect railroad companies to provide use of their right-of-way for free or at too low a price.

[16] Additional information about the Train Horn Rule and Quiet Zones is available from FRA at https://www.fra.dot.gov/Page/P0889.

Freight and Intercity Passenger Rail Safety

In the last 10–15 years, the amount of freight rail traffic has remained somewhat steady[17] but intercity passenger rail (Amtrak) ridership increased, from about 25 million riders in 2004 to 31 million in 2014.[18] Over this time period, overall freight and intercity passenger rail safety has improved. In 2007, there were a total of 2,693 reported injuries and 851 fatalities associated with freight and intercity rail, compared to 2017 when there were a total of 1,711 reported injuries and 821 fatalities.[19] Notably, the vast majority of fatalities have been to trespassers.[20] Notably, the vast majority of fatalities have been to trespassers.[21] Freight and intercity rail highway-rail grade crossing safety has also improved over time: there were 2,942 incidents at highway-rail grade crossings in 2006, as compared to 2,043 in 2016.[22]

Freight and Intercity Passenger Rail Trespassing Trends

The Federal Railroad Administration (FRA) defines a trespasser as a "person who is on the part of railroad property used in railroad operation[s] and whose presence is prohibited, forbidden, or unlawful."[23] Typically, railroad trespassers are pedestrians who walk across or along railroad tracks, using them as a shortcut to another destination. Individuals unlawfully engaging in recreational activities on railroad property, such as biking or operating off-road vehicles, are also considered trespassers.

Trespassing incidents appear to be increasing. For example, between 2012 and 2017, total trespasser casualties (defined as deaths and injuries) reported to FRA increased by over 25 percent (there were 815 total reported casualties in 2012 as compared to 1,042 in 2017).[24]



The San Clemente Beach Trail parallels a corridor owned by SCRRA and operated by Metrolink and Amtrak (Photo courtesy of Rails-to-Trails Conservancy).

Public Transportation Agency Policies and Perspectives

Public Transportation Agency Policies

Several public transportation agencies and rail authorities have developed guidelines for rails-with-trails to provide consistent standards along their routes. As interest in trail development along rail transit corridors increases, public transportation agencies are establishing policies to create a standardized approach to rail-with-trail development.

17 Association of American Railroads data, as measured by total tonnage reported by Class I railroads. Annually between 2008 and 2017, Class I railroads moved between 1.5 and 2 million tons of commodities.

18 https://www.bts.gov/archive/publications/multimodal_transportation_indicators/2015_08/passenger/amtrak_ridership. Most recent ridership data compiled by BTS are from 2015, but 2014 is most recent year for which complete annual ridership data are available.

19 https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/query/query.aspx

20 About 74 percent of the 2007 fatalities were trespassers; about 80 percent of the 2017 fatalities were trespassers.

21 https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/query/gxrtally1.aspx

22 Incidents reportable to FRA must meet the following criteria: (1) involves on-track equipment, (2) involves a highway user, and (3) the accident occurred at a highway-rail grade crossing. More information available at https://safetydata.fra.dot.gov/OfficeofSafety/Documents/Railroad%20Safety%20Data%20Frequently%20Asked%20Questions.pdf

23 49 CFR Part 225, per the FRA Guide for Preparing Accident/Incident Reports.

24 https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/castally4.aspx

Sample Public Transportation Agency Rail-With-Trail Policies

The Southern California Regional Rail Authority (SCRRA), the designated track owner of the Metrolink rail system that operates in six counties throughout the Los Angeles-San Diego region, developed its *Rail-with-Trail Design Guidelines*[25] to provide uniform and consistent standards for rails-with-trails throughout Metrolink's corridors. The guidelines address clearances, at-grade crossings, surface, utilities, landscaping, fencing, lighting, drainage, and access. In addition, the guidelines address trail construction, maintenance, funding, and exceptions, emphasizing that costs shall be borne by the rail-with-trail developer.

The Utah Transit Authority (UTA) created specific design criteria for rails-with-trails to provide a uniform basis for their functional design and development. The criteria, which are included in UTA's *Light Rail Design Criteria Guidelines*,[26] outline minimum design standards for setback, fencing, trail surface, drainage, landscaping, lighting, signs, striping, roadway interface features, restroom facilities, and crossings. The design criteria have been revised over time as new challenges arise. For example, horses were allowed on rails-with-trails (and all other trails) until it became apparent that horses are prone to getting startled by the train. UTA has found that having design criteria is helpful in proactively coordinating with trail developers to design trails that meet UTA's needs.



UTA's No Trespassing Sign. (Photo courtesy of UTA)

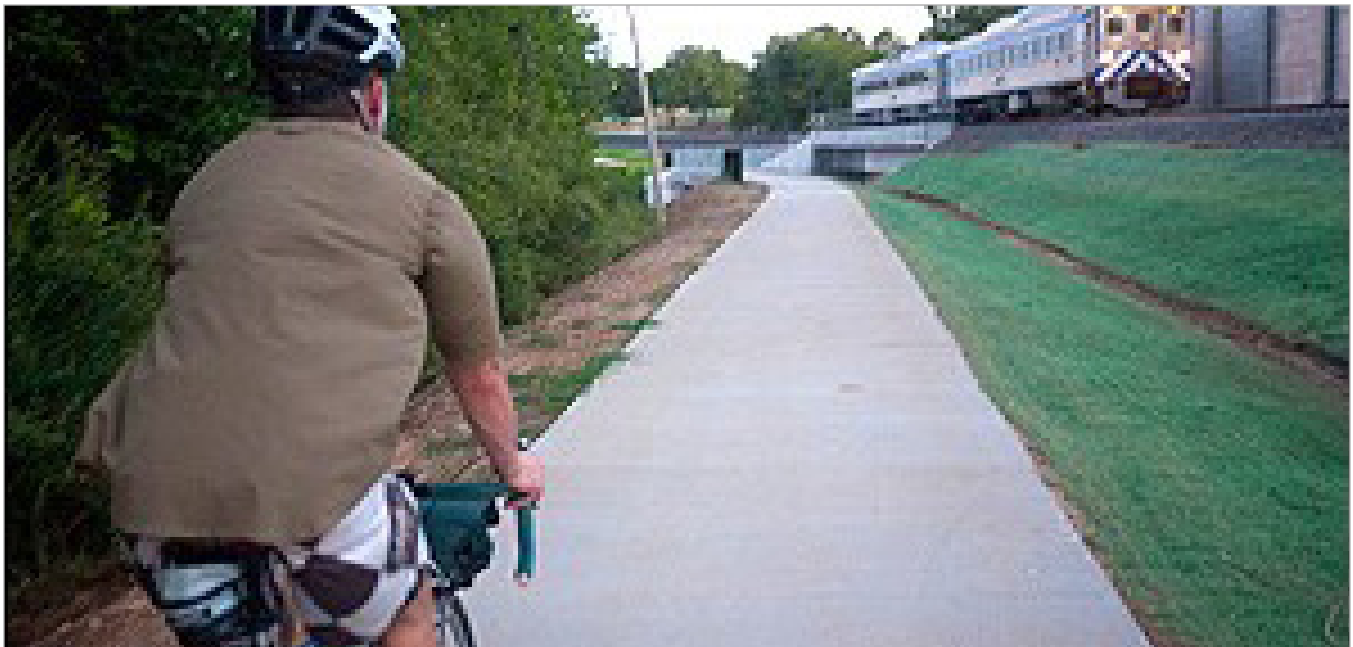
Public Transportation Agency Perspectives

As with the railroads, the priority of public transportation agencies is to provide safe and efficient service. However, public transportation agencies often recognize that rails-with-trails can be an asset to not only the surrounding communities but to public transit. Public transportation agencies often operate as part of broader State or regional entities, many of which have a stated purpose to plan for and provide multimodal transportation systems. Therefore, many public transportation agencies actively coordinate with local communities to improve access from existing trails to transit. In addition, public transportation agencies are increasingly working with communities to develop rails-with-trails along their rail right-of-way, often in conjunction with the development of new or expanded transit lines. These transit agencies view bicycle and pedestrian facilities as complementary for expanding access to their public transit system. Multiuse trails not only provide

[25] SCRRA. May 2010. Rail-with-Trail Design Guidelines. Available at https://www.metrolinktrains.com/globalassets/about/engineering/rail_with_trail_design_guidelines.pdf

[26] UTA. July 2010. Light Rail Design Criteria Guidelines. Available at http://www.rideuta.com/uploads/UTALRTDesignCriteriaRevision5.pdf

The Denton A Train was built alongside an existing trail. The DCTA sees the trail as a way to provide better transportation options overall and boost ridership for public transit (Photo courtesy of RTC).



additional mobility and recreational resources to the local communities, but they also connect trail users to transit systems and can boost transit ridership. In addition, co-locating trail facilities along public transportation corridors can provide key connections to trails for those who would not otherwise have direct access to a trail from their original location.

Safety for transit riders, employees, and the public is the main priority for public transportation agencies when considering rails-with-trails. Safety-related design considerations employed by public transportation agencies include:

- **At-Grade Crossings**: Many of the public transportation agencies interviewed for this report seek to limit the number of at-grade crossings on their tracks. Additional safety measures used at locations where trails cross transit tracks include warning signs, gates, and Z-crossings, which encourage trail users to slow down and look both ways before crossing tracks.
- **Fencing:** Most of the public transportation agencies interviewed for this report require fencing in between the tracks and the trail. However, the materials used and height and distance requirements for fencing vary among the agencies.
- **No-Trespassing Signage:** Public transportation agencies often require "no trespassing" signage along their tracks. For example, UTA's design criteria requires "no trespassing" signage to be installed at the separation fence within 50 feet of each track at-grade crossing and at a maximum spacing of 500 feet along the separation fence. Metro Transit in Minnesota also has added enhanced signage to locations where a high volume of trail users cross the transit tracks.

Several public transportation agencies felt that, instead of creating safety risks, rails-with-trails yield safety benefits in terms of their role in reducing trespassing, dumping, vandalism, and illegal track crossings by channelizing pedestrians and bicyclists away from tracks and providing a safe and convenient route for pedestrians who may otherwise trespass on or along the tracks.

While public transportation agencies see rails-with-trails as valuable aspects of multimodal transportation system, several agencies cited a concern that allowing additional uses in their right-of-way, including rails-with-trails, would limit their ability to expand operations in the future. However, as demonstrated by several examples of transit services that were introduced in to an existing rail-to-trail corridor, public transportation agencies are often able to provide for new or expanding transit service while maintaining existing trails.

Rail Transit Safety

From 2006 to 2017, rail transit ridership increased, from 3.7 billion trips in 2006 to 4.8 billion trips in 2017.[27] Over this time period, rail transit injuries and fatalities (excluding those at at-grade crossings) also increased. For instance, rail transit-related injuries increased from 6,902 in 2006 to 8,993 in 2016. Fatalities also increased from 125 to 240 over the same time period.[28]

By contrast, transit-related fatalities at at-grade crossings decreased from 33 in 2006 to 12 in 2016.[29] However, transit-related incidents not resulting in fatalities at at-grade crossings increased, from 176 in 2006 to 471 in 2016.[30] [31]

[27] APTA, http://www.apta.com/resources/statistics/Pages/ridershipreport.aspx. Includes data on heavy rail, light rail, and commuter rail.

[28] BTS Transit Safety Data by Mode for All Reported Accidents. https://www.bts.gov/content/transit-safety-data-modea-all-reported-incidentsb. These data do not include fatalities reported as suicides.

[29] BTS Transit and Grade-Crossing Fatalities by Rail Transit Mode. https://www.bts.gov/content/transit-and-grade-crossing-fatalities-rail-transit-mode

[30] https://www.bts.gov/content/transit-and-grade-crossing-incidents-rail-transit-mode

[31] Rail transit incidents reported by BTS rely on National Transportation Database (NTD) and FTA definitions. FTA's reportable incident threshold is when there are one or more injuries requiring immediate medical transportation away from the scene. See notes: https://www.bts.gov/content/transit-and-grade-crossing-incidents-rail-transit-mode

Rail Transit Trespassing Trends

Between 2007 and 2013, rail transit-related trespassing events also increased, from 106 in 2007 to 151 in 2013.[32] Between 2007 and 2017, 81 percent of all rail transit-related fatalities were identified as trespassers or individuals who intended suicide.[33] Similarly, fatalities associated with trespassing and at-grade railroad crossings account for 93 percent of all rail-related deaths.[34] The Federal Transit Administration (FTA) reported that between 2007 and 2013, suicides and trespassing event fatalities occurred over five times as often as fatalities from events due to other public behavior.[35]

State DOT Policies and Perspectives

State DOT Policies

The study team identified 11 State DOTs that have or are in the process of developing official design guidelines that give details specific to rail-with-trail design and development (see Appendix B for State rail-with-trail guidelines). Four other States mention rails-with-trails in their overall trail guidance documents but do not provide specific rail-with-trail guidelines.

In all cases, the State DOTs developed rail-with-trail design guidelines to provide trail developers with the resources necessary to meet State design requirements and safety standards. With design guidelines, State DOTs can ensure that there is a baseline for rail-with-trail proposals that helps determine whether a rail-with-trail is feasible.

The State design guidelines identify minimum and desired physical requirements for many rail-with-trail design considerations, including:

- Width of separation between railroad tracks and the trail;
- Barrier presence and height between railroad tracks and the trail;
- Strategies to design within or around narrow corridor widths;
- Providing for drainage under several different cross sections;
- Creating safe crossings; and
- Signage alerting users to hazards and rules that are specific to rails-with-trails.

Nearly all published State DOT rail-with-trail guidelines require that rails-with-trails be set back a certain distance from the track and require some type of barrier between the track and trail. Some States are very specific as to the width of the setback and what type of barrier must be used, including material, height, and varying height requirements depending on setback, train type, train speeds, and train frequency. Like other design features, States have various requirements for bridges and tunnels; some States prohibit shared bridges between rail and multiuse paths, while others allow it.

[32] Note that these data are reported as "suicide or trespasser." There are no separate figures reported for trespassers only. https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Rail%20Safety%20Statistics%20Report.pdf

[33] https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Rail%20Safety%20Statistics%20Report.pdf

[34] https://www.fra.dot.gov/Page/P0841 and https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Rail%20Safety%20Statistics%20Report.pdf

[35] https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Rail%20Safety%20Statistics%20Report.pdf

Most State DOTs indicated that their design guidelines are meant to be flexible and adaptable, as each rail-with-trail project is unique. Some States provide multiple standards to meet a variety of circumstances, while others provide a standard for the most intense conditions, (e.g., those appropriate for high-speed, high-frequency, and/or heavily used rail corridors). In addition to their own guidelines, or in States that do not have written guidelines, some refer to U.S. DOT's 2002 Report for effective practices for separation, barriers, constricted corridor strategies, drainage, crossings, signage, and other design elements and procedures.



The Burlington Greenway in Vermont was the impetus to creating design guidelines for the State (Photo courtesy of Rails-to-Trails Conservancy).

Vermont Rail-with-Trail Guidelines

The Vermont Agency of Transportation includes a comprehensive set of guidelines for rails-with-trails in their *Pedestrian and Bicycle Facility Design Manual.*[36] The manual explains separation distances and setbacks, fence heights, and strategies to work within constricted corridors with images and diagrams. It also discusses pavement and subsurface, and what to consider when there are tracks and ties remaining underneath the trail, for example when a trail is built upon a disused siding (i.e., auxiliary track for meeting, passing, or storing trains). Adaptation of existing or historic structures are addressed, as are considerations for new bridges and tunnels. Setback and barrier options according to train frequency and speed are outlined in a table. In addition to vegetation and drainage, winter use, snow plowing, and seasonal maintenance are also considered, as snowmobiles and cross country skis may be used on some rails-with-trails that are not plowed under snow conditions.

State DOT Perspectives

The roles of the State DOT in rail-with-trail development can be broadly categorized into three categories:

- States with an active role in trail-building, including rails-with-trails when necessary;
- States with a regulatory or review role, working closely with a trail builder and a railroad; and
- States with little involvement in trail or railroad projects.

State DOTs that own rail rights-of-way tend to be more amenable to the development of rails-with-trails because trails alongside rail help to provide transportation alternatives and multimodal connections, furthering their missions of mobility and economic development. Some State DOTs see trails, including rails-with-trails, as drivers of economic development that enhance mobility, quality of life, and recreation opportunities.

[36] Vermont Agency of Transportation. December 2002. Vermont Pedestrian and Bicycle Facility Planning and Design Manual. Available at https://vtrans.vermont.gov/sites/aot/files/highway/documents/publications/PedestrianandBicycleFacilityDesignManual.pdf

State Rail-with-Trail Development Examples

The New Hampshire DOT (NHDOT) takes an active role in rail-with-trail development when approached by a trails group or municipality. As private railroads divested themselves of railroad lines within the State, NHDOT purchased several rail corridors to preserve the State's rail network and allow for future rail restoration. NHDOT now enters into operating agreements with private railroad operators to use these State-owned rail corridors. The agency has also allowed rails-with-trails to be built along on one rail line and has discussed the viability of other such installations on other corridors.

NHDOT's rail-with-trail design standards identify minimum safety requirements to be met under any future rail traffic scenario, ensuring full operability of state-owned rail corridors in the future. NHDOT reviews plans submitted by trail developers, comments as needed, and provides staff for a field inspection during the construction phase.

In Connecticut, the State DOT owns a large network of both active tracks and railbanked[37] corridors. The State government also has a robust trail building program. Responsibility for trails is shared between the State DOT and the Department of Environmental Protection, as well as with local governments. The Connecticut DOT manages trail projects they see as having a statewide or a regional scope and is especially focused on completing the East Coast Greenway trail through Connecticut. Smaller spur trails generally fall under the responsibility of local government, and Connecticut DOT will assist in unique situations when there is specialized engineering needed. Connecticut DOT will consider using rails-with-trails to make important connections for a more complete trail network, mainly when there is no other viable alternative to route a trail.



Winnipesaukee, Winnisquam, Opechee (WOW) Trail, New Hampshire. (Photo courtesy TrailLink.com/abeetle)

[37] "Railbanked" refers to corridors that have been acquired by voluntary agreements between railroads and trail agencies to preserve out-of-service railroad corridors as a trail until a railroad might need the corridor again for rail service.



Camp Chase Trail, Ohio (Photo courtesy of Rails-to-Trails Conservancy)

Section IV: Rail-with-Trail Development Process

Interviews with and data collected from over 100 rail-with-trail managers, representing nearly 30 percent of all rails-with-trails, make clear that there is no standard or uniform rail-with-trail development process. Rather, the process varies widely depending on many factors, most importantly the location of the trail relative to the active right-of-way, the intensity of the active railroad operations, and the corridor owner. This section presents common issues, strategies, and effective practices that pertain to the rail-with-trail development process for four types of rails-with-trails: 1) those located within an active railroad right-of-way, 2) those located outside but immediately adjacent to an active railroad right-of-way, 3) those located within or alongside existing or planned public transportation agency-owned right-of-way, and 4) rail-trail to rail-with-trail conversions.

Overview of Rail-with-Trail Development Effective Practices

Many of the effective practices presented in U.S. DOT's 2002 Report still pertain to rail-with-trail development today. However, through the course of this study and other research conducted on rails-with-trails since 2002, new effective practices have emerged for the four types of rails-with-trails. A summary of effective practices for the rail-with-trail development process are outlined below.

- **Railroad Coordination:** Trail developers should engage railroads early and often. In addition to the railroad right-of-way owner, trail developers should also engage rail operators and freight customers. Railroad officials should be encouraged to voice their concerns or suggestions, and trail developers should be prepared to provide design and management solutions to address these concerns. In addition, understanding what might incentivize the railroad's approval or support, such as infrastructure improvements at crossings, eliminating at-grade crossings, improving access to the corridor for track maintenance, installing new signage to address safety concerns, and financial compensation, can help lead to a successful project.
- **Determining Feasibility**: A proposed rail-with-trail project may need to undergo a comprehensive feasibility analysis to determine if the project is feasible, and, if so, how best to implement it. The feasibility analysis should address land ownership and acquisition methods, existing physical and environmental conditions, stakeholder engagement, design and construction considerations, trail use and maintenance, and funding mechanism(s).
- **Locating Rails-with-Trails:** Prior to planning a rail-with-trail, identify and analyze alternatives that avoid locating the trail within a railroad's right-of-way. The planning process should consider whether routing the trail or segments of the trail outside of the railroad right-of-way is feasible, since doing so may simplify some aspects of corridor acquisition and trail development. If there are no viable alternatives to routing the trail within the active railroad right-of-way, plan the trail while considering the effective practices outlined in this report.

- **Involving Stakeholders**: Identifying and involving stakeholders early in the rail-with-trail development process can help create an inclusive and open atmosphere, saving time and energy and helping to avoid conflicts down the line. Stakeholder groups that should be involved include utility companies; State and local transportation, parks and recreation, and health departments; law enforcement officials; adjacent landowners; trail user groups; community groups, and the general public.
- **Environmental Review:** Become knowledgeable of required Federal, State, and local environmental review and permitting processes and design standards. If needed, analyze the environmental impacts prior to acquiring land and designing the rail-with-trail.
- **Consider Involving Intermediaries:** In the early stages of planning, identify the best agency or entity to lead negotiations and/or manage the project. Rail-with-trail project managers may benefit from intermediaries, such as a State DOT, negotiating with a railroad on their behalf.
- **Right-of-Way Acquisition:** Governmental trail developers interested in pursuing a rail-with-trail should acquire the affected railroad property for public ownership whenever feasible, particularly if State law affords governmental entitles greater protection from liability than private landowners.

Types of Rail-with-Trail Projects

There are four distinct types of rails-with-trails: 1) those located within an active railroad right-of-way, 2) those located outside but immediately adjacent to an active railroad right-of-way, 3) those located within or alongside existing or planned public transportation agency-owned right-of-way, and 4) rail-trail to rail-with-trail conversions. Regardless of the rail-with-trail type, trail managers, railroads, and other stakeholders should work together to ensure that rails-with-trails are safe and meet the needs of trail users, the railroad, and the community.

Table 3 outlines the unique considerations for each rail-with-trail type.

Trails within Active Railroad Rights-of-Way

This type of rail-with-trail describes a trail segment located within an active railroad right-of-way, including those owned by private freight railroads, publicly-owned passenger railroads (e.g., Amtrak), State DOTs, and private tourist and excursion railroads. Rail-with-trail development withi n an active rail right-of-way can be contentious and lengthy. Many large freight railroad companies (Classes I and II) do not allow trail development within their rights-of-way. In fact, since 2013, four of the eight Class I railroads have implemented policy that explicitly prohibit trail development within their rights-of-way due to safety and liability concerns (see Section III for more information). However, pursuing trail development in an active railroad right-of-way may be appropriate for short distances or in corridors that allow for a setback greater than 50 feet.

Camp Chase Trail

The Camp Chase Trail, located in Franklin and Madison Counties, Ohio, is nearly 16 miles and part of the larger Ohio to Erie trail system that will cross Ohio. More than 12 miles of the trail exists within the railroad right-of-way through a 2009 easement agreement established between the railroad owner and county park agencies. The 19-foot-wide easement is located near the operating tracks. The trail managers were required to indemnify the railroad owner.[38]

Trails Adjacent to Active Railroad Rights-of-Way

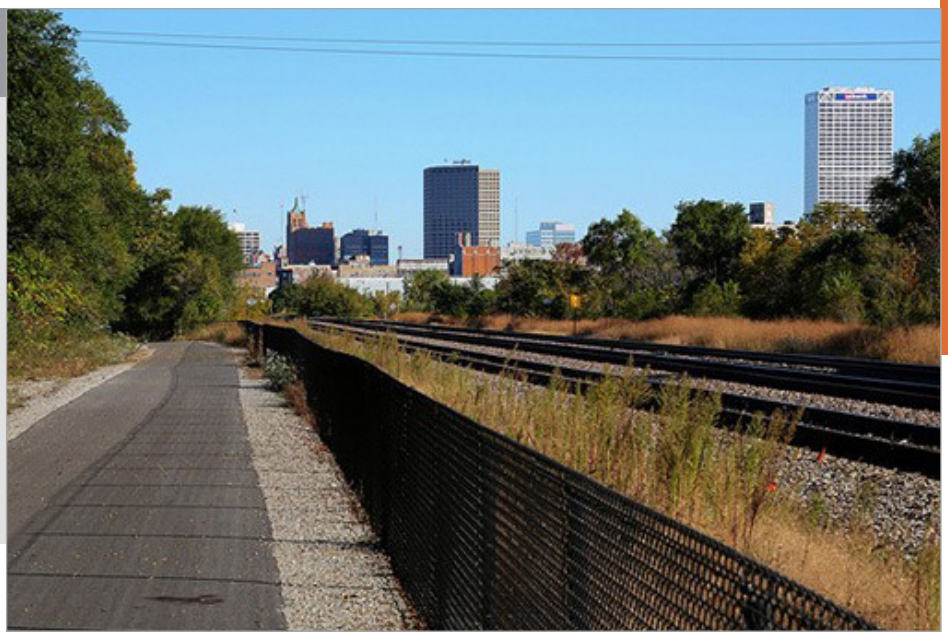
This rail-with-trail type refers to trails that are developed immediately adjacent to, but outside of, a railroad right-of-way. The property on which the rail-with-trail is located is sometimes a utility company right-of-way, an adjacent roadway owned and managed by a public entity, or one or more adjacent private properties. Depending on the width of the railroad right-of-way,

[38] A copy of the easement agreement is available at the Rails-to-Trails Conservancy's Rail-with-Trail website at https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/.

rails-with-trails of this type can be just as close to active railroad tracks as rails-with-trails developed within active railroad rights-of-way. In this type of rail-with-trail development, the trail developer negotiates with property owners that may be more amenable to trail development (e.g., utility companies). Yet, even if the rail-with-trail is wholly outside of the railroad's active right-of-way, the railroad remains a major stakeholder and should be involved in the planning, design, and construction of the rail-with-trail.

KK River Trail

The Kinnickinnic "KK" River Trail is a 2.3-mile trail in Milwaukee, Wisconsin that provides trail users key connections to the city's broader trail network. More than a mile of the trail runs parallel to an active Canadian Pacific railroad right-of-way. Although the trail was developed on city-owned land, the railroad was engaged in the trail development and planning processes.



Kinnickinnic "KK" River Trail, Wisconsin (Photo courtesy of John December)

Table 3: Effective Practices for Rail-with-Trail Development for the Four Rail-with-Trail Types

Within Active Railroad Right-of-Way	Adjacent to Active Railroad Right-of-Way	Within or Adjacent to Public Transportation Right-of-Way	Rail-Trail to Rails-with-Trails Conversion
• Identify where alternative routing outside of the active railroad right-of-way may be feasible and research ownership of adjacent parcels. • Identify and engage both railroad owner and operator(s). • Identify and engage rail customers along the corridor that may be impacted by trail development. • Where grade-separated crossings are identified or recommended, document clearance requirements (for bridges) or protective overhead barriers (for tunnels and underpasses).	• Although the railroad may not be as impacted, engage them throughout the planning process as a stakeholder. • Identify and engage corridor owner(s) throughout the project. • Identify and engage rail customers along the corridor that may be impacted by trail development.	• Trail planning may occur as part of transit project planning or after its development. Seek opportunities to incorporate the trail as part of major infrastructure (e.g., an elevated platform), even if the trail will need to be constructed in later phases. • Encourage safe and accessible connections to transit stations. • A public transportation agency may be more supportive of rail-with-trail development than other rail operators. Where a transit line is planned within a freight or heavy passenger rail corridor, consider asking the public transportation agency to lead negotiations for the rail-with-trail project on the rail-with-trail project manager's behalf.	• Trail closure during railroad construction and maintenance might be necessary. Be sure to alert trail users and the public. • Existing tunnels and bridges may need to be redesigned and rebuilt to accommodate both rail and trail. Depending on which entity maintains authority over these structures, the trail may need to be removed and rerouted from existing bridges and/or tunnels. • Adjacent landowners and community members may have concerns about the changing landscape and required trail closures. Engage community stakeholders that will be impacted by these changes.

County Line Trail

The County Line Trail was the first rail-with-trail in Ohio. Half of the current trail was donated to the county, while the remainder was purchased from private landowners alongside the CSX tracks. Wayne County Trails Association (WCTA) developed the trail using funding from the Ohio DOT and through partnerships with city and county agencies. The CSX line is a heavily-used double-track freight corridor, with trains running every 10–15 minutes at fairly high speeds. When developing the trails, the WCTA engaged in discussions with both CSX corporate headquarters as well as local representatives. Negotiations with the railroad to develop the rail-with-trail were smooth, likely due to the fact that the trail is separated by a great distance from the tracks and is not on railroad right-of-way. There is an average of 200 feet between the active tracks and the multiuse trail, as well as a ditch. However, near crossings, the trail comes within 25 feet of the rail. WCTA has developed a positive relationship with CSX, often storing railroad materials such a ties or ballast stone on county property adjacent to the tracks. The successful implementation of the County Line Trail was aided by persistence, keeping safety the primary concern for all involved, and building personal relationships to work together toward a common goal.

Trails within or Adjacent to Public Transportation Rights-of-Way

This rail-with-trail type refers to trails that are developed in or adjacent to public transportation agency rights-of-way, either as part of larger multimodal transportation corridor projects or alongside existing transit rights-of-way. As mentioned in Section III, public transportation agencies often see rails-with-trails as complementary to the public transportation system. Increasingly, public transportation agencies actively incorporate trail development as part of their rail transit expansion projects. Incorporating trails into these types of plans from the beginning can streamline the rail-with-trail development process, typically due to a coordinated planning approach when the rail developer is also the rail-with-trail developer, and because such projects often do not involve additional property acquisition for the rail-with-trail.

There are also several examples where transit has been added to existing railroad rights-of-way, or where railroads have downsized track operations allowing for transit to be developed in former freight corridors. This evolution has provided unique opportunities for rail-with-trail development that often complements and enhances access to rail transit.



Porter Rockwell Trail, Utah. (Photo Courtesy of Jim Olson, http://www.utahhikes.net)

Porter Rockwell Trail

Nearly the entire length of the 10.7-mile Porter Rockwell Trail in Draper City, Utah parallels a Utah Transit Authority (UTA) corridor that provides light-rail service. Draper City has a license agreement with UTA to use a portion of the right-of-way for trail use.[39] UTA required a 24-foot minimum setback and reviewed and approved all trail planning documents.

Rail-Trail to Rail-with-Trail Conversions

Recently, a fourth rail-with-trail type has emerged: trails developed in formerly active railroad corridors (traditional rail-trails) that incorporate new rail service, typically public transit. Rail-trails that are developed using the Federal railbanking statute are required to allow for the reactivation of rail service if and when it is deemed necessary.[40] In rare instances, if rail service is reactivated in a rail-trail corridor, the trail is either removed or relocated. Some examples include the use of a former railroad corridor for commuter rail or light rail transit expansions, as occurred in Denton, Texas (see case study) and is currently occurring along a portion of the Capital Crescent Trail in Montgomery County, Maryland, for the development of a new light rail corridor that will connect into the Washington Metropolitan Area Transit Authority's (WMATA) Metro rail system. Another rail-trail to rail-with-trail conversion is occurring in southwest Pennsylvania where the Montour Trail Council leases portions of its trail corridor to a freight rail operator.

Denton Branch Rail Trail

When the Denton Branch Rail Trail first opened in 2001, it was a classic rail-trail story. The city of Denton built the 8.6-mile trail after UP Railroad pulled the tracks off the former Denton Branch corridor, once part of the renowned Missouri-Kansas-Texas Railroad. Even as Denton city officials were finalizing their purchase of the corridor to build a trail back in 1993, they knew their region, part of the Dallas/Fort Worth metropolitan area, would continue to grow and that the corridor might someday see rail service reactivated to serve commuters.

After its inception in 2003, the Denton County Transportation Authority (DCTA) began to make plans to construct a commuter rail line connecting Denton to the Dallas Area Rapid Transit network. In 2006, DCTA and Denton city officials reached an agreement: DCTA would build parts of the A-train commuter rail on the corridor where the trail sits and would build a new concrete trail alongside the trail. The new Denton Branch Rail Trail and the 21-mile commuter rail system A-train simultaneously opened in the summer of 2011.

The trail extends from the new Denton Downtown Transit Center on Hickory Street south to Swisher Road in Lake Dallas, with many trail access points at public streets. In addition to the downtown transit center, the trail also connects with Med Park Station. In 2016, DCTA added 4 miles of trail between Old Town Lewisville to Hebron Station, and in the summer of 2018, DCTA plans to open an extension between Lake Dallas and the Highland Village/ Lewisville Lake Station.



Denton Branch Rail Trail, Texas. (Photo courtesy of Bob Tickner)

[39] A copy of the license agreement is available on the Rails-to-Trails Conservancy's Rail-with-Trail website at https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/.

[40] Section 8(d) of the National Trails System Act [16 U.S.C. § 1247(d)] refers to "the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use." Railroad corridors that are "railbanked" under this statute preserve corridors for future rail use and allow interim trail use.

Determining Feasibility and Developing a Plan

Many aspects of planning, design, and construction that apply to "typical" shared-use path development also apply to rails-with-trails. In fact, rails-with-trails often exist as segments of more extensive shared-use paths or trails that may diverge from the active rail corridor to follow other corridors (e.g., inactive or abandoned rail corridors, waterways, utilities). When considering a rail-with-trail project, whether it is wholly rail-with-trail or part of a larger trail project, the trail developer may need to conduct a comprehensive feasibility analysis of the project. The elements of the feasibility analysis will vary depending on two main factors: 1) the preferred location of the trail relative to the active rail corridor (i.e., whether it is located within or immediately adjacent to the rail right-of-way), and 2) the owner of the corridor. Figure 6 provides example steps to take in conducting a feasibility analysis.

Most rail-with-trail feasibility analyses take a comprehensive look at a project, including the existing physical conditions and community impacts, and propose preferred and alternative routings, in order to answer an inherent question: is this project feasible, and if so, what are strategies for implementation? Generally, trail planners should address the following elements as part of a feasibility study:

- Land ownership and proposed method(s) of acquisition
- Existing physical and environmental conditions
  - » Document geological, hydrological, structural, and other conditions, and estimate the capital and maintenance costs.
  - » Document current safety hazards and observed behaviors (e.g., trespassing, dumping) that the trail may mitigate.
  - » Indicate if there are known or anticipated environmental constraints and route alternatives for areas where remediation efforts would greatly affect rail-with-trail development. Analyze the environmental impacts prior to acquisition and design.
  - » Comprehensively examine and outline the need for new or modified bridges and trestles along the trail.
  - » Inventory existing sidings.
  - » Identify existing utilities in the corridor, cataloging ownership, location, and any easement agreements with the railroad company.
  - » Identify how the existing railroad drainage system will be maintained. Prototype designs of any changes along with cost estimates should be included if the rail-with-trail will impact the existing drainage system in any way, factoring in trail surface runoff.
- Stakeholder engagement
  - » Demonstrate community support and/or opposition and input.
  - » Involve appropriate government agencies, elected officials, and other key decisionmakers and stakeholders.
  - » Document the permitting, approval and other requirements for all phases of trail development and management/maintenance.
- Design and construction considerations
  - » Identify any locations where the trail will need to cross the railroad corridor and determine if at-grade crossings can be avoided or designed for safety.
  - » Determine the minimum allowable distance between the trail and the railroad tracks.
  - » Consider what types of separation between the railroad tracks and the trail will help maintain and enhance safety.

  - » Identify costs associated with construction. Construction permits and railroad services can be expensive. Aside from the fees required to secure various permits, expenses may include planning or engineering services (e.g., plan review, attending project meetings, travel, accommodation costs), legal fees, onsite monitoring, and flagging services.
- Anticipated trail use, maintenance, and future uses of the corridor
  - » Conduct an analysis of access to the trail from local communities.
  - » Assess and address how the trail will affect railroad maintenance access, how vegetation management will occur, and explore the development of an operations and maintenance plan.
  - » Assess future expansion plans from the railroad owner and operators, no matter how remote the possibility of track expansion may seem. This should include an assessment of the impacts of future rail expansion on trail operations, including long-term closures or detours and construction disturbances (e.g., noise, heavy vehicle traffic, debris).
  - » Site-specific analysis should be included whenever equestrian use is anticipated for a new rail-with-trail.
- Funding
  - » Identify all potential funding mechanisms at all levels of government (e.g., local, State, Federal) and private sources.

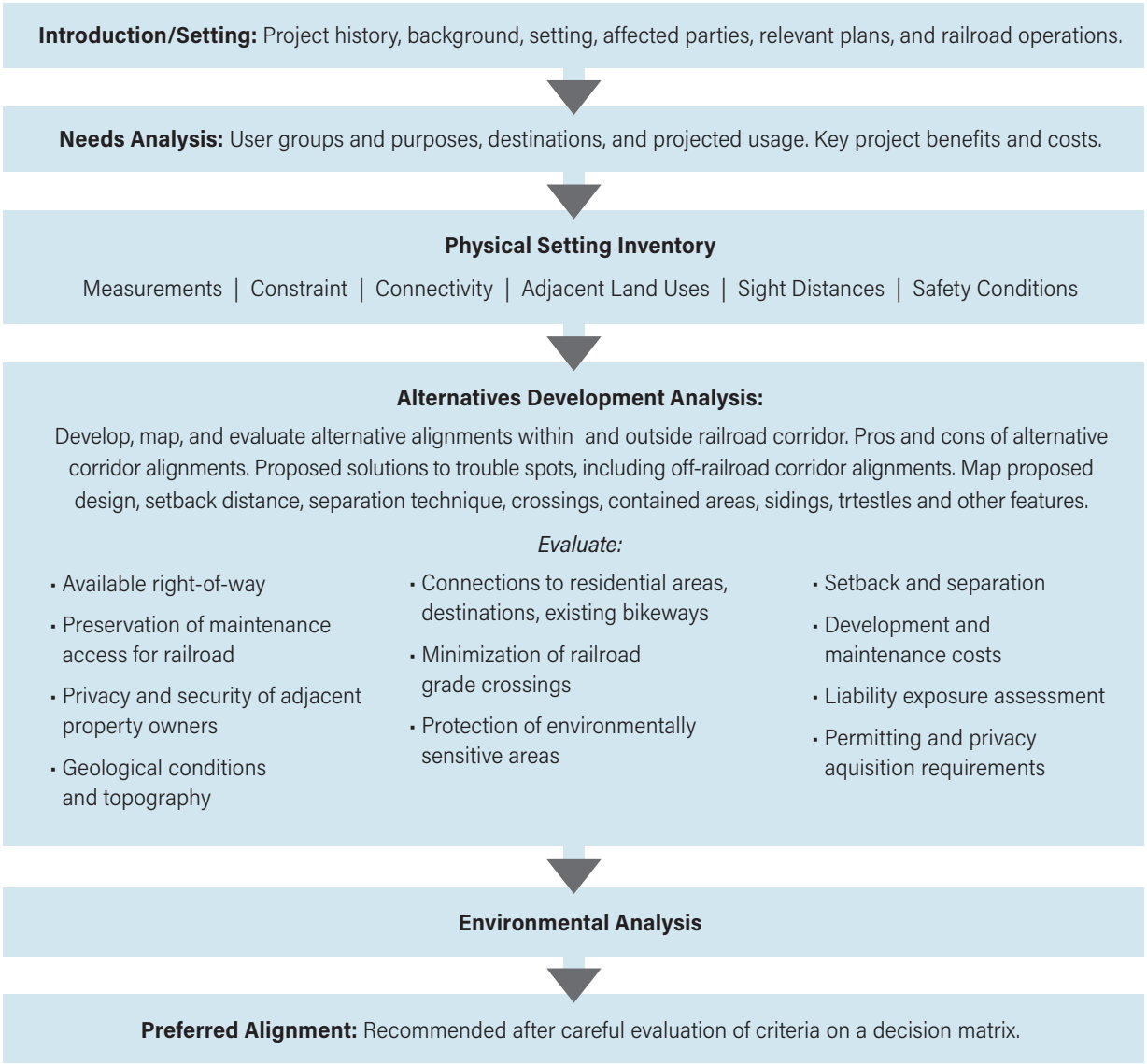


Figure 6: Steps in a Feasibility Study

Rail-with-Trail Planning in Chattanooga, Tennessee and Washington, DC

As many more cities, regions, and States proactively plan and develop integrated nonmotorized transportation systems, identifying potential corridors for rail-with-trail development can be a strategy for increasing nonmotorized transportation connectivity. In Chattanooga, Tennessee, the city worked with local advocates and its metropolitan planning organization to identify active railroad corridors, and assess their feasibility for improving the city's bicycle and trail network.[41]

A coveted corridor in Washington, DC has been eyed by the city for decades to help bring improved, safe trail connections to parts of the city that have little or no bicycling infrastructure.[42] These examples demonstrate that rail-with-trail planning can occur using a more proactive inventory strategy to identify rail-with-trail opportunities, or by using other planning activities (e.g., development of a multimodal network master plan) that allow active railroad rights-of-way to clearly emerge as unique opportunities to for trail development.



South Chickamauga Creek Greenway, Chattanooga. (Photo courtesy The Trust for Public Land)

Environmental Considerations

Trail developers may need to conduct an environmental review to consider the proposed rail-with-trail's potential impacts on the environment to comply with applicable State and Federal law.[43] Environmental considerations and analyses may include various aspects of the trail's impact on the environment and human health and safety, including:

- Riparian zones;
- Light and glare;
- Geology, soils, and hydrology;
- Biological resources;
- Land use;
- Cultural resources;
- Aesthetics;
- Noise levels; and
- Environmental contaminants.

Trail managers should be aware that State and Federal environmental protection requirements for trail development may be at odds with the railroad's expectation of corridor management for efficient rail service operation. This could prove especially true when a rail-with-trail project interacts with protected wildlife and natural environments.

[41] Chattanooga Department of Transportation. 2015. Connecting Chattanooga Neighborhoods by Rail-Trail: An Examination of Railroad Corridors https://www.railstotrails.org/resource-library/resources/connecting-chattanooga-neighborhoods-by-rail-trail/

[42] https://www.railstotrails.org/resource-library/resources/new-york-avenue-rail-with-trail-draft-concept-plan/?q=&a=Rails-to-Trails%20Conservancy&t=All&s=District%20Of%20Columbia&g=All

[43] The National Environmental Policy Act and its implementing regulations (40 CFR §§ 1500-1508) requires Federal agencies to consider the potential environmental consequences of their proposals, document the analysis, and make this information available to the public for comment prior to implementation. Many States and local jurisdictions have their own environmental requirements.



Metropolitan Branch Trail in Washington, DC. (Photo courtesy TrailLink.com/cindyd)

> "The railroad's requirements and all the permit requirements can be in conflict with one another. For instance, the railroad wants vegetation cleared and wide-open gravel ballasts but—in the case of the Border-to-Border [Trail]—it runs along the Huron River, a State designated protected waterway, which means protected habitat, vegetation, and natural aesthetics. Striking the balance between two opposing requirements can be also be challenging."
>
> *– Peter Sanderson, Principal Park Planner, Washtenaw County Parks, Border-to-Border Trail, Michigan*

Environmental Contaminants

Dealing with known, potential, or perceived contamination along the corridor is one of the most common environmental considerations for rail-with-trail projects. Contamination does not necessarily prevent the development of rails-with-trails if appropriate steps are taken to ensure the safety of trail users.

The type and extent of contamination along rail corridors fall into two general categories: 1) residual contamination that may be found along any stretch of corridor, and 2) contamination associated with industrial uses. Trail developers should conduct due diligence and inventory potential hazards along the corridor and perform necessary remediation actions before and during design and construction.

There are typically two phases to environmental site assessments. Phase I typically includes the review of records, a site inspection, and interviews with property owners, neighbors, and local government officials. Since railroads often use chemicals for corridor and track maintenance (e.g., herbicides for vegetation control, creosote for preservation of wooden ties) and sometimes transport hazardous materials, contamination risk is an inherent aspect of most railroad corridors. Therefore, an environmental site assessment for rail-with-trail projects will generally involve a Phase II assessment, which involves soil sampling and laboratory analysis, to reveal levels of contamination and help determine appropriate steps for remediation and/or routing and design strategies to avoid human exposure to contaminated areas. In some cases, a Phase II assessment will reveal high levels of contamination that may extend beyond the desired trail corridor boundary and may require mitigation action by the corridor owner.

Remediation strategies range from the removal and replacement of top soil or clay to the construction of an impervious surface over the contaminated area to prevent further leeching or harmful contact for trail users and trail neighbors. When the trail is open, signage and fencing can be used to protect trail users from exposure to known contaminants. Trail managers should coordinate with their State environmental agency to ensure proper compliance and to consult on the assessment and potential remediation processes. Additionally, trail managers should develop a comprehensive management plan that includes risk management for the open trail and the designation of a qualified person or department to regularly inspect the trail to identify potential hazards.



Border-to-Border Trail, Michigan (Photo courtesy of mlive.com/Ryan Stanton)

Whittier Greenway Trail

The City of Whittier, California, agreed to be responsible for the assessment and resulting clean-up of an area that was part of a perpetual easement with UP Railroad to develop the Whittier Greenway Trail, a current rail-with-trail project. Discovery of a high level of contaminations on the site led to testing of adjacent residential properties—also highly contaminated—which required clean-up by the railroad on all affected properties. The city secured a grant from the Environmental Protection Agency (EPA) prior to acquisition of the easement that helped defray costs associated with necessary environmental remediation. The city also procured additional environmental liability insurance.

Burlington Greenway

A planned extension of the eight-mile Burlington Greenway in Vermont is adjacent to a Superfund site, which is creating challenges to accessing the trail in a constrained area (the trail is bounded by Lake Champlain on one side and urban development on the other). The EPA requires minimal impact to the Superfund site to limit further contamination. As a result, the rail-with-trail will have to work around the site, which may require building bridges. Because environmentally contaminated sites impact both route planning and cost estimating, it is important to identify and consider them early in the planning process.

Involving the Stakeholders

Identifying and involving stakeholders early in the rail-with-trail development process can help create an inclusive and open atmosphere, saving time and energy and easing negotiations down the line. Most successful rail-with-trail projects have involved a variety of stakeholders from the beginning stages of development, including not only the trail manager and the affected railroad(s), but also representatives from the following groups:

- Utility companies (e.g., telephone, cable, water, sewer, electric, and gas);
- Metropolitan planning organizations; transportation, public transit, parks and recreation, and health departments;
- Law enforcement officials;
- Adjacent landowners;
- Trail user groups;
- Community groups; and
- The general public.



Hank Aaron Trail, Milwaukee (Photo courtesy of Ben Carter)

Utility companies should be consulted throughout the rail-with-trail development process to identify existing utilities along the corridor, inform design choices, oversee construction activities, and potentially time utility infrastructure maintenance or improvements with rail-with-trail construction. In addition, a wide range of government agencies should be involved early in the development process, as rail-with-trail development may impact existing planning efforts in the area or other elements within their purview. Law enforcement officials can provide insight on existing safety challenges in the area and suggest improvements during design.

Successful planning is key to coordinating a broad set of stakeholders. Adjacent landowners, trail user groups, community groups, and the general public should also be engaged throughout the rail-with-trail development process. Extensive engagement, such as via public workshops, will ensure the public is fully informed of temporary and permanent changes to their community, and provide ample opportunity for the public to give input on design choices to create a rail-with-trail they are likely to support and use. Railroad officials should be invited to public workshops and encouraged to voice their concerns or suggestions whenever possible.

> "Coordinate early, make sure you've got the right partners at the table, be organized on what the vision is, and have a clear idea of what you want. It means a lot of conversations with all the partners."
>
> – *James Hanning, Pedestrian and Bicycle Coordinator, City of Milwaukee, Wisconsin*

When engagement falters or collaboration proves to be difficult, rail-with-trail developers may find it helpful to form a corridor management committee to give all identified stakeholders a formal voice. The committee may serve as the primary decisionmaking body (as it is in the case of the planned rail-with-trail along an upcoming extension of the Metro Blue Line light rail transit in Minneapolis, Minnesota) or it may serve in more of an advisory role.

Railroad Coordination

Rail-with-trail planners may find it difficult to identify the appropriate person at a Class I or other nonlocal railroad to contact about a project. Large railroads can have thousands of employees in numerous States; few, if any, have a person who deals specifically with rail-with-trail projects. The decisionmaking process, as in all large organizations, involves multiple departments and professionals in a variety of disciplines.

Railroad company representation should include staff from the real estate, operations, maintenance, and legal departments of both the owner of the rail corridor and any operators on the line. In some cases, one company, such as a Class I freight railroad, will own the corridor, while regional rail, Amtrak, Class II or III freight, or even another Class I railroad will operate over the line. Rail-with-trail developers should engage with all rail operators on the corridor, not just the corridor owner, to determine their needs and concerns. Stakeholder discussions should also involve railroad customer representatives when appropriate, such as in cases where the rail-with-trail will run close to customer facilities or operations, cross a spur track, or where the railroad operator otherwise desires their input.

Rail-with-trail developers may benefit from intermediaries negotiating with a railroad on their behalf. For example, a public transportation agency that is planning a light rail line within an existing rail corridor may be uniquely positioned to assume responsibility for rail-with-trail negotiations, since they will already be discussing acquisition and construction within the rail corridor and may have already established a relationship with the railroad. Similarly, State agencies may be in a position

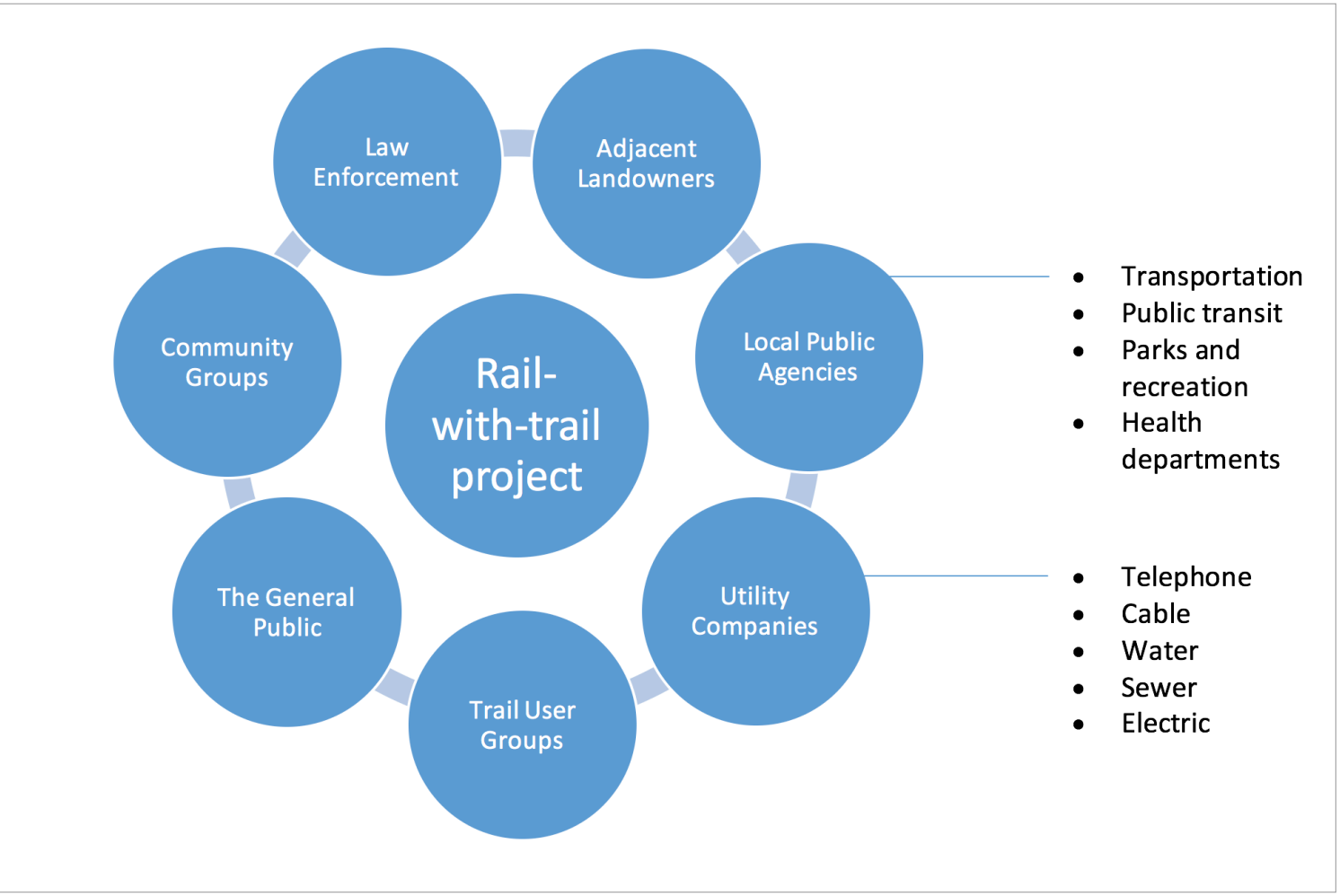


Figure 7: Stakeholders in the Rail-with-Trail Development Process

to provide incentives to the railroad, like land swaps or major infrastructure improvements, in exchange for access to the corridor for trail development. In such cases, coordinating the rail-with-trail project with the rail corridor owner and operator via an intermediary might be the preference of all affected parties, as it is likely to consolidate and centralize negotiations and eliminate duplicative efforts.

Southwest Commuter Path

Negotiations for the Southwest Commuter Path in Madison, Wisconsin, took place between rail-with-trail developers and both the Wisconsin DOT (the corridor owner) and Wisconsin Southern Railroad (the operator). While the trail developer registered Wisconsin DOT's preference for concurrence from the operator in rail-with-trail negotiations, the City of Madison also identified the State's "positive approach to bicycles as a form of transportation" and feeling that "it is part of their mission to support bicycle transportation" as key to getting the Southwest Commuter Path built.

Border-to-Border Trail

On Washtenaw County's Border-to-Border Trail, Washtenaw County Parks & Recreation (WCPR) led the rail-with-trail development effort. The rail corridor was used lightly for freight under ownership of NS, which was not amenable to conversations about a rail-with-trail. In 2013, Michigan DOT acquired the corridor and it has since seen a large increase in Amtrak passenger trains. Michigan DOT was open to discussing a rail-with-trail and has helped broker a relationship with Amtrak. WCPR was required to meet both Michigan DOT design requirements and Amtrak's safety standards, which included exploring all other route alternatives, allowing space for a second future track and a service road, not adding new at-grade crossings, installing fencing along the entirety of the corridor, and providing vertical separation where possible. WCPR works primarily with Michigan DOT on review and approvals of trail design, but does submit plans to Amtrak for review for anything that interacts with the rail corridor, such as fencing, barriers, grading and drainage, and clearing and grubbing. WCPR attributes their successful partnership with Michigan DOT and Amtrak to the following practices:



Madison's Southwest Commuter Path (Photo courtesy Rails-to-Trails Conservancy)

- Start discussions with the railroad very early on and expect the process to take some time.
- Expect to follow the railroad's processes throughout.
- Safety should be the number one priority at all times.
- Use professional networks to find the right contacts at the railroad.

Right-of-Way Acquisition and Use

As is the case with traditional rail-trail projects, there are several methods to gain control of, or acquire, property for rail-with-trail development. The acquisition method affects both the ease of the project and the allocation of potential liability (liability is further discussed in Section V). There are three common types of property arrangements for rails-with-trails: 1) full transfer

of ownership; 2) acquisition of easement; or 3) a lease or license. Each acquisition method is discussed in more detail below.[44]

Based on data for 84 rails-with-trails for which the acquisition method is known, more than half (52 percent) were developed under an easement, lease, or license agreement. There are rare instances of the trail-managing agency providing an easement or lease agreement to a railroad company.[45] These occur in cases where former railroad corridors are owned by the trail manager and rail service returns.

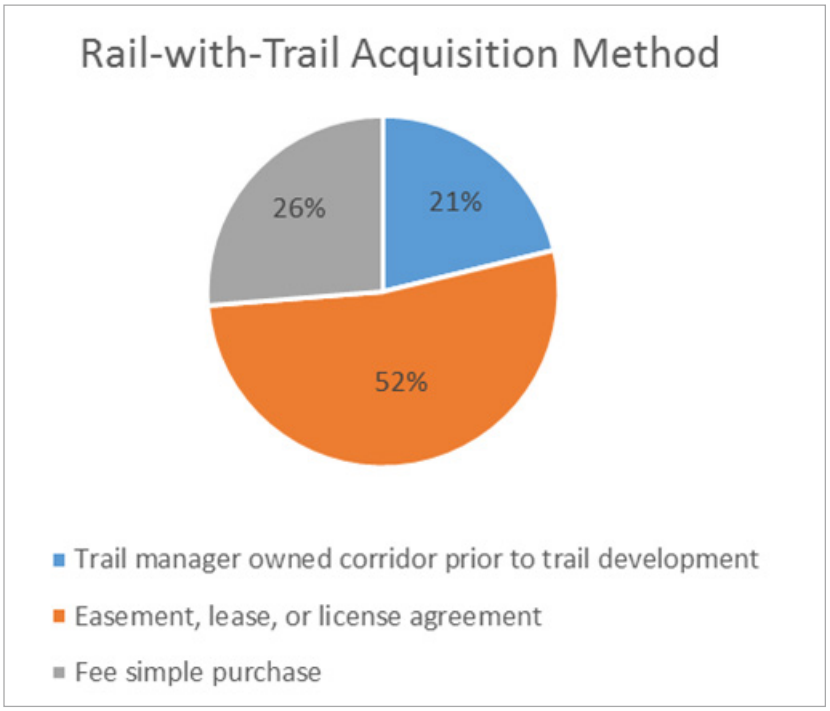


Figure 8: Reported Acquisition Methods for Rails-with-Trails (Sample size: 84)

Regardless of the acquisition method, most railroad companies will expect financial compensation for purchase or use of their corridors. Trail developers that are negotiating with railroads for access to their rights-of-way should be fully prepared to have the corridor appraised. Funding for rail-with-trail corridor acquisition is usually obtained through a variety of Federal, State, local, and private funds. There are rare instances of property donation, which the property donor can use for tax deduction.

Some other unique challenges and considerations related to corridor acquisition include:

- **Trail Corridor Width:** Acquiring adequate right-of-way for both trail development and operations/maintenance should be considered in the feasibility study and planning phase. In constrained areas, the trail developer and railroad should work together to develop creative solutions. However, there are instances of easements as narrow as 15 feet that accommodate trail development.
- **Use of Adjacent Publicly Owned Corridors:** Many active railroad corridors exist adjacent to public roadways. Trail developers should understand where right-of-way boundaries exist and determine if acquiring access within the road right-of-way is an easier path forward. State DOTs and other roadway managing agencies may have existing easements with the railroad to utilize their right-of-way.
- **Federal Requirements:** Freight railroads are subject to the regulatory authority of the Surface Transportation Board and are also subject to regulation by the FRA. Any use of the right-of-way cannot interfere with current or potential future freight rail service and must comply with FRA safety regulations.[46]

Full Transfer of Ownership

Obtaining full fee simple ownership of the rail-with-trail corridor gives a trail manager the most flexibility to design and develop a rail-with-trail project. In a full transfer of ownership, the trail developer or the local government purchases the land needed for the rail-with-trail from the railroad or corridor owner. This can be costly, and railroads are rarely interested in selling their land. In most instances, fee-simple (i.e., full ownership) acquisition is not necessary for rail-with-trail development, and frequently is not an option.

[44] Sample agreements for each of these arrangements are available at Rails-to-Trails Conservancy's Rail-with-Trail website: https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/.

[45] In 2010 the Montour Trail Council (MTC), managers of the Montour Rail-Trail—Westland Branch in Washington County, PA, provided a 30-year lease to a company that is now operating rail service on a segment of corridor that was owned by MTC prior to this rail service reactivation. Additionally, the Heritage Rail Trail County Park in York County, PA provides a lease to an excursion railroad operator for the tracks adjacent to the trail.

[46] FRA's safety regulations are found at 49 CFR Parts 200–299.

Easements and License Agreements

Easements are acquired when the landowner is willing to grant to another party the right, preferably permanent, to a particular use of the property. The landowner retains title to the land while relinquishing most of the responsibility for management of the property. The trail manager may be able to obtain a permanent easement on a property for a lower price than a fee-interest acquisition, in return for a limited right to use the property for trail purposes. The easement is recorded in the jurisdiction's land records, so the easement right survives property transfer. The right to transfer the easement interest, however, may or may not be restricted in the easement agreement.[47] Table 4 provides a listing of typical easement agreement considerations.

Table 4: Typical Easement Agreement Considerations

From the trail manager's perspective, an easement agreement should:	**From a railroad's perspective, an easement agreement should:**
1. Guarantee exclusive use. **2.** Be granted in perpetuity. **3.** Include air rights if there is any possible need for a structure. **4.** Broadly define purpose of the easement and identify all conceivable activities, uses, invitees, and vehicular types allowed to avoid any need to renegotiate with the landowner in future. **5.** State that all structures and fixtures installed as part of trail are property of grantee. **6.** Limit grantor indemnification to trail-related activities only.	**1.** Provide conditions for termination of the easement, such as discontinuance of use of, or failure to maintain, the trail, or if the trail becomes a significant safety or liability problem. **2.** Indemnify the railroad against trail-related trespasser and other trail-related activities, consistent with applicable law. **3.** Place responsibility for ensuring reasonable railroad access to the tracks, and for needed trail repairs or improvements, on the public agency. **4.** Outline maintenance and management procedures and responsibilities. **5.** Retain approval rights for any improvement on the land subject to the easement.

A license or lease is usually a fixed-term agreement that provides limited rights to a particular licensee or lessee for a particular use of the property. Typically, these are employed in situations when the property cannot be sold (e.g., a publicly owned, active electrical utility corridor), in the case of interim property owners or trail managers, or where the owner wants the ability to control the use (through the terms of the license) or to retain a right to revoke the permission and regain control over the property. A license is often non-exclusive and non-transferable, and is not recorded. Depending on the terms of the license agreement, the trail manager may be subject to some limitations that could present challenges for trail development and operation. Table 5 provides a listing of the typical considerations for a license agreement.

[47] Sample agreement documents (easements and license) are available at Rails-to-Trails Conservancy's Rail-with-Trail website: https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/

Table 5: Typical License Agreement Considerations

From the trail manager's perspective, a license agreement should:	From a railroad's perspective, a license agreement should:
1. Provide an acceptable term length with an option to renew. **2.** Identify all conceivable activities, uses, invitees, and vehicular types. **3.** Allow for railroads to review and approve the plan within a time limit. **4.** Provide clarity on maintenance responsibilities. **5.** Narrow potential environmental liability for preexisting conditions. **6.** Limit grantor indemnification to trail-related activities only. **7.** Specify limits on other uses of license property.	**1.** Allow for temporary trail closures for railroad maintenance activities. **2.** Include a revocable clause, including removal, if the trail becomes a significant safety or liability problem. **3.** Indemnify the railroads against trail-related trespasser activities and other trail-related activities, consistent with applicable law. **4.** Place responsibility for ensuring reasonable railroad access to the tracks, and for needed trail repairs or improvements, on the public agency. **5.** Outline maintenance and management procedures and responsibilities.

When easements, licenses, and other use agreements are employed for rail-with-trail corridor acquisition, indemnification agreements can address liability concerns and good design can reduce liability risks. However, the ability to indemnify other parties is not always available to State and local governments, as explained in Section V.

Rail-with-trail projects should always consider the potential need for additional tracks or sidings in the future. Easements or license agreements should include language related to the removal or relocation of the rail-with-trail if this need should arise. The license or lease should include a sufficiently long term so as to allow the trail manager to obtain satisfactory return on its investment in development of the rail-with-trail and/or provide for reimbursement for the amortized value of any improvements made by the trail manager, if the lease or license is terminated prior to the end of the useful life of these improvements.



Schuylkill River Trail, Pennsylvania. (Photo courtesy of traillink/jmcginnis12)

Section V: Liability and Legal Tools for Managing Risk

Liability is frequently raised as a concern of both railroads and trail developers in rail-with-trail projects. In the context of rails-with-trails, liability refers to civil (not criminal) liability and means the obligation of a trail manager or railroad to pay or otherwise compensate a person who is harmed through some fault of the trail manager or railroad. Several liability questions relating to rails-with-trails are largely a matter of State law, which varies from State to State, and cases with different facts may have different outcomes. This report does not explore the specifics of State laws related to liability.

Keeping those limitations in mind, this section discusses the principles governing liability in the context of rails-with-trails, including both statutory and common law standards, and the available legal tools for reducing a railroad's or trail manager's exposure to liability.[48] This section is a high-level overview of liability and legal tools and is not intended as legal advice. It does not address the fairly extensive body of law dealing with disputes related to ownership and acquisition of railroad corridors, nor does it address the general safety issues and regulatory framework applicable to railroad operations in general.[49] Further, this section does not address the many other ways in which a railroad or trail manager can be liable for damages, such as through the violation of laws or legal principles prohibiting pollution or discrimination, or through noncompliance with government regulations. Consult an attorney for issues specific to your railroad or trail project.

U.S. DOT contracted with the Rails-to-Trails Conservancy to conduct a legal analysis that included review of State laws and statutes relating to rails with trails. The legal analysis is available on the Rails-to-Trails Conservancy's website at https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/.

Overview of Risk Management Effective Practices

Effective practices for managing risk associated with rails-with-trails are:

- **Legal Research:** Conduct initial legal research as early in the process as possible. Important information to address includes ownership, easement, and license agreements in the railroad corridor; legal protections available at the State level (e.g., indemnification, applicable State statutes, and trespassing laws); local or State property rights ordinances and information; and trail management organization insurance protection.

[48] "Common law" standards are those developed by judges through case-by-case litigation and set forth in published judicial decisions that are considered precedent in factually similar contexts within jurisdictions.

[49] For more information about rail safety, see FRA's website at https://www.fra.dot.gov/Page/P0843.

- **Indemnification Agreements:** To the extent practicable and reasonable, consider using indemnification agreements to address liability concerns arising out of potential injuries related to trail activities on railroad property. Both trail managers and railroad companies should review State statutes to ensure the validity of any such indemnification agreements.[50]
- **Trespassing History:** It is important to have corridor-specific information about the frequency and location of trespassing on the corridor, the history of injuries sustained by trespassers and the locations where they occurred, and the number and information about the safety of existing crossings.
- **Signs and Markings:** The *Manual on Uniform Traffic Control Devices* defines the standards for signs, signals, and pavement markings on all shared use paths, including rail-with-trail facilities.
- **Safety Education and Training:** Staff responsible for oversight of trail construction and maintenance should consider developing rail safety training or education programs to ensure that these work activities are conducted safely, without undue risk to workers, and without interfering with train operations.
- **Liability Insurance:** Trail managers should obtain comprehensive liability insurance for key personnel, including directors and officers, and in an amount sufficient to cover foreseeable liability costs unless, as a public agency, it can be determined that there is adequate self-insurance already in place.

Perspectives on Risks and Benefits of Rails-with-Trails

As discussed in Section III, the perspectives of various stakeholders (e.g., private railroad companies, public transportation agencies, and trail managers) toward rails-with-trails depends on their respective organizational and operational missions. Railroads, particularly Class I railroads, express concern that rails-with-trails may expose their companies to greater risk of liability due to increased trespassing on the active right-of-way and interference with railroad operations. For rails-with-trails proposed to be located within active railroad rights-of-way, the railroad will weigh the safety and liability risks against potential financial and other gains. Therefore, minimizing these risks is a key component of a successful rail-with-trail. Many of the concerns associated with safety and increased liability can be addressed by employing good design practices to discourage or reduce trespassing opportunities, by using available legal tools for avoiding these consequences, and through indemnification agreements. While public transportation agencies are likely to share the same concerns as railroads, many view rails-with-trails as a way to provide safe and convenient routes for pedestrians and bicyclists to access rail transit.

Trail managers also are concerned with safety and liability, but view these concerns largely as a design and management issue rather than seeing them as obstacles or impediments to developing rails-with-trails. Trail managers should also note that private railroads sometimes require barriers between the railroad tracks and trail, additional insurance, or indemnification agreements that reduce the railroad's liability for trespassing on railroad property.

Legal Frameworks Governing Railroad and Trail Manager Liability

Common law principles establish the degree to which a person owes a "duty of care" to another, governing the extent to which a person can be found liable for negligence if another is injured by the breach of this duty. As the owners and/or occupiers of their rights-of-way, railroads and trail managers have varying duties of care that they owe to persons both on and off their premises. In addition, railroads have a duty to exercise reasonable care on their premises to avoid an unreasonable risk of harm to others who may be off the railroad premises, such as through derailments or objects that may hang off or fall from the trains. The degree of such responsibility takes into account the particular circumstances of a case.

[50] See FRA website https://www.fra.dot.gov/eLib/Details/L20496 for a Matrix of Statutes and Laws pertaining to rails-to-trails.

In most States, the duty of care owed to persons who enter another's property depends on whether the injured person is considered a trespasser, a licensee, or an invitee. Trespassers are due the least duty of care, while invitees are due the most.[51] However, the duty of care owed to persons can be altered through legislation, such as recreational use statutes.

Definitions (note that specific definitions of terms may vary from State to State):

- **Invitee**: A person entering upon the property of another for business purposes or because of a public invitation extended by the property owner.
- **Licensee**: A person who is privileged to enter or remain on land by virtue of the possessor's consent, such as a social guest. The fact that the possessor knows of the intention to enter and does not prevent it is not necessarily a manifestation of consent, and therefore is not necessarily permission. Likewise, "[e]ven a failure to post a notice warning the public not to trespass cannot reasonably be construed as an expression of consent to the intrusion of persons who habitually and notoriously disregard such notices."[52]
- **Trespassers**: A person that enters any private property without permission of the owner or without having an official reason. All 50 States have laws criminalizing trespass and providing for minimal punishment. A number of States specifically forbid trespassing on railroad property and facilities.[53]

Courts applying these common law categories have developed a series of exceptions, recognizing that certain landowners may owe a heightened duty of care even to trespassers where their land is a place of danger or, in the case of railroads, they are operators of "dangerous instrumentalities."[54] These common law exceptions to the general rule that the railroad owes no duty of care to trespassers are:

- **Known or Habitual Trespass:** The known-trespasser rule states that a landowner who knows of or reasonably anticipates the presence of a trespasser in a place of danger owes a duty of ordinary care to protect or warn the trespasser about that dangerous condition.
- **Discovered Trespass:** Under the "last clear chance" doctrine, railroads have a duty to use reasonable care to avoid injury to a discovered trespasser, such as where a member of a train crew observes a trespasser in danger on the tracks.
- **Young Children:** Under the "attractive nuisance" doctrine, a majority of States hold railroads to a duty of exercising reasonable care for young children when the railroad knows or should know that such children are likely to trespass in a particular area.

A railroad should weigh and balance three factors when deciding whether to allow a rail-with-trail on its right-of-way or determining the indemnity and insurance coverage appropriate for a given rail-with-trail: (1) the extent, if any, to which the rail-with-trail will elevate the railroad's common law duty of care to any particular individual; (2) the increased or decreased likelihood of an injury occurring as a result of the rail-with-trail, and (3) the potential applicability of a statute, such as a recreation use statute, to protect the railroad. Each rail-with-trail project will have unique characteristics affecting the extent, if any, to which a railroad's liability is potentially increased.

[51] A 2012 Amendment to the Restatement [Restatement (Third) of Torts: Phys. & Emot. Harm § 51 (2012)] published by the American Law Institute (ALI), removes the three strict "entrant" categories and says landowners should have an integrated and general duty of reasonable care. This duty of care applies to all visitors on a property owner's land, other than "flagrant" trespassers. Several States have abolished the distinction between invitees, licensees, and trespassers, and established a unitary duty of reasonable care by landowners. See http://centerjd.org/content/faq-trespasser.

[52] Section 330 of the Restatement (Second) of Torts (1965).

[53] See FRA's Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings at https://www.fra.dot.gov/StateLaws.

[54] The vitality of these exceptions, such as the "last clear chance" doctrine, has been lessened as a result of the current trend by a majority of states to move away from a standard in which the plaintiff's own '"contributory negligence" bars any recovery. Instead, the majority of States now adopt a comparative negligence standard under which liability is apportioned between the parties according to their degree of fault, subject to certain limits. See, .e.g. Renz v. Penn Cent. Corp., 87 N.J. 437, 435 A.2d 540 (N.J., 1981) (refusing to apply a State statue according absolute immunity to railroads from civil liability to trespassers in light of adoption of comparative negligence standard in the State).

Recreational Use Statutes

State recreational use statutes are one way to address a railroad's concerns about a rail-with-trail increasing their liability risk. These statutes, which have been enacted in all 50 States and the District of Columbia, typically limit the liability of landowners for injury to recreational users unless landowners intentionally, willfully, or recklessly injure or endanger trail users.[55]

Indemnification and Insurance

Notwithstanding the immunity conferred by a recreational use statute, an injured trail user may still bring a claim against the railroad, the trail manager, or both. Most rails-with-trails agreements will therefore include extensive provisions detailing indemnification and insurance responsibilities among the parties. Such agreements should ensure that the railroad retains no liability for injuries to or claims by trail users or arising from trail use. At the same time, many agreements provide that the railroad retains liability for injuries or damage not attributable to trail use.[56]

[55] The Rails-to-Trails Conservancy maintains a list of recreational use statutes by State at https://www.railstotrails.org/resource-library/resources/recreational-use-statutes/.

[56] The Rails-to-Trails Conservancy provides additional information on liability and trail insurance at https://www.railstotrails.org/build-trails/trail-building-toolbox/management-and-maintenance/liability-and-trail-insurance/.



Tracks and trail share a structure on the Hockhocking Adena Bikeway in Ohio. (Photo courtesy of the Rails-to-Trails Conservancy).

Section VI: Design

There are no national standards or guidelines for rail-with-trail facility design beyond those that are applicable to all shared-used paths or at-grade crossings. Instead, trail planners and developers often use guidance from other standards related to shared use paths, pedestrian and bicycle facilities, railroad facilities, and roadway crossings of railroad rights-of-way. Such guidance includes the U.S. Access Board's guidelines for streets and sidewalks, outdoor developed areas, and buildings and sites and the AASHTO *Guide for the Development of Bicycle Facilities, 4th Edition* (AASHTO Guide).[57] It is important to note that the requirements included in the MUTCD apply to rails-with-trails.[58]

The design of a rail-with-trail project should be based on site-specific conditions, trail user needs, State and Federal regulatory requirements, local trail planning and construction guidelines, engineering judgment, and requirements of the railroad owner(s) and operator(s). Trail planners, designers, and engineers should work closely with railroad staff, including those in the real estate, legal, operations, and maintenance departments to achieve a suitable rail-with-trail design.

Railroad operating and signal departments should be included in any design discussions that may impact rail operations and safety. The day-to-day experiences of these professionals can be instrumental in helping to avoid or minimize potential problems. For example, they may be more acutely aware of trespassing trouble spots, recurrent vandalism, areas with difficult sight lines or weather-
related concerns, as well as train movement patterns and frequency. Further, because train crews deal firsthand with the emotional burden of striking a pedestrian on the tracks, railroad input on crossing design, separation, safety education, and other anti-trespassing interventions should be weighed heavily in the planning and design processes. Their unique perspectives could lead to design strategies that may not have been originally considered by trail developers, including efforts to improve sightlines, relocate at-grade crossings, relocate or reconfigure sidings, enhance train signals and communications, and reorient train operations.

Ultimately, successful rail-with-trail design delicately balances the operational, maintenance, and safety requirements of a railroad with the specific needs and characteristics of trail users and the community.

This section describes effective practices for rail-with-trail facility design including many key design elements. These effective practices are derived from extensive research into existing and planned rails-with-trails that involved interviews with railroad officials and trail managers; a literature review of previous rail-with-trail studies; a review of trail planning guidance documents; and input from experienced railroad and trail professionals.

[57] *AASHTO Guide for the Development of Bicycle Facilities, 4th Edition.*

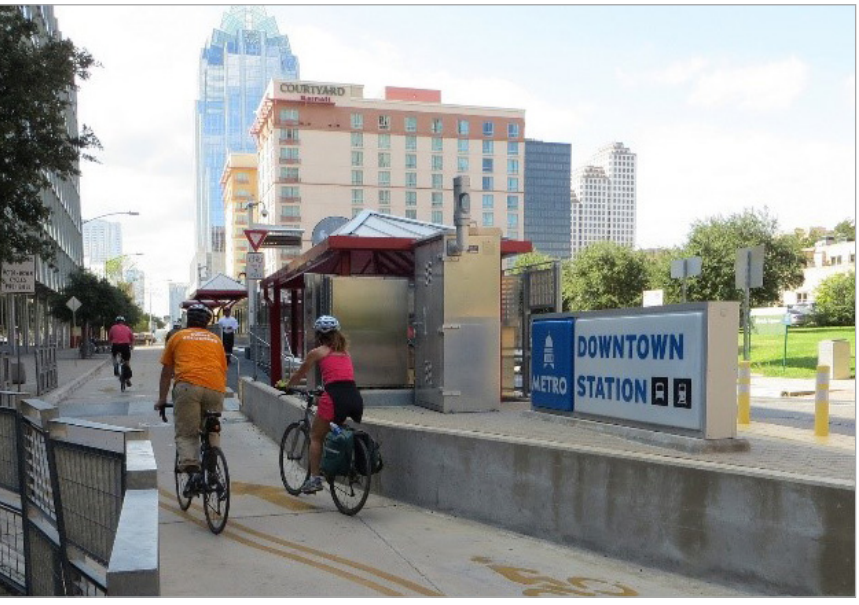
[58] FHWA. May 2012. *Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 Edition with Revisions Number 1 and 2 incorporated.* Available at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/pdf_index.htm.

The effective practices that follow in this section are suggestions based on collective knowledge and synthesized research, rather than rigid standards or guidelines that would apply to every rail-with-trail project.

Overview of Design Effective Practices

A summary of effective practices for the design of rail-with-trail facilities is as follows:

- **Regulatory Requirements:** Trail developers must adhere to all applicable Federal, State, and local requirements. This applies to all subsequent design recommendations.
- **Setback:** Rails-with-trails should be set back from railroad tracks as much as reasonably possible. When constructed within the railroad right-of-way, the trail should be built on the far edge of the property, where conditions allow. Setback determinations should consider factors including:
  - » Train frequency, speed, and type of freight transported;
  - » Current and future rail maintenance and operational needs;
  - » Track curvature,
  - » Topography and other environmental and physical constraints;
  - » Separation type;
  - » Any applicable State standards; and
  - » Historical patterns of trespassing or vandalism.
- **Separation:** Separation between the rail-with-trail and railroad tracks, which aims to reduce trespassing on the tracks, often takes the form of fencing, ditches, berms, vegetation, or any combination of these options. When fencing is needed, corridor characteristics, such as the setback distance, location of legal at-grade crossings, and the type, speed, and frequency of rail service will influence the appropriate fencing style, including height and material.
- **At-Grade Crossings:** New at-grade trail-rail crossings are discouraged and railroads often do not allow them. They should only be proposed where there is no other reasonable alternative. In many cases, a more cost-effective and appropriate solution may be to use existing grade crossings. Any grade crossing should be reviewed to determine which traffic control devices are required to provide warning and guidance for trail users. All signs, signals, and pavement markings need to conform to the Manual on Uniform Traffic Control Devices.
- **Grade-Separated Crossings**: Overcrossings (bridges or trestles) or undercrossings (tunnels or routing a trail under an existing railroad bridge) are another solution for rails-with-trails if an existing crossing is not available. However, these types of grade-separated crossings are expensive to construct. Overcrossings and undercrossings should be designed with approach grades that comply with Americans with Disabilities Act (ADA) guidelines, along with fencing and lighting as appropriate.



- **Accommodating Future Tracks and Sidings:** A rail-with-trail should be designed and located so as not to preclude potential future rail expansion, if expansion is anticipated. Where corridor width, topography, and other factors allow, the rail-with-trail should be located on the opposite side of the railroad, away from proposed track or siding expansion.
- **Access to Stations:** Rails-with-trails along passenger rail lines should be designed to promote access to rail and transit stations, taking into account both accessibility and safety. To facilitate multimodal transportation, secure bicycle parking should be installed near the stations in coordination with the rail or public transportation agency.

The Lance Armstrong Bikeway in Austin, Texas facilitates multimodal options for access to the metro station. (Photo courtesy of the Rails-to-Trails Conservancy).

- **Drainage:** Consider the impact the rail-with-trail may have on the adjacent rail line's drainage system. In certain cases, a new or modified drainage system might need to be installed to serve both the railroad and trail.

Setback

Setback is the distance between the edge of a rail-with-trail and the centerline of the closest active railroad track. The range of setback on existing rails-with-trails varies considerably, from seven to 200 feet, with an average of approximately 32 feet.[59] A comparison of rail-with-trail setback with both train speed and frequency reveals little correlation, with some trails reporting a narrow setback existing along high speed and frequently traveled rail lines.

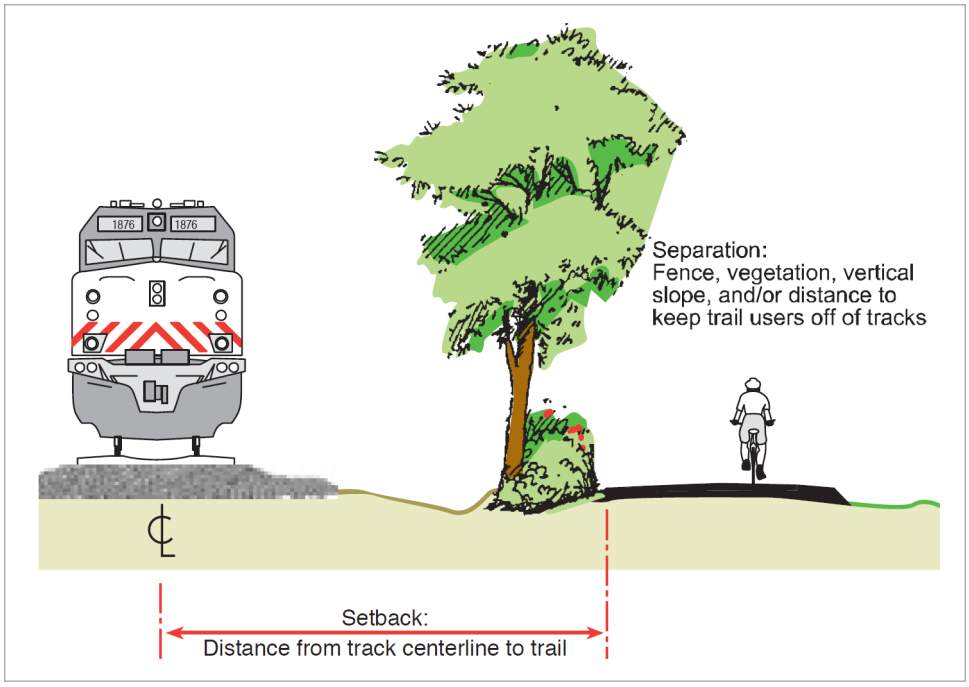
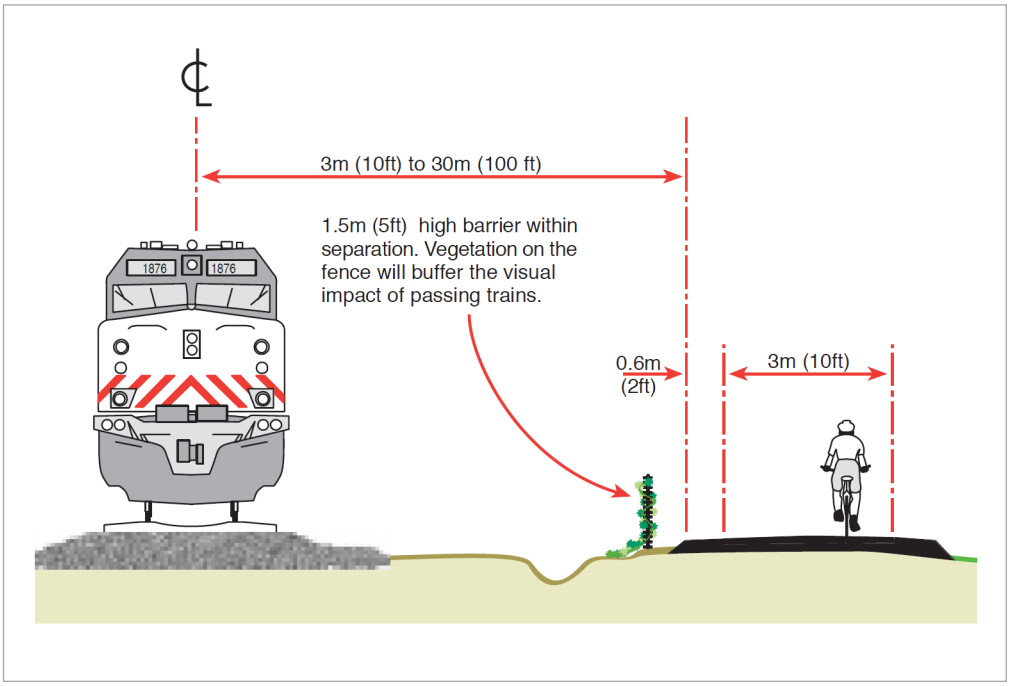
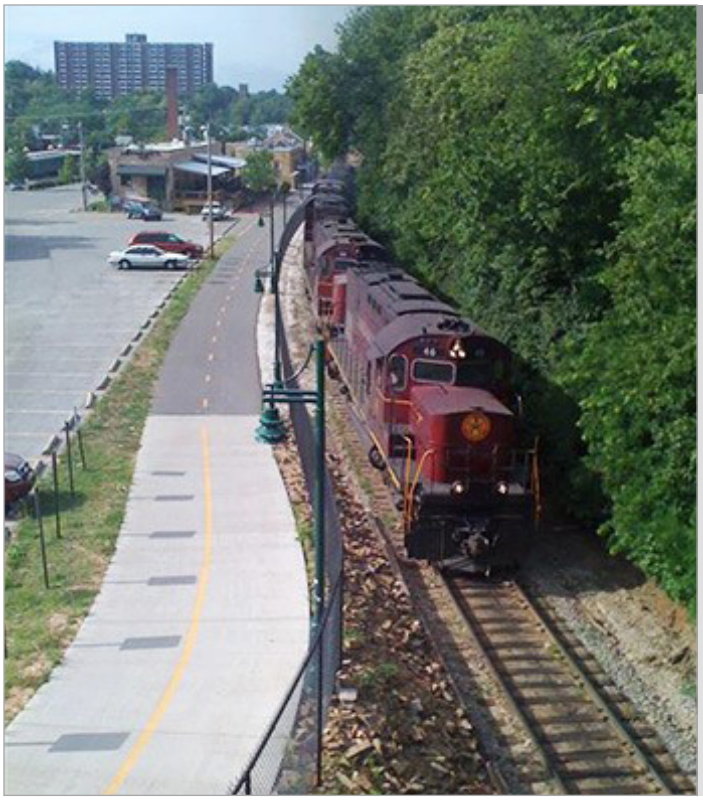


Figure 9: Setback and Separation Definition.

Figure 10: Minimum Rail-with-Trail Setback Depends on the Specific Situation



[59] These calculations are based on a sample size of 78.



Setback Examples

The Inland Rail Trail in San Diego County, California reports a seven-foot setback along a rail corridor with up to 70 trains per day traveling up to 60 miles per hour. Parts of the Frisco Trail, opened in 2006, are as close as two feet to the edge of the active Arkansas & Missouri Railroad line through downtown Fayetteville, Arkansas, while a section of the Camp Chase Trail in Columbus, Ohio, opened in 2016, features 10 feet of setback from the parallel Camp Chase Railway line at its narrowest point. Managers for rails-with-trails with narrow setback report few problems with trail operations or incidents occurring due to the trail's proximity to the active rail. The Montour Trail in Pennsylvania's Allegheny County features a setback distance of 14 feet along a Wheeling and Lake Erie Railway line where the trail manager reports trains travel only once a day at a speed of 10–20 miles per hour.

The Frisco Trail in Arkansas has some sections with a very narrow setback distance. (Photo courtesy of the City of Fayetteville)

There is no consensus on setback requirements nor is there a method to calculate the appropriate minimum setback based on corridor characteristics. While guidance documents do provide information on minimum setback standards for bicycle facilities and adjacent walkways, these sources are not considered appropriate for a rail-with-trail.[60]

In most cases where the rail-with-trail is constructed within the railroad right-of-way, the railroad's planning and engineering guidelines will dictate minimum setback distance or the railroad will determine setback as part of the acquisition agreement. At an absolute minimum, trail users must be kept outside the "dynamic envelope" of the track; that is, the space needed for the train to operate. According to the MUTCD, the dynamic envelope is "the clearance required for light rail transit traffic or a train and its cargo overhang due to any combination of loading, lateral motion, or suspension failure."[61] The dynamic envelope includes the area swept by a turning train. Trains might also disturb flying debris from the railbed, including ballast rocks or objects deliberately or accidentally placed on the rails, and debris or freight might fall off trains or hang off rail cars. Rail-with-trail planners should account for these possibilities when considering setback.

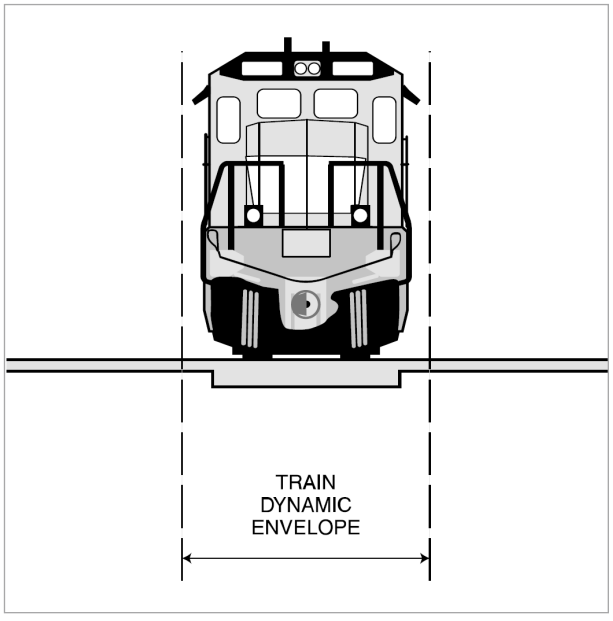


Figure 11: Dynamic Envelope Delineation (MUTCD Fig. 8A-1.)

[60] The *AASHTO Guide for the Development of Bicycle Facilities* includes minimum setback standards but it does not specifically consider the characteristics of adjacent rail use. Many States' Public Utilities Commissions also outline minimum setback standards, also known as "clearance standards" for adjacent walkways, which represent the legal minimum setbacks based on the physical size of the railroad cars. These setback standards are commonly employed along all railroads and at public at-grade crossings. However, these setback distances are geared towards railroad workers and are not considered generous enough for the public.

[61] Section 1A.13, MUTCD (2009).

Regardless of the trail's location relative to the railroad right-of-way, several factors should be considered when determining the minimum setback for a rail-with-trail to ensure safety of both rail and trail operations. Such factors include:

- Train speed, frequency, and type (e.g., freight, passenger, transit);
- Current and future rail maintenance and operational needs;
- Track curvature;
- Topography and other environmental and physical constraints on or adjacent to the railroad corridor (e.g., existing fencing or other structural impediments);
- Trespassing patterns;
- Separation type, such as fences or vegetation; and
- Any applicable State standards.

Constrained Areas

In many cases, an adequate setback distance can be achieved along most of a corridor. However, certain constrained areas, for example, those with challenging terrain, will not allow for the desired setback width. While a railroad corridor may be 100 feet wide or greater, the track may be within a narrow cut or on a fill section, making the placement of a rail-with-trail very difficult. Rails-with-trails in very steep or rugged terrain or where there are numerous bridges and trestles simply may not be feasible given the need to keep a minimal setback from the tracks, allow railroad maintenance access, and still have a reasonable construction budget. Relatively narrow setback distances may be acceptable to the railroad, trail manager, and design team in certain constrained areas and for very short distances, especially along relatively low-speed lines with low train frequency, or in areas with a history of trespassing where a trail might help alleviate a current problem. Safety should not be compromised at these pinch points; instead, additional right-of-way should be acquired to allow for a greater setback distance or a physical separation should be used between the trail and railroad tracks.

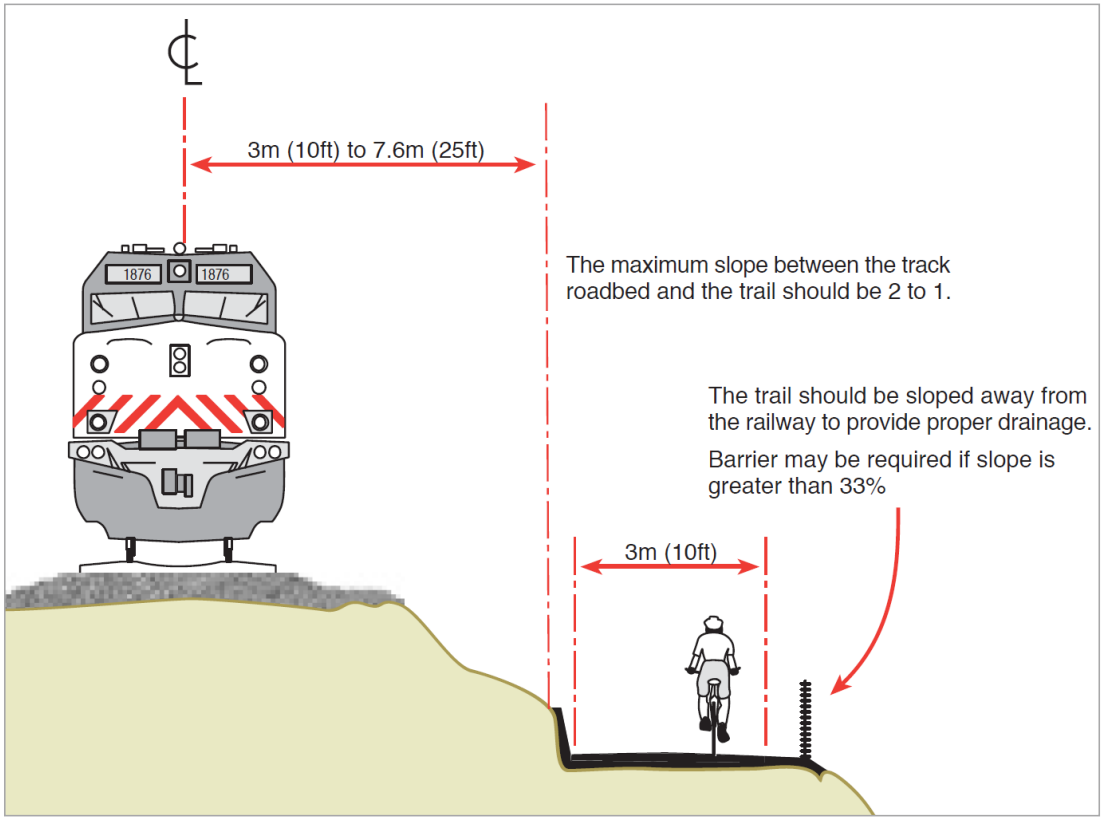


Figure 12: Minimum Rail-with-Trail Setback—Fill Sections (Depending on Situation)

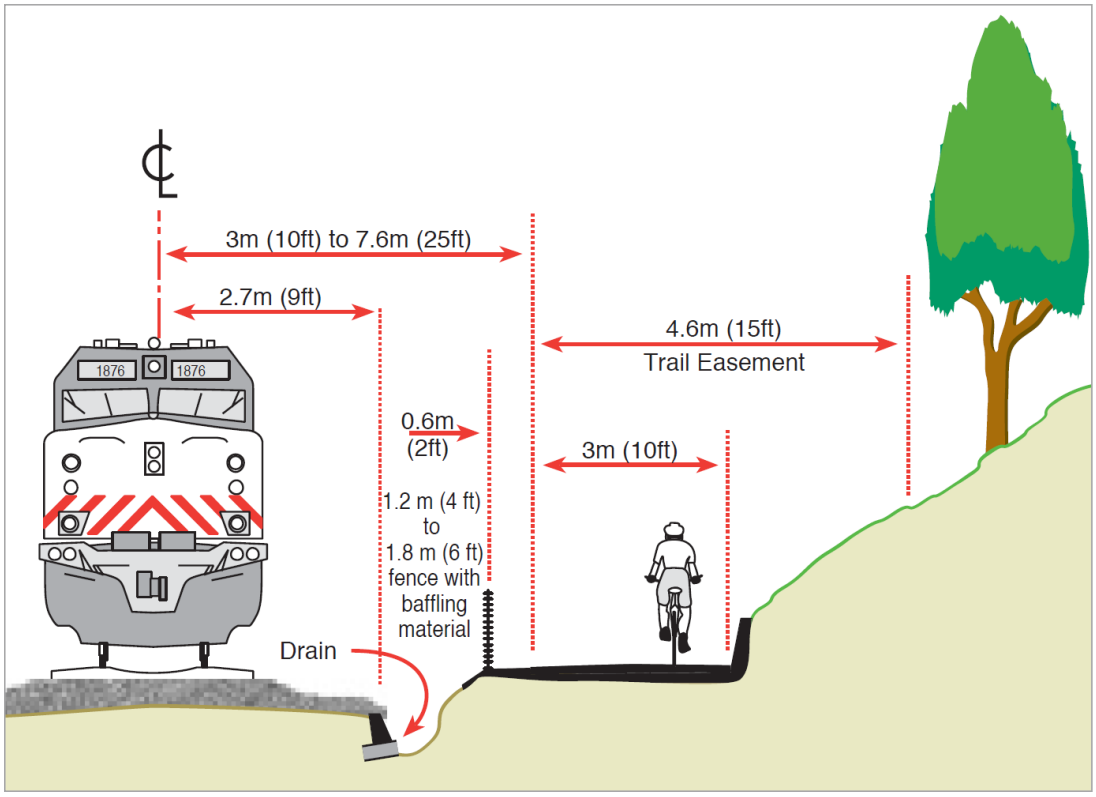


Figure 13: Minimum Rail-with-Trail Setback—Constrained Sections (Depending on Situation)

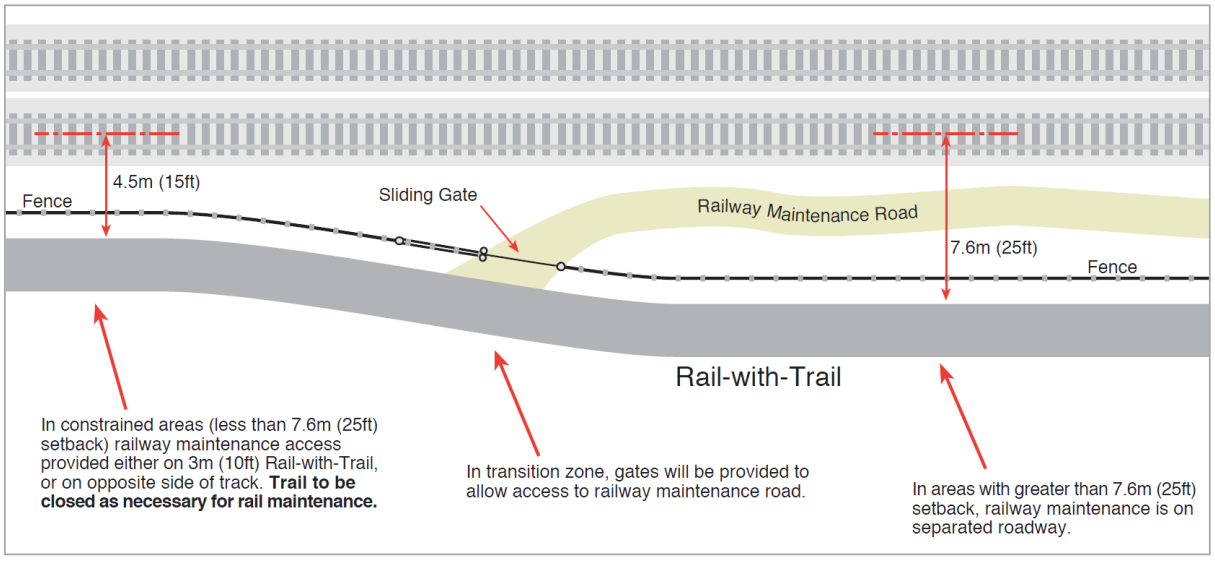


Figure 14: Sample Maintenance Access Transitions

Separation

Most rails-with-trails have some type of separation feature or landform, whether natural or constructed, between the trail and active rail line to maintain safety and prevent trespassing. Many railroads will request or require fencing between a trail and an active track, especially in areas with a narrow setback. Other barrier types, such as vegetation, ditches, or berms, often provide adequate separation, particularly in areas with wider setbacks. Where such barriers exist naturally between the tracks and planned location of the trail, fencing or other barrier requirements may not be needed to maintain safety and prevent trespassing. Using a combination of separation techniques is common; this is especially true in constrained areas, where multiple separation techniques in tandem may enable the use of narrower setback distances.

Based on data for 106 rails-with-trails for which the presence (or absence) of a barrier between the rail-with-trail and the railroad tracks was reported, 87 percent have some sort of barrier, and 13 percent have no barrier. For rails-with-trails that have opened since 2000, the percentage with barriers increases to 96 percent, indicating that the recent practice has been to install some sort of barrier between the rail-with-trail and railroad tracks (see Figure 15).

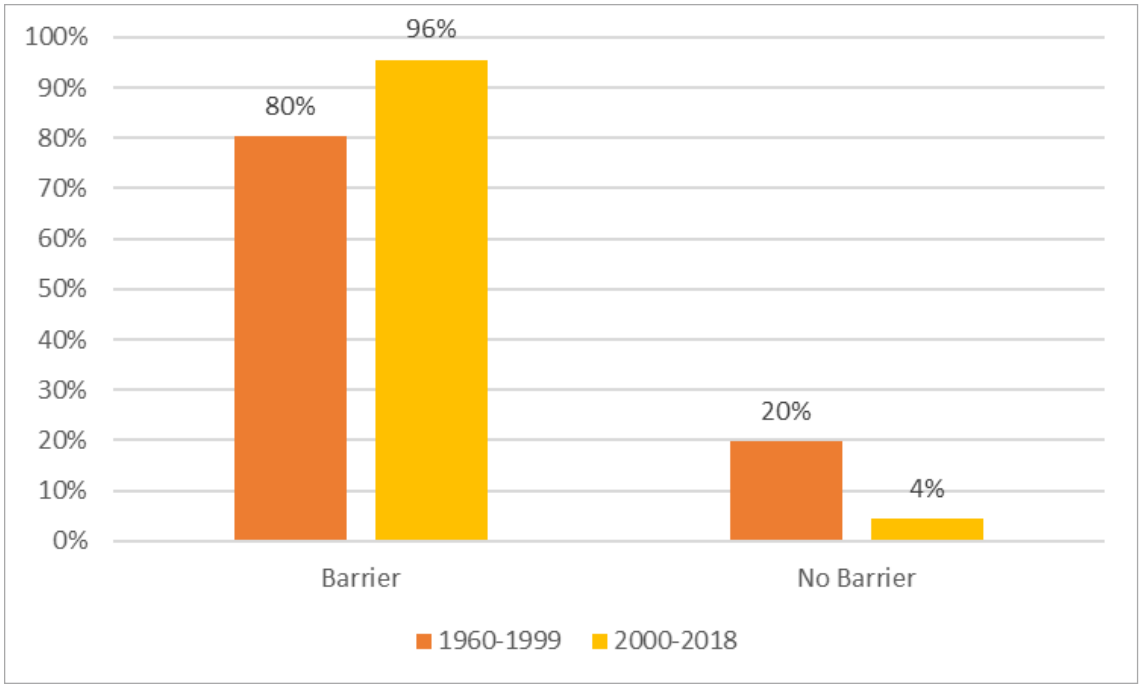


Figure 15: Barriers between Rails-with-Trails and Railroad Tracks (Sample size: 106)

Common barriers between rails-with-trails and railroad tracks include fencing, vegetation, grade separation, ditches, and concrete walls. Many rails-with-trails have more than one barrier type. Figure 16 shows the distribution of these barrier types for trails built between 1960 and 1999 and between 2000 and 2018. Fencing has become a more popular choice since 2000, as 86 percent of rails-with-trails built since 2000 include fencing. Likewise, the other barrier options have become less popular since 2000.

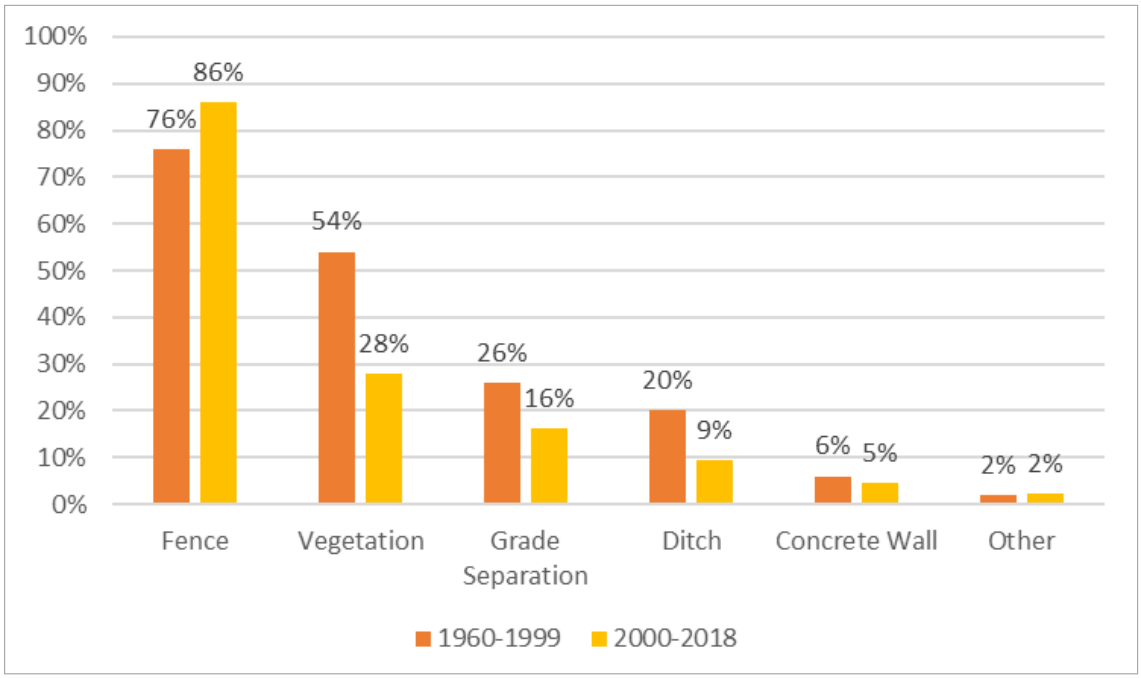


Figure 16: Barrier Types: 1960–1999 and 2000–2018 (Sample size: 93)[62]

[62] Note: some trail managers reported multiple barrier types for their rails-with-trails, so the percentages add to more than 100.

Fencing

Fences are the most common type of separation between rails-with-trails and active railroad tracks. To promote safety and minimize trespassing, railroads often request that trail developers install and maintain fencing with specific height and material requirements. Even if a railroad does not require fencing along most of the rail-with-trail, it may require fencing near at-grade crossings

There is a range of fencing types that vary in terms of design, material, durability, and cost. Trail developers should coordinate with railroad maintenance personnel as well as representatives from local utilities whose facilities share the corridor to determine the appropriate fencing type for the project.

Corridor characteristics, such as setback distance and the presence of legal at-grade crossings in the area, will influence the appropriate rail-with-trail fencing height and material. Railroads may require taller fencing or fencing made of a different material near at-grade crossings. In sections of rail-with-trail where legal crossings are infrequent or where trespassing has been a demonstrated problem, some rail-with-trail managers have installed taller fences to further discourage trespassing.

The type, speed, and frequency of rail service on the adjacent track may also influence the fencing height and material chosen. Faster trains are likely to send debris flying at a greater force than slower trains. A higher and more durable fence may be needed to deflect debris moved by higher-speed trains or to discourage trespassing.[63] It is also important to consider how a new fence might inhibit the movement of wildlife.

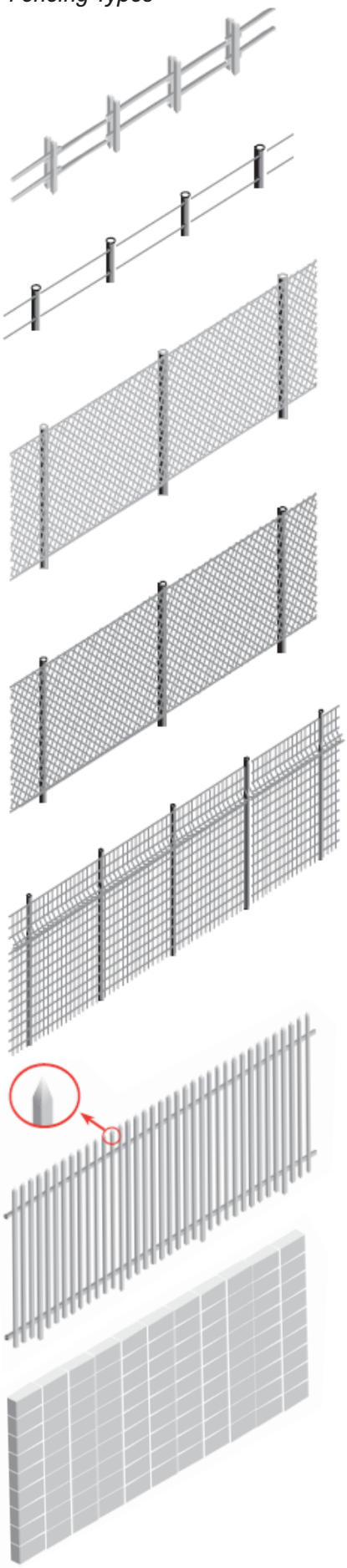
While fencing can provide safety benefits and reduce trespassing, it also can reduce visibility. It is often important to maintain visual access to the trail corridor from adjacent land uses so that portions of the trail do not become isolated from public view. This is especially true in areas where perceived or actual levels of crime are high. Fence design in these instances should not block visual access to the trail corridor; a shorter height or transparent fencing style, such as chain-link, may be appropriate. In all areas, care should be taken to ensure tall fences do not impede sight-distance at grade crossings, both for trail users and railroad operators. Depending on how far the fence is from the nearest track, a dense, high fence could possibly partially obscure the visibility of curved track ahead for train crews.

Installing and maintaining fencing can be costly, especially when considering the cost of flaggers that railroads typically require for any maintenance work within their right-of-way. Improperly installed or maintained fencing may do little to impede trespassing and may require frequent repair or replacement at the trail manager's expense. For all but the most heavily-constructed fencing, people find ways to cut, climb, or otherwise overcome fences if so inclined. However, despite the potential for damage and inability to prevent all trespassing, fencing costs can be justified by their effectiveness in channelizing trail users and reducing trespassing along the adjacent tracks.

> "I think the fences have improved safety. Before the trail people were walking everywhere and crossing the tracks all over the place."
>
> –Jeanne-Marie Souvigney, Livingston (Montana) Parks and Trails Committee

[63] For more information on the uses of high-security fencing to prevent right-of-way trespassing see *FRA's High-Security Fencing for Rail Right-of-way Applications: Current Use and Best Practices* (2015) available at https://railroads.dot.gov/elibrary/high-security-fencing-rail-right-way-applications-current-use-and-best-practices.

Fencing Types



- **Wood-Rail Fence:** Where trespassing is not as much of a problem, a low wood-rail fence can still serve as an effective reminder to trail users to stay off the tracks.
- **Post and Cable:** This inexpensive fence type may be used on a rail-with-trail where trespassing has not been a problem, there is adequate setback, and the fence serves primarily to demarcate the railroad property boundaries. The fence provides little screening or anti-trespassing features.
- **Chain-Link:** Chain-link fences are popular due to their effectiveness in keeping trail users off the tracks, relative low cost, and ease of maintenance. Chain-link fencing may not be visually appealing for rural areas where there is no history of trespassing, nor is it likely to be very effective in any areas with a history of trespassing, because it is very easy to cut and vandalize. Most chain-link fences may tend to project the image of an urban or industrial environment. For this reason, trail developers may wish to explore using other, more appealing types of fences whenever possible.
- **Chain-Link with Barrier:** Similar to chain-link, but with either a plastic woven fabric or wood battens in the chain-link material, providing a solid-type barrier to help catch debris and provide wind and visual buffering.
- **Israeli-Style Steel Fence:** Sometimes referred to as"Israeli-style" fencing for its use in Israel to protect kibbutzs, this product is more expensive than chain-link, difficult to vandalize, difficult to scale, and relatively easy to repair if cut. It would be inappropriate for areas requiring aesthetic treatment, and provides limited screening or buffering benefits.
- **Wrought Iron Picket Fence:** This is the most vandal-resistant fencing and is used in locations that have a history of trespassing. It is virtually impossible to cut and difficult to scale. Because of its cost and visual impact, it is typically used at specific locations rather than along an entire corridor.
- **Wall:** Very rarely used due to its cost and visual impact, solid concrete block walls are virtually indestructible and offer complete buffering and screening from rail debris or trains. A wall may be appropriate where a rail-with-trail must be placed very close to tracks for short distances. Walls are most commonly used in areas where a grade separation requires a retaining wall adjacent to the trail. Walls should be designed in coordination with railroad engineering personnel, because a wall can impact the structural integrity of the rail bed, alter drainage patterns in the rail corridor, and, in some circumstances, impede access by railroad maintenance forces.

Figure 17: Fence Types

Fence Examples

During negotiations for development of the Southwest Commuter Path in Madison, Wisconsin, the Wisconsin & Southern Railroad requested an eight-foot-high fence between their active rail line and the trail. Trail planners negotiated the height down to five feet, with the understanding that if the railroad were to find evidence that the fence height was insufficient, the trail manager would install a taller fence.

UP Railroad required an eight-foot fence along the Whittier Greenway Trail in Whittier, California. The trail has several grade crossings and uses art-enriched fencing at these locations to provide a more welcoming feel for trail users and to visually denote trailheads at these locations.

Along a planned extension of the Border-to-Border Trail in Washtenaw County, Michigan, Amtrak and Michigan DOT are upgrading the existing track to accommodate high-speed trains. The railroad is requiring the installation of a heavy-duty fence designed specifically to absorb the impact of any debris that might be blown around by a train passing at a high rate of speed.



Art-enriched fencing to be installed at road crossings on the Whittier Greenway Trail (California) (Photo courtesy of the City of Whittier).

Vegetation

Whether natural or planted, vegetation can serve as both a visual and physical barrier between a track and a rail-with-trail. The density and species of plants in a vegetative barrier determine how effective the barrier can be in deterring potential trespassers. A dense thicket can be, in some cases, just as effective as a fence in keeping trail users off the tracks. Even tall grasses can discourage trail users from venturing across to the tracks, although they may be less effective than trees and shrubs. Vegetation typically takes a few years after being planted to become an effective barrier. During this time, separation between the rail-with-trail and track may need to be augmented with other temporary barriers until planted trees and

hedges have sufficiently matured. As with fencing, vegetation should not block the public's view of an approaching train or trail user at grade crossings, nor should it impede trail users' views of roadway or train traffic at crossings.

The railroad's vegetation management practices should be considered during design to ensure that vegetation along the trail is compatible with such practices. The railroad might set guidelines for the type of vegetation permitted and the minimum distance at which it may be planted along their tracks. Further, to maintain its tracks and crossties, the railroad might use aggressive herbicide that can also affect vegetation along the rail-with-trail and potentially harm trail users. In such cases, trail developers and the railroad should explore nontoxic substitutions or impose a geographic or frequency limit on their use.



A row of trees forms a vegetative barrier separating the tracks from the Libba Cotten Bike-way in North Carolina. (Photo courtesy of the Rails-to-Trails Conservancy)

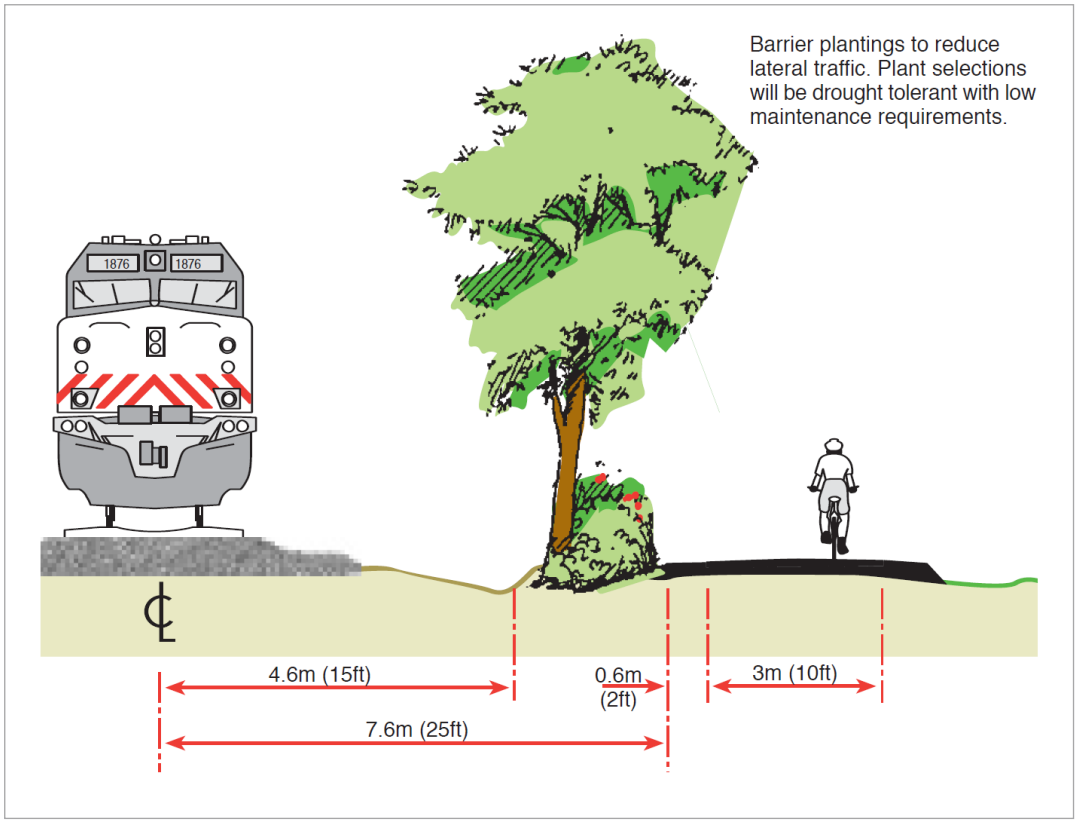


Figure 18: Trail Separation Example—Using Vegetation as a Separation Technique

Ditches

Many rail corridors contain drainage ditches that run adjacent to the tracks. The deeper and wider these ditches are, the more difficult they are to cross on foot, and thus the greater deterrent to trespassing they may provide. The presence of water in the ditch also will naturally act as a deterrent. Trail and railroad track drainage needs must be considered in the design process, especially if a ditch is planned to be constructed.

Vertical Separation

Vertical separation achieves many of the same benefits as other separation strategies and is very common where a rail-with-trail is located along numerous cut-and-fill locations. In cases where the rail-with-trail is at a significantly lower elevation than the tracks, the setback becomes less important than the amount of vertical separation, which effectively addresses trespassing concerns. In cases with vertical separation of greater than 10 feet, the danger from falling objects may increase. A fence or barrier at the top of the slope may help prevent injuries on the trail below. In situations where the trail is higher than the parallel rail line, fencing can be used as a secondary separation technique to prevent trail users from trespassing or trail debris from falling on the track.



Vertical separation combined with a fence and retaining wall on the Santa Fe Trail in New Mexico. (Photo courtesy of Scott Belonger, P.E., Associate Principal for Loris and Associates)

Crossings

The point at which trails cross active tracks is an area of great concern to railroads, trail planners, transportation agencies, and trail users. For years, railroad owners, the FRA, FHWA, and State DOTs have worked to reduce the number of at-grade crossings to improve safety, lower maintenance costs, reduce liability exposure, and increase the efficiency of service. Rail-with-trail design should discourage new at-grade crossings wherever possible. In fact, many government agencies and railroad owners have adopted policies of not allowing new at-grade crossings. In these cases, using existing grade crossings, building grade-separated crossings, or designing the trail to avoid crossing tracks are alternatives.

Based on data for 242 rails-with-trails for which the presence of trail/track crossings is known, 54 percent have trail/track crossings and 46 percent do not. For trails that have opened since 2000, the percentage of rails-with-trails with trail/track crossings increases to 60 percent, indicating that more recent rails-with-trails have crossed railroad tracks in some way (see Figure 19).

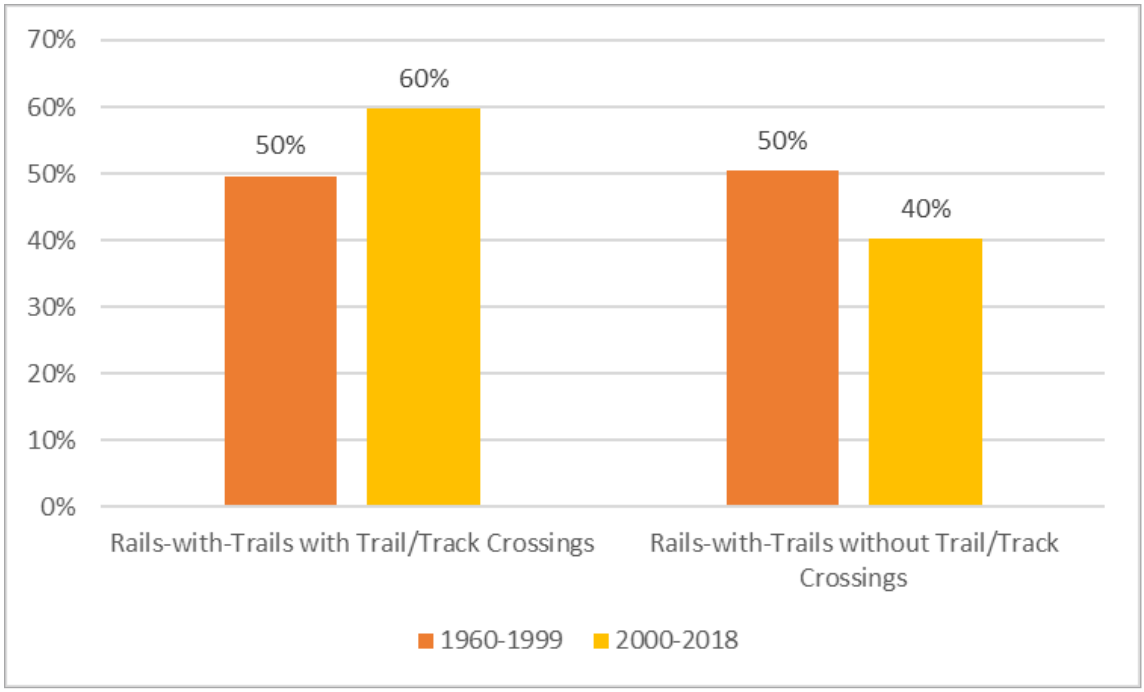


Figure 19: Rails-with-Trails with and without Trail/Track Crossings (Sample size: 242)

Rails-with-trails often cross railroad tracks at grade or via bridges or tunnels, and some rails-with-trails have multiple crossing types. Figure 20 shows the distribution of these trail/track crossing types for trails built between 1960 and 1999 and between 2000 and 2018. Since 2000, it is somewhat less common for rails-with-trails to include at-grade trail/track crossings, though the percentage is still above 50 percent. There has been a decrease in the presence of bridges carrying rails-with-trails over railroad tracks, but an increase in tunnels carrying rails-with-trails below tracks.

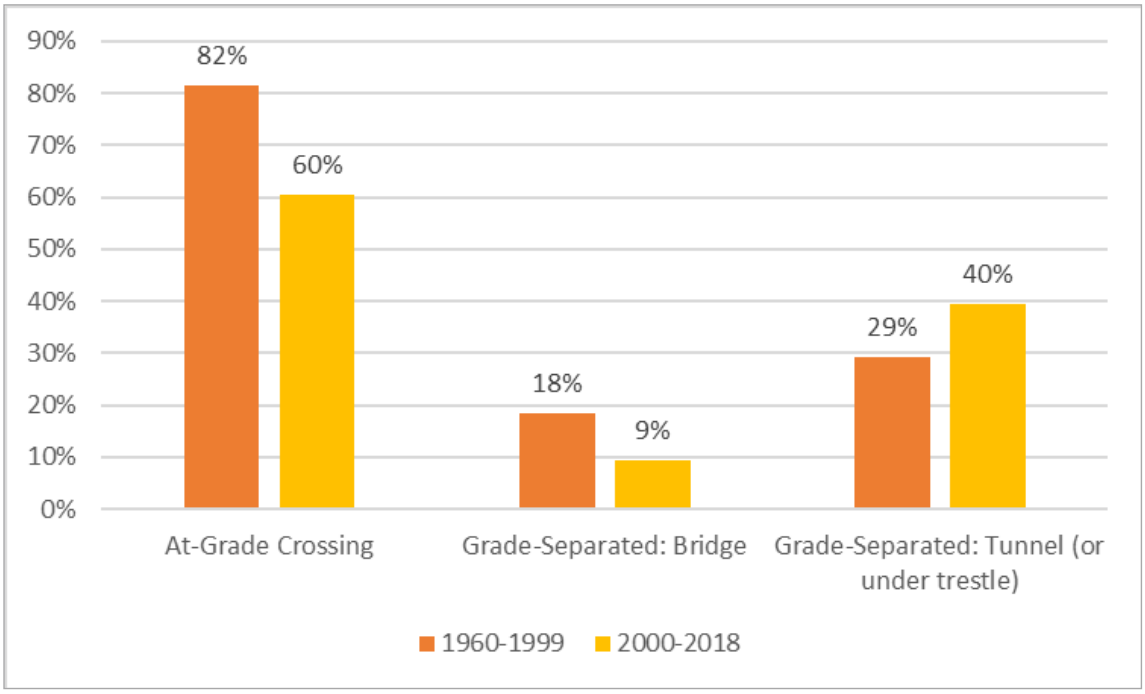


Figure 20: Types of Trail/Track Crossings (Sample size: 108)[64]

[64] Note: some trail managers reported multiple trail/track crossing types for their rails-with-trails, so the percentages add to more than 100.

When designing a rail-with-trail, trail developers should carefully evaluate all potential crossings, with consideration given to:

- Train frequency and speed;
- Location of the crossing;
- Sight distance;
- Approach grades and angle;
- Crossing surface;
- Lighting; and
- Warning devices (e.g., passive and/or active).

To address any potentially hazardous conditions that may be present (or to enhance safety treatments) at any grade crossing, an onsite Diagnostic Team of stakeholders to assess the situation is highly recommended. Typically, the Diagnostic Team consists of representatives from railroads, State and local authorities, U.S. DOT, trail user groups, engineering consultants, and other participants.

The following sections describe design considerations for various crossing types.[65]

At-Grade Trail-Rail Crossings

Location of the Crossing

If a new at-grade trail-rail crossing is the only option, it should be designed to reduce illegal track crossings by channelizing users to the intended crossing location. It is unsafe to locate at-grade crossings on railroad curves where sight lines are poor. Similarly, locating such crossings where trains may be regularly stopped on the crossing can limit access to the trail and can serve to encourage trail users to cross between or under railroad cars—an extremely dangerous and illegal activity. When new at-grade crossings are not permitted, the rail-with-trail design will need to channelize users to cross the tracks at existing roads or develop a grade-separated crossing.

Sight Distance

Adequate sight distance is important for any at-grade crossing, but particularly at crossings lacking active warning devices such as flashing lights or automatic gates. Bicyclists, pedestrians, and other trail users should be given sufficient time to detect the presence of an approaching train and determine whether they should either stop and wait, or continue across and clear the crossing safely before the train arrives.

The following three elements promote the safe movement of trail users across railroad tracks:

- **Advance Notice of the Crossing:** The first element concerns stopping sight distance, a common consideration in highway intersection design. The stopping sight distance is the distance required for a trail user to see an approaching train and/or the grade-crossing warning devices, recognize them, determine what needs to be done, and then come to a safe stop 12 feet clear of the nearest rail, if a stop is necessary. This point usually will be marked by a pavement marking in advance of the crossing. This sight distance is measured along the trail, and is based on a trail user traveling at a given speed, and coming to a safe stop.
- **Properly Located Traffic Control Devices:** The second element involves locating the appropriate traffic control devices (e.g., crossbuck signs) at grade crossings. Traffic control devices should be seen from an adequate distance in order for the observer to take appropriate action. The MUTCD, available from the Federal Highway Administration at https://mutcd.fhwa.dot.gov, contains guidance and standards for the proper use of signs, signals, and pavement markings on roadways and pathways.
- **Ability to See an Approaching Train:** The third element concerns the trail user's ability to see an approaching train to decide whether it is safe to cross. Two kinds of sight distance considerations are involved for safe movement across the crossing: the sight distance available in advance of the crossing and the sight distance present at the crossing.

Approach sight distance (also known as corner sight distance) involves the clear sight line, in both directions up and down the tracks, that allows a trail user to determine in advance of the crossing that there is no train approaching and it is safe to proceed across the tracks without having to come to a stop. These sight triangles, which depend upon both train speed and trail user

[65] See TRB Transit Cooperative Research Program (TCRP) Report 175: Guidebook on Pedestrian Crossings of Public Transit Rail Services (2015) for more information on engineering treatments designed to help improve pedestrian safety at light rail, commuter rail, and streetcar crossings. Available at http://www.trb.org/Main/Blurbs/172320.aspx

speed, are determined as shown in FHWA's *Railroad-Highway Grade Crossing Handbook.*[66] Where sight triangles are obstructed by vegetation, topography, or structures, or where clear sight triangles cannot otherwise be obtained, the trail should have additional warning signs or a reduced advisory speed posted in advance of the crossing. STOP or YIELD signs will accompany crossbucks at passive crossings.

Clearing sight distance, which applies to all crossings without automatic gates, involves the clear sight line, in both directions up and down the tracks, present at the crossing itself. A trail user stopped 15 feet short of the nearest railroad track should be able to see far enough down the track in both directions to determine if they can move across the tracks, to a point 15 feet past the far railroad track, before the arrival of a train. At crossings without gates that have multiple tracks, the presence of a train on one track can restrict trail users' view of a second train approaching on an adjacent track.

Approach Grades and Angle

The AASHTO Guide[67] provides recommended grades for shared use paths. The Architectural Barriers Act (ABA) Accessibility Guidelines, adopted as standards by the U.S. Department of Defense, the U.S. General Services Administration, and the U.S. Postal Service, provide requirements for accessible facilities for Federal outdoor developed areas.[68] The ABA standards for Federal outdoor developed areas call for grades of five percent or less, but grades over five percent are allowed for short distances in specific circumstances. Grades over five percent are not recommended for crossing approaches. In general, the trail approach should be at the same elevation as the track. Steep grades on either side of the track can cause bicyclists to lose control, may distract trail users from the conditions at the crossing, and may block sight lines. In addition to the ABA standards, the U.S. Access Board is also developing guidelines that cover access to streets, sidewalks, and shared use paths.[69] Trail developers on non-Federal lands may look to these guidelines for guidance on providing accessibility for individuals with disabilities.



A trail/track crossing on the Camp Chase Trail in Ohio. The trail bends in order to cross the tracks at 90°. (Photo courtesy of the Rails-to-Trails Conservancy)

Another critical issue, particularly for bicyclists and people with disabilities, is the angle of crossing. The AASHTO Guide makes the following statement with respect to the crossing angle of a shared use path at a railroad track:

> "The likelihood of a fall is kept to a minimum where the roadway or shared use path crosses the tracks at 90 degrees. The preferable skew angle between the centerline of the tracks and the bikeway is between 60 and 90 degrees, so bicyclists can avoid catching their wheels in the flange[way] and losing their balance…Efforts to create a right-angle crossing at a severe skew can have unintended consequences, as the reversing curves needed for a right-angle approach can create other concerns for the bicyclists. It is often best to widen the roadway…to allow bicyclists to choose the path that suits their needs the best." (Section 4.12.1, p. 4-38)

[66] FHWA. August 2007. Railroad-Highway Grade Crossing Handbook, Revised Second Edition. https://safety.fhwa.dot.gov/hsip/xings/com_roaduser/07010/

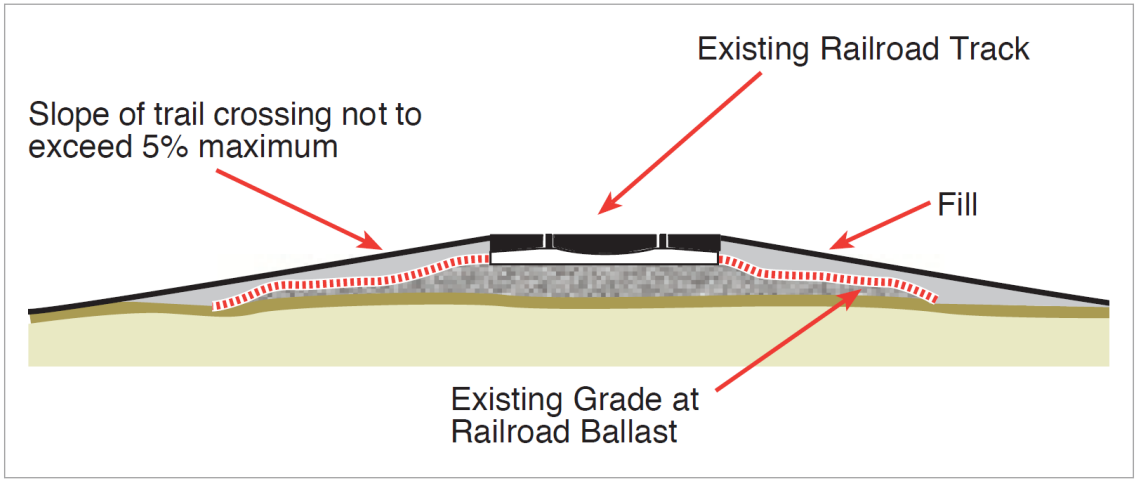
[67] AASHTO *Guide for the Development of Bicycle Facilities, 4th Edition.*

[68] Architectural and Transportation Barriers Compliance Board. 2014. Outdoor Developed Areas: A Summary of Accessibility Standards for Federal Outdoor Developed Areas. https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas/a-summary-of-accessibility-standards-for-federal-outdoor-developed-areas

[69] United States Access Board. Streets & Sidewalks. https://www.access-board.gov/guidelines-and-standards/streets-sidewalks

Flangeway is the term used for the groove between the rail and the pavement edge. The standard flangeway width for commuter and transit at-grade crossings is 2.5 inches and 3 inches for freight railroads. Flangeways are usually wider than bicycle tires and wheelchair casters. For this reason, crossings should be perpendicular; acute angle crossings are not recommended. In addition, a rail-with-trail should cross the railroad where the track is straight. Where the track is curved, sight distance is restricted and the rails may be at different levels.

Figure 21: Approach Grade at At-Grade Crossings



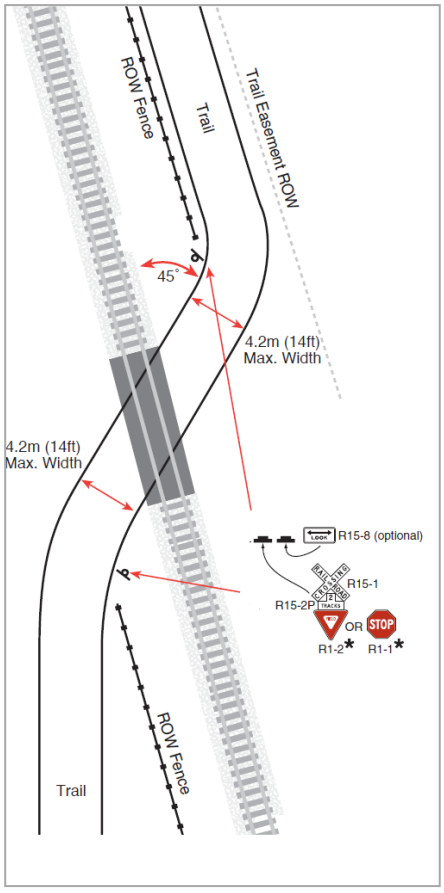


Figure 22: 45° Trail-Rail Crossing

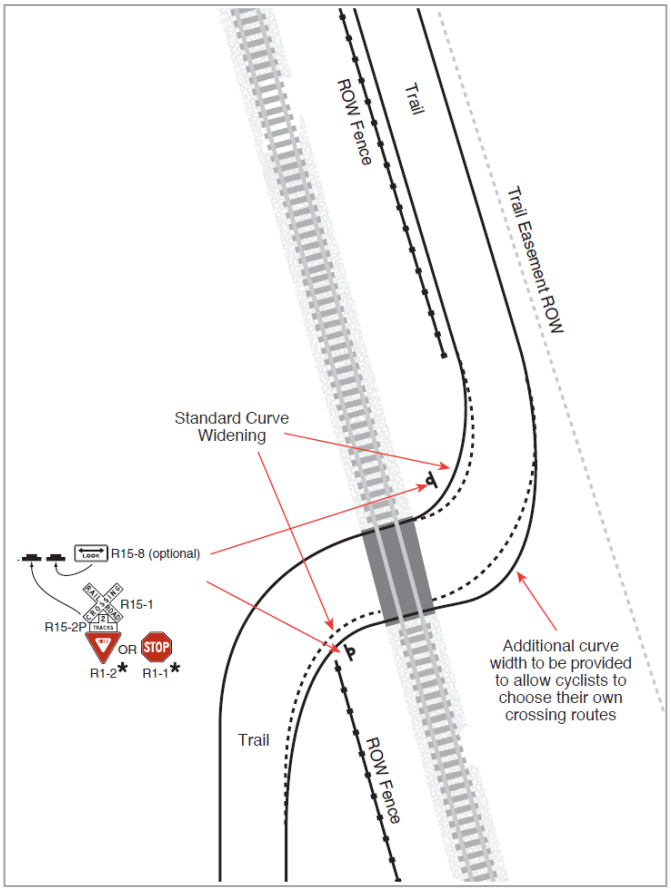


Figure 23: 90° Trail-Rail Crossing

Crossing Surface

The smoothness of the crossing surface has a profound effect on trail users. Sudden bumps and uneven surfaces can cause bicycle riders to lose control and crash and are difficult for wheelchair users to navigate. A crossing surface in poor condition will focus trail user attention on choosing the smoothest path over the crossing, while diverting attention away from warning devices or an approaching train.

The AASHTO Guide notes, "The four most common materials used at grade crossings are concrete, rubber, asphalt, and timber. Concrete performs best, even under wet conditions, as it provides the smoothest ride. Rubber crossings are quite rideable when new, but they are slippery when wet and degrade over time. Asphalt is smooth when first laid, but can heave over time and needs maintenance to prevent a buildup next to the tracks. Timber wears down rapidly and is slippery when wet." (Section 4.12.1, p. 4-38).

Portage Hike and Bike Trail

The Portage Hike and Bike Trail runs for nearly ten miles between Ravenna and Kent in Ohio. The Portage Park District was granted an easement for a trail from the Private Industry Council that owns the adjacent railroad. There had initially been a problem with vehicles driving on the trail, but installing collapsible bollards in the center and on sides where necessary has resolved the issue. There is one crossing where an obtuse angle proved dangerous as bicycle tires got caught in the tracks. The angle of crossing was changed to be more perpendicular to the rail line to mitigate this safety issue.

The Diagnostic Team may require a specific type of crossing surface material that meets slip-resistance standards. Flangeway filler strips, typically made of rubber, are available to help ease the transition from trail to track and reduce the potential for caught wheelchair or bicycle tires. The railroad must approve any such modification to its tracks.

Lighting

The Diagnostic Team may determine a need for lighting along the trail leading up to or at the grade crossing location. Therefore, the team will evaluate and identify the locations of lighting fixtures and the recommended lighting levels. Lighting must be directed towards the trail surface and not pointed towards the locomotive engineer's line of sight.

Warning Devices

Many types of warning devices are available for use at grade crossings. The MUTCD states, "Because of the large number of significant variables to be considered, no single standard system of traffic control devices is universally applicable for all highway-rail grade crossings. The appropriate traffic control system…should be determined by an engineering study involving both the highway agency and the railroad company."[70] The Diagnostic Team will consider variables such as train frequency, train operating characteristics, and volume of trail users to determine the necessary warning devices to be installed.

There are two categories of warning devices: passive and active. Passive warning devices are those that cannot be made to change their function or appearance upon detection of the approach of a train. Existing at-grade trail-rail crossings typically have some sort of passive warning device, such as a railroad crossbuck sign. Active warning devices can change their appearance upon detection of the approach of a train so as to advise trail users of the approach or presence of a train at the crossing. Active warning devices include bells, flashing-light signals, automatic gates, and other devices that are activated by the detection of an approaching train. All warning devices at crossings should be compliant with MUTCD requirements. See Figure 24 for an example of signing and markings for a pathway grade crossing.

[70] Section 8A.02, MUTCD (2009)

Warning Device Examples

At a crossing along the Louisville Loop in Kentucky, trail developers followed MUTCD requirements regarding passive warning devices, including pavement markings and crossbucks immediately in advance of the crossing. MUTCD-compliant warning signs farther in advance of the crossing give trail users adequate distance to stop in the event a train is present or approaching.

Along Michigan's Border-to-Border Trail, there is one at-grade crossing of a rail line owned by Michigan DOT that carries Amtrak service. The crossing is located in a constrained area where an alternative route for the trail was not possible. Active warning devices used for the crossing include gates, flashing lights, and bells.

PASSIVE WARNING DEVICES

The MUTCD requires that all "pathway grade crossings" without active warning devices have a crossbuck assembly in each direction.[71] Refer to the MUTCD for further guidance regarding the location and retro-reflectivity of these signs.

The MUTCD makes the following statements about the use of STOP and YIELD signs at highway-rail grade crossings: "A YIELD sign shall be the default traffic control device for Crossbuck Assemblies on all highway approaches to passive grade crossings unless an engineering study performed by the regulatory agency or highway authority having jurisdiction over the roadway approach determines that a STOP sign is appropriate."[72] This may also apply to trail crossings, as determined by an engineering study that considers the number and speed of trains, sight distances, the collision history of the area, and other factors.

The MUTCD applies to all signals, pavement markings, and traffic control devices, whether on roads or on shared use paths. The MUTCD provides specifications on sign shapes, colors, dimensions, legends, borders, and illumination or retro-reflectivity. Section 2A.06 notes that "State and local highway agencies may develop special word message signs in situations where roadway conditions make it necessary to provide road users with additional regulatory, warning, or guidance information, such as when road users need to be notified of special regulations or warned about a situation that might not be readily apparent."

The MUTCD does not require pavement markings at trail-rail crossings, but states that "If pathway users include those who travel faster than pedestrians, such as bicyclists or skaters, the use of warning signs and pavement markings in advance of the pathway grade crossing should be considered."[73] The MUTCD contains warning signs that can be used to indicate the configuration of the upcoming crossing, or to otherwise warn users of special conditions. MUTCD signs that may be appropriate for rails-with-trails are shown in Figure 25.

If used at trail-rail crossings, pavement markings may include an "X", the letters "RR", and/or a stop bar line. For unpaved trails, consideration should be given to paving the approaches to trail-rail crossings, not only so that appropriate pavement markings can be installed, but also to provide a smooth crossing. If it is not possible to pave the approaches, additional warning devices may be appropriate.

[71] Section 8D.05, MUTCD (2009)

[72] Section 8B.04, MUTCD (2009)

[73] Section 8D.03, MUTCD (2009)

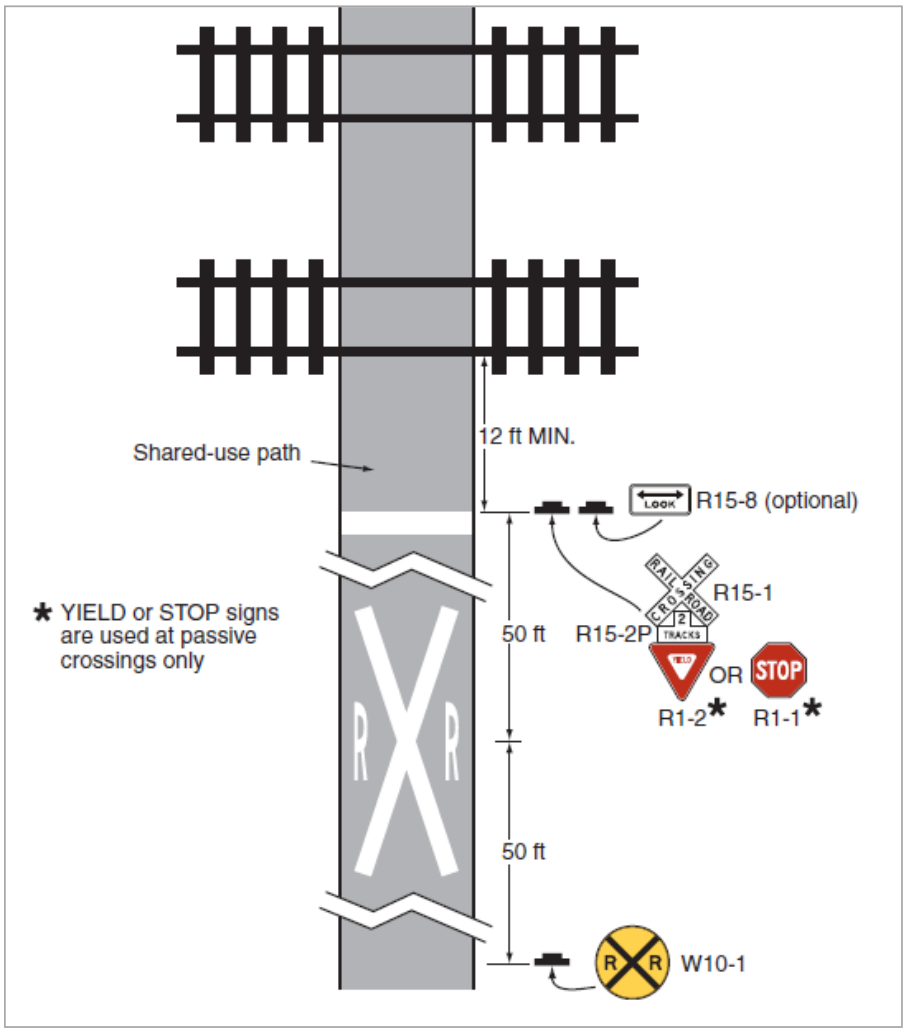
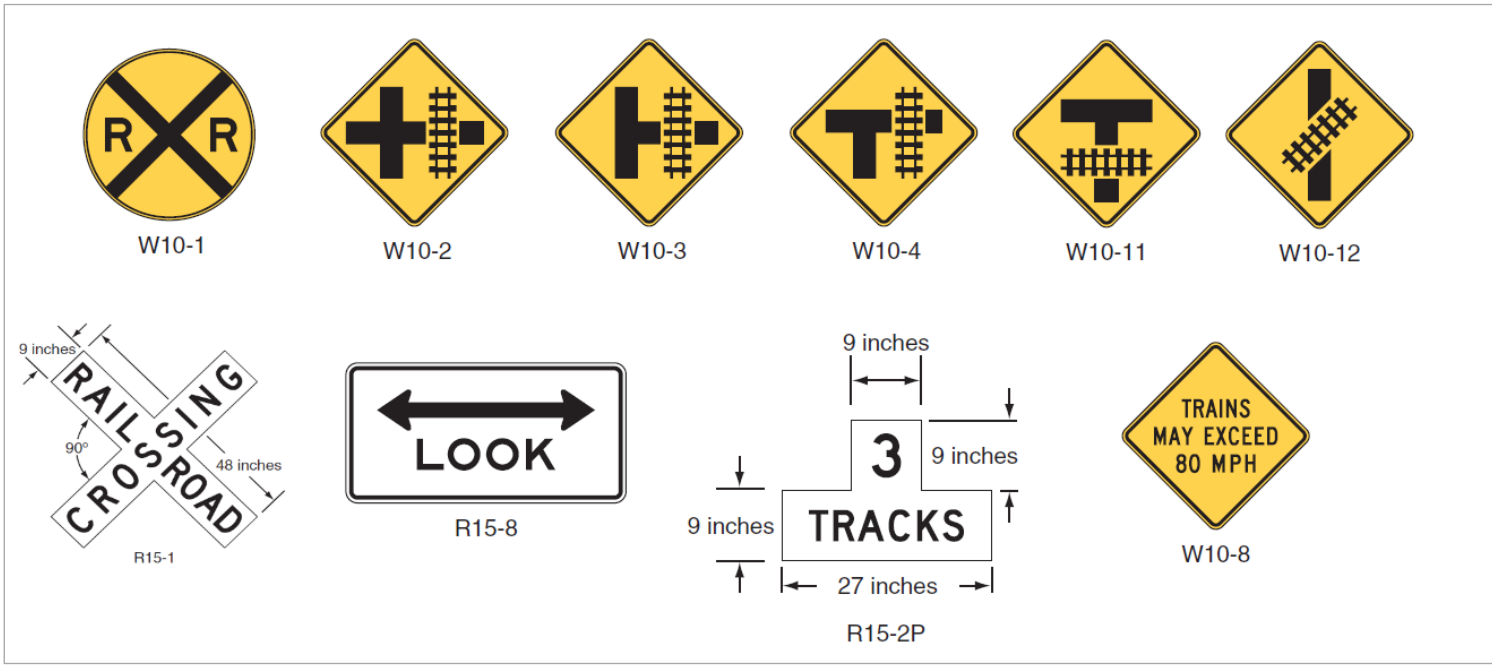


Figure 24: Example of Signing and Markings for a Pathway Grade Crossing (MUTCD Fig. 8D-1)

Figure 25: MUTCD-Approved Railroad Warning Signs that May be Appropriate for Rail-with-Trails. See MUTCD 2009 Figure 8B-1 and Figure 8B-4. See MUTCD 2009 Table 8B-1 for information on grade crossing sign and plaque minimum sizes.



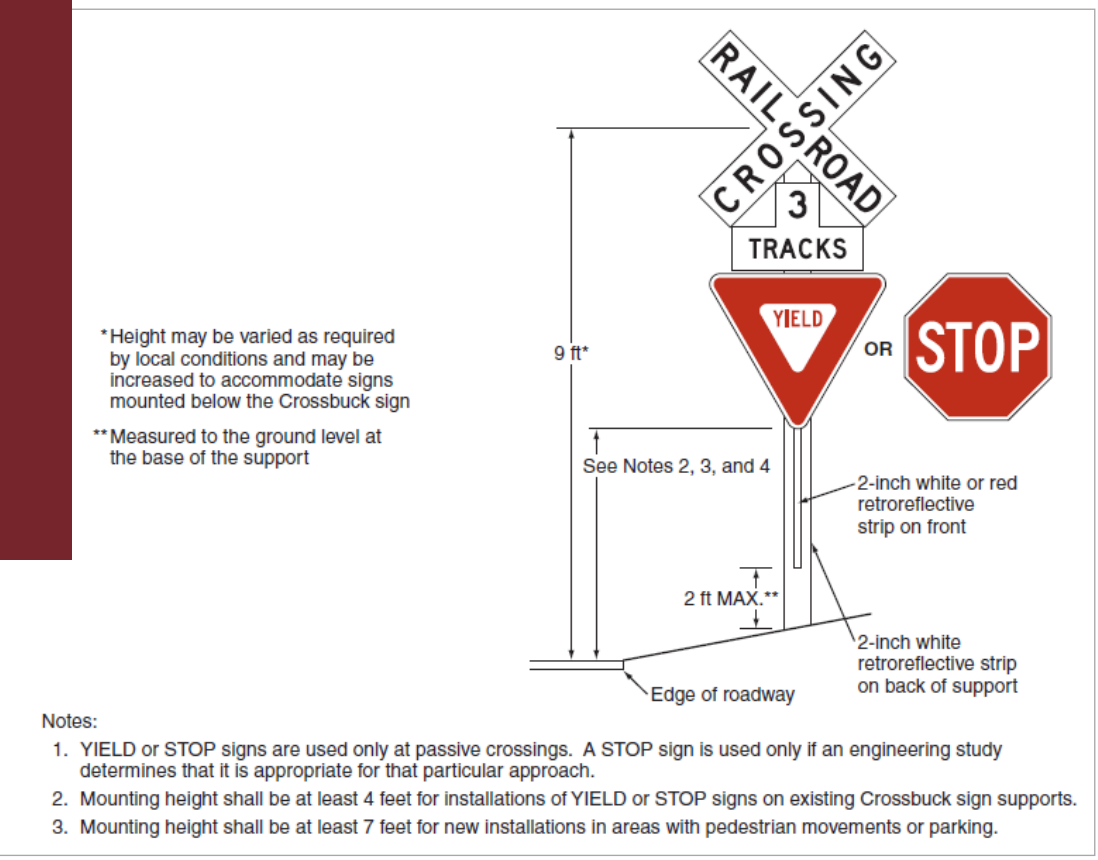
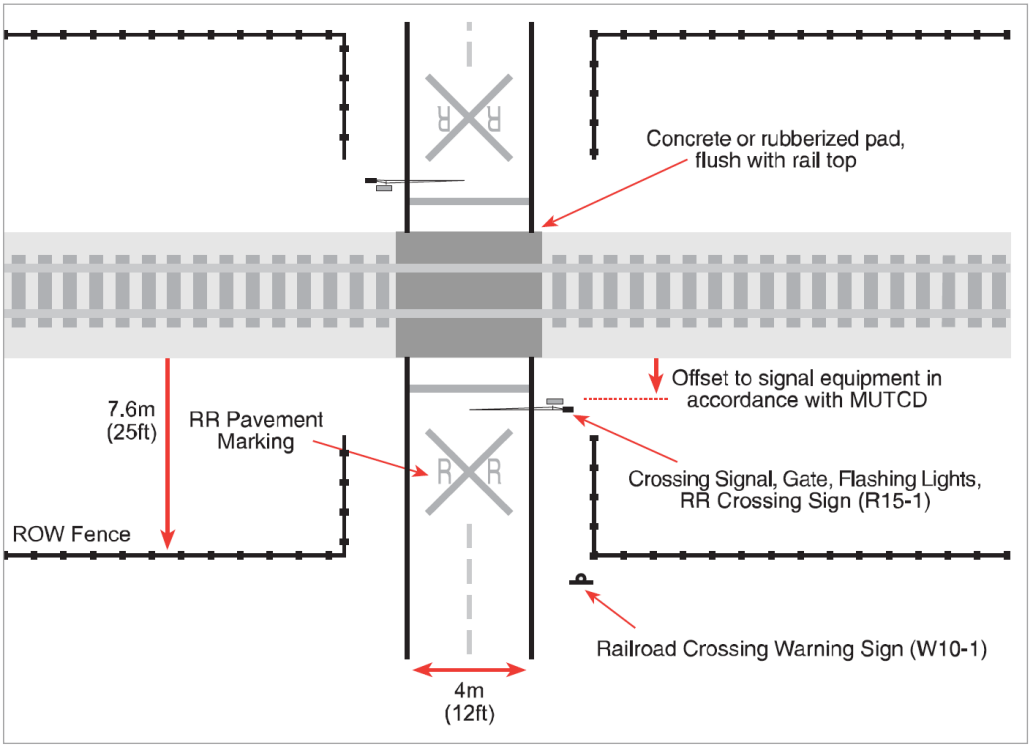


Figure 26: Highway-Rail Crossing (Crossbuck) Sign with a Yield or Stop Sign (MUTCD 2009 Fig. 8B-2)



ACTIVE WARNING DEVICES

Active traffic control systems advise trail users of the approach or presence of a train at railroad crossings. Requirements regarding the appropriate uses, location, and clearance dimensions for active traffic control devices at highway-rail crossings can be found in Chapter 8C of the MUTCD. In addition, Chapter 8D of the MUTCD contains more specific, but less comprehensive, recommendations for pedestrian and bicycle signals at pathway-rail crossings. An additional resource on the selection of traffic control devices is FHWA's *Railroad-Highway Grade Crossing Handbook.*[74]

Flashing light signals combined with swing gates may be appropriate in cases such as these:

- High-speed transit or freight rail,
- Limited sight distance,
- Multiple tracks, and
- Temporary sight obstructions, such as standing freight cars.

It is important to note that the same traffic control devices that generally keep a road user from crossing a track may not prevent a pedestrian or bicyclist from proceeding through a crossing. Pedestrians and bicyclists may be reluctant to stop at barriers and will often find a way to proceed over, under, or around barricades.

Figure 27: Crossing Equipped with Active Warning Devices and Fences

[74] https://safety.fhwa.dot.gov/hsip/xings/com_roaduser/07010/

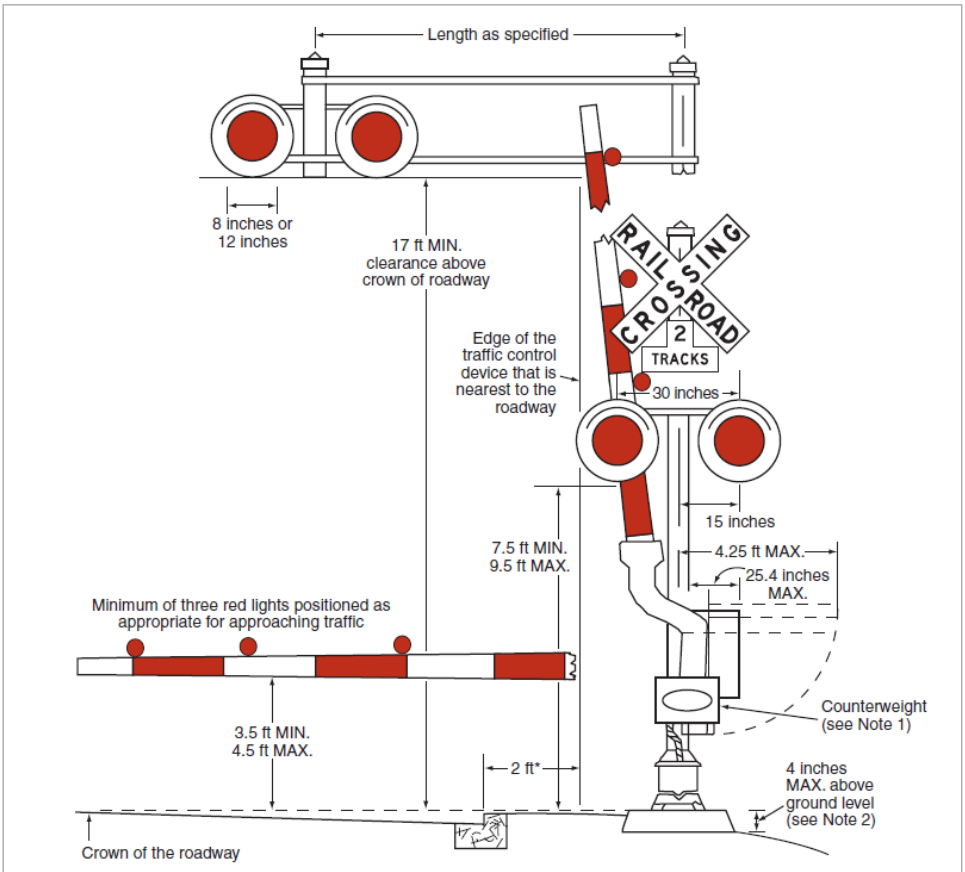


Figure 28: Clearances for Active Traffic Control Devices at Highway-Rail Grade Crossings (MUTCD Fig. 8C-1)

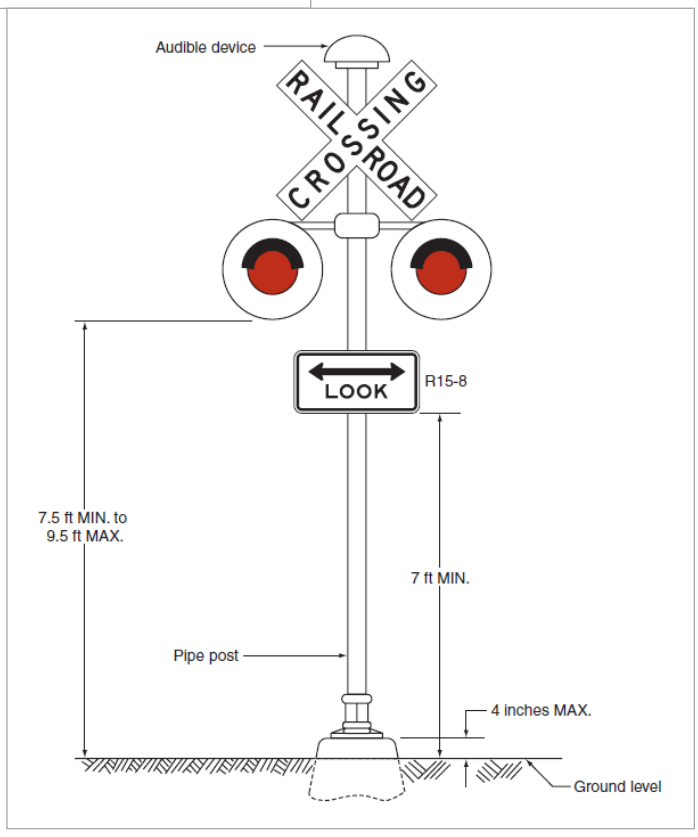


Figure 29: Example of Flashing Light Signal Assembly for Pedestrian Crossings (MUTCD 2009 Fig. 8C-4)

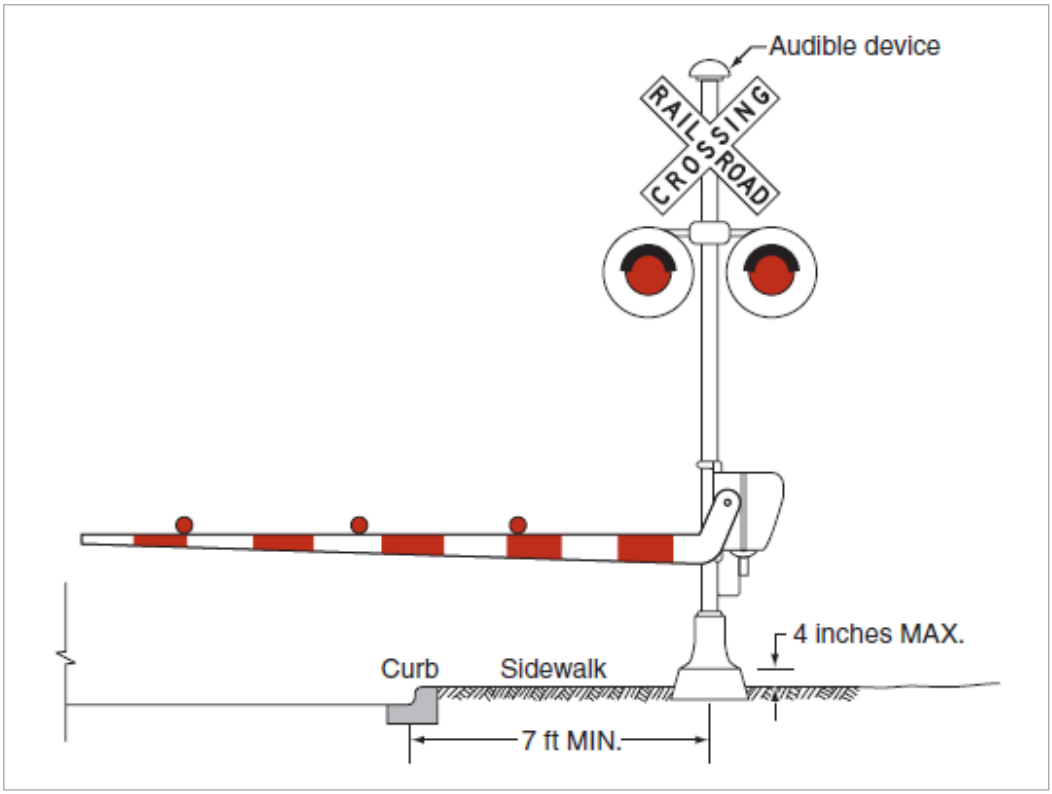


Figure 30: Example of a Shared Pedestrian/Roadway Gate (MUTCD 2009 Fig. 8C-5)

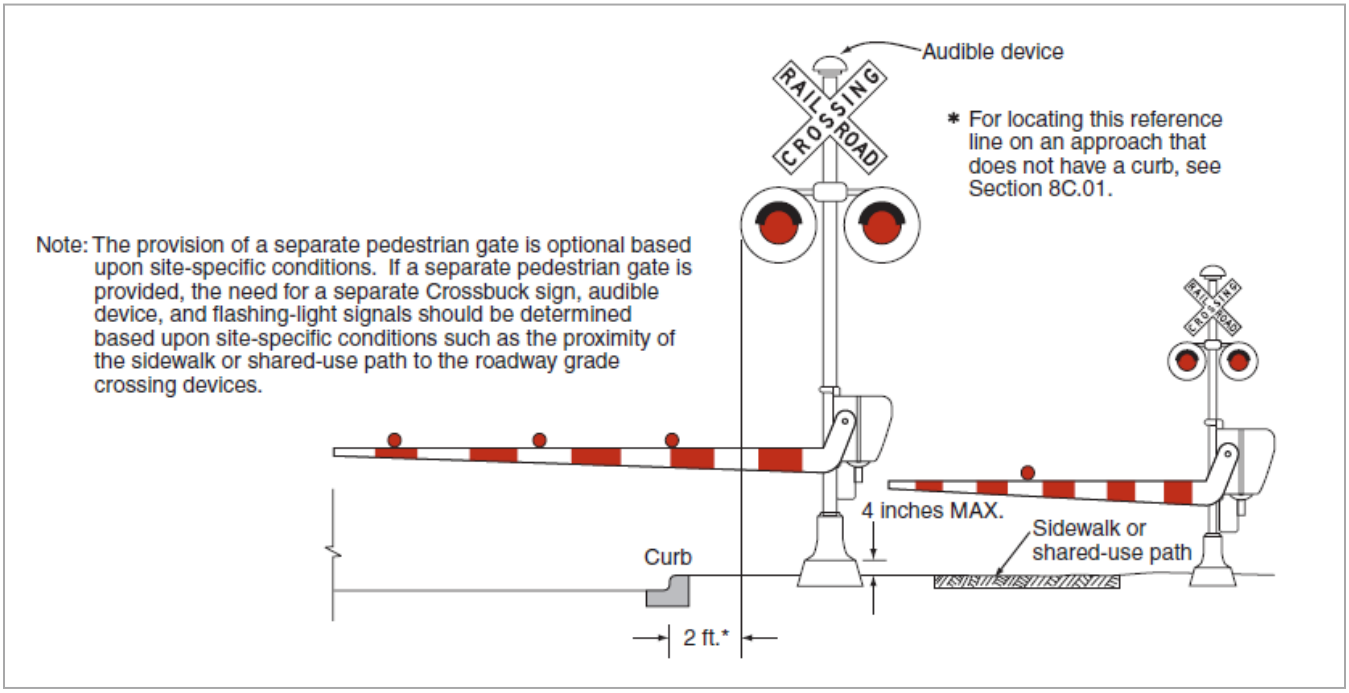


Figure 31: Example of a Separate Pedestrian Gate (MUTCD 2009 Fig. 8C-6)



Gates on the Kalamazoo River Valley Trail force bicyclists to dismount before crossing the tracks. (Photo courtesy of Malachi Barrett/MLive.com)

Kalamazoo River Valley Trail

Along an extension of Michigan's Kalamazoo River Valley Trail that opened in 2017, gates were installed to force bicyclists to dismount at rail crossings where fears had emerged regarding trail users not paying attention as they crossed an in-use rail line. Michigan DOT and Amtrak, who jointly have authority over the crossings, required the installation of the gates, which they also designed

No Train Horn/Quiet Zones

Where a rail-with-trail crosses a track at-grade in quiet zones[75] (areas where trains do not sound their horns in advance of the crossing), additional steps should be taken to mitigate the increased risk that results from the silencing of the horn. New at-grade crossings in quiet zones must include flashing lights and gates. The MUTCD also requires a "NO TRAIN HORN" sign or plaque in each direction at highway-rail grade crossings where a quiet zone has been established;[76] this feature should be installed at trail-rail grade crossings as well. FRA regulations also require that a diagnostic team review be conducted of each trail-rail crossing that will be included within a proposed quiet zone.[77] Establishing an adequate approach angle and sight distance are of the utmost importance, and the diagnostic team may recommend lighting the crossing.

[75] For more information on the Train Horn Rule and Quiet Zones, see https://www.fra.dot.gov/Page/P0889.

[76] Section 8B.29, MUTCD (2009).

[77] See 49 CFR § 222.27(b). Trail-rail crossings are considered pedestrian crossings for purposes of 49 CFR Part 222.

Grade-Separated Trail-Rail Crossings

Grade-separated crossings—overpasses and underpasses—can eliminate conflicts at trail-rail crossings by completely separating the trail user from the active rail line, although usually at considerable expense. New grade-separated crossings generally involve the following:

- **Trail Bridge:** Trail bridges should be constructed to meet required minimum train clearances and the structural requirements of the rail corridor. The bridges should have adequate fencing to prevent debris from falling onto the active tracks below.
- **Trail Tunnel:** Installing a trail tunnel, which is often a new box culvert installed under active railroad tracks, requires close coordination with the railroad, as the construction may disrupt railroad operations. Trail tunnels must be constructed to meet the structural requirements determined by the heavy loads of trains above. Fencing should be installed adjacent to the tracks above the tunnel and along the trail's approach to the tunnel to discourage trespassing.
- **Locate the Rail-with-Trail under an Existing Rail Bridge:** Rails-with-trails sometimes pass under existing railroad bridges. In these situations, trail planners must allow for adequate vertical clearance for the rail-with-trail. AASHTO guidelines recommend a vertical clearance of 10 feet, with a minimum of 8 feet of clearance in constrained areas.[78] Railroads will also likely require the installation of a covering over the trail where it passes under the railroad to prevent trail user injury from falling debris. Where the rail-with-trail must run directly over a waterway to pass under the bridge, such as via a boardwalk, additional environmental impacts may result.

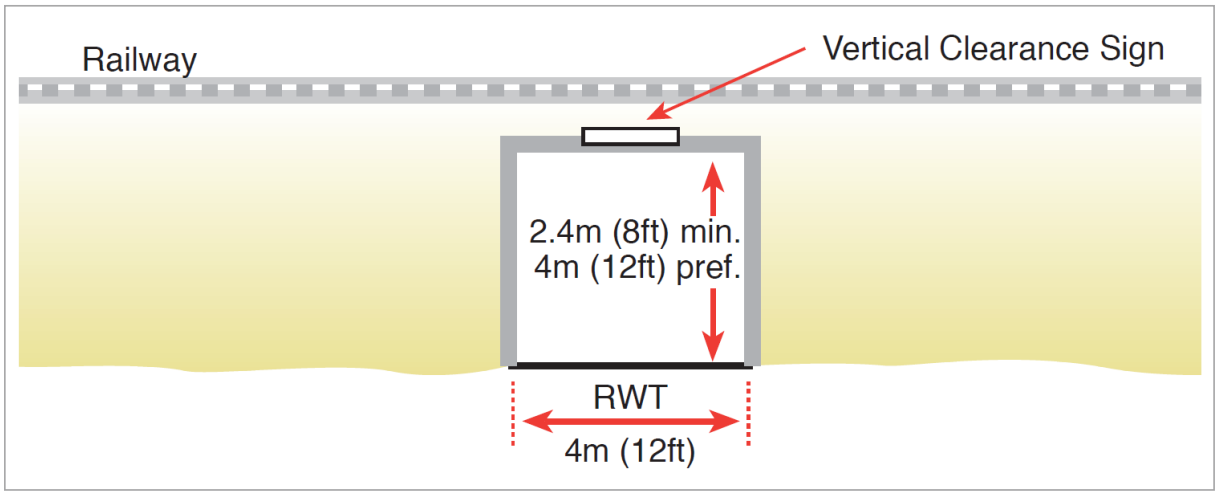


Figure 32: Rail-with-Trail Culvert under Tracks

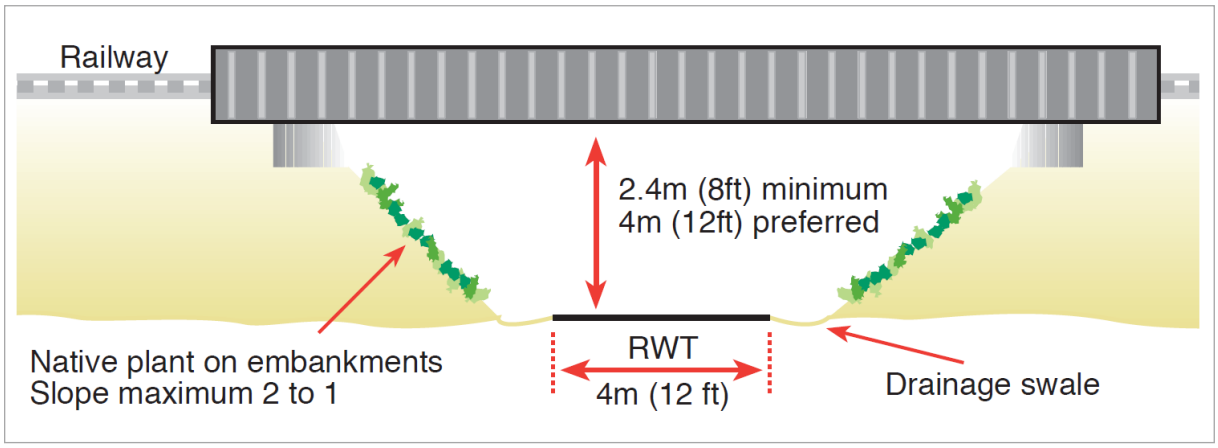


Figure 33: Rail-with-Trail Track Undercrossing

[78] AASHTO Guide for the Development of Bicycle Facilities, 4th Edition.

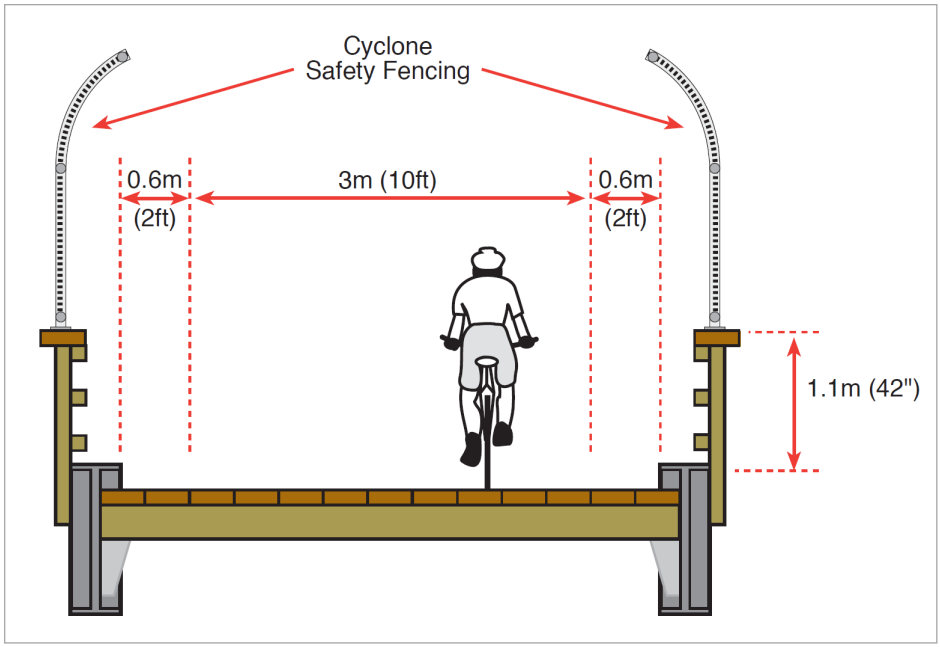


Figure 34: Rail-with-Trail Track Overcrossing

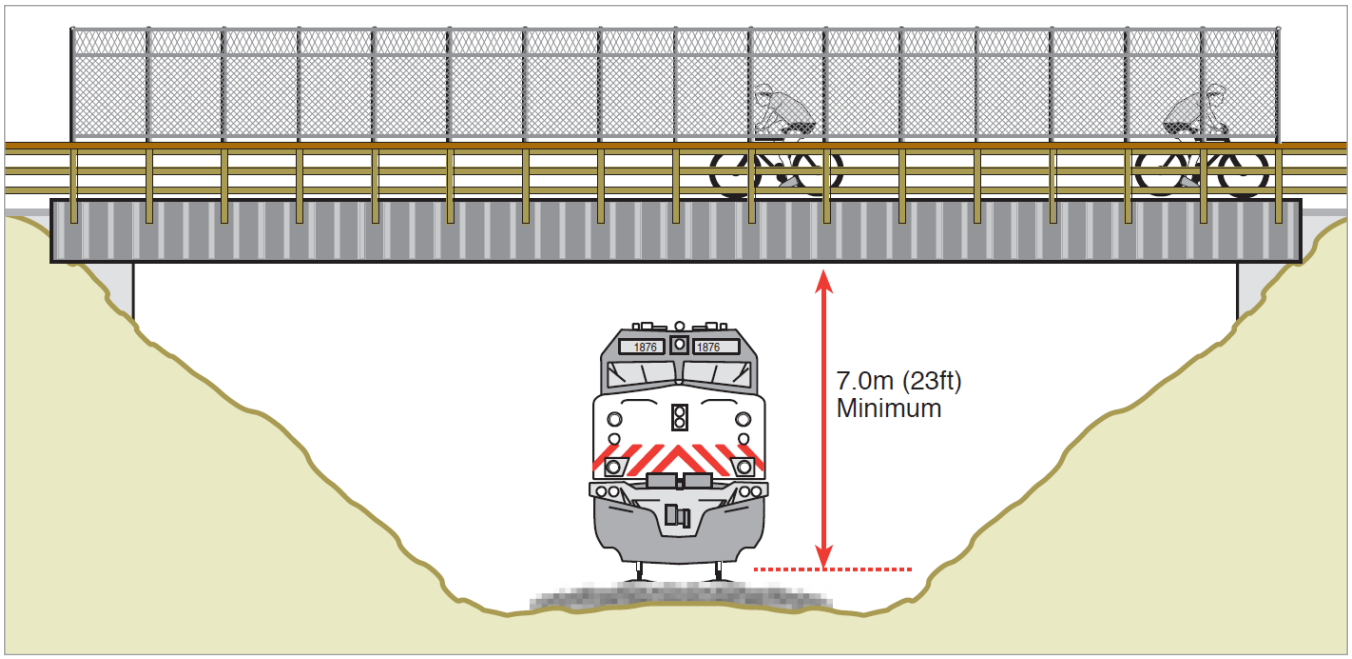


Figure 35: Rail-with-Trail Track Overcrossing (Meets Amtrak-Required Clearance Height for Non-Electrified Track)

Wherever a rail-with-trail bridge or tunnel is constructed, it should be designed to meet the current and future operational needs of the railroad, such as required vertical clearance for double-stacked trains. Dark, isolated underpasses that are hidden from public view can attract illegal activity, so they should be designed to be as short as possible to increase the amount of light available and thus decrease their attractiveness for crime. Adequate artificial lighting is also extremely important. Further, the decision to construct a bridge or underpass should be made in full consideration of the additional maintenance these facilities require.

The AASHTO Guide[79] offers specific design dimensions and lighting guidelines for bridges and tunnels. According to the guide, the minimum clear width of the pathway on a bridge or through a tunnel should be the same as the width of the approach path, with an additional two feet clear area on the sides, if space is available. Therefore, the width of a tunnel or bridge on a 10-foot-wide trail would be 14 feet. The AASHTO Guide recommends a vertical clearance of 10 feet, with a minimum of 8 feet in constrained areas. Larger horizontal and vertical clearances may be needed for certain types of maintenance and emergency vehicles. Future needs for vehicular access should be taken into consideration when designing these structures.

Approach grades for bridges and tunnels on rails-with-trails should follow AASHTO guidelines and be accessible to and usable by individuals with disabilities.

Grade-Separated Trail-Rail Crossing Examples

Trail Bridge: On Wisconsin's Hank Aaron State Trail, Canadian Pacific required a new rail-with-trail bridge to be built 24 feet above the tracks and to have sufficient fencing. The fencing is curved towards the top to prevent objects intentionally or accidentally falling onto the tracks below.

Rail-with-trail under an existing rail bridge: An example of this type of grade-separated trail-rail crossing can be found along the Border-to-Border Trail in Dexter, Michigan. The trail was constructed as a wooden boardwalk over Mill Creek where it passes under the active rail line owned by the Michigan Department of Transportation and operated by Amtrak. Despite the railroad bridge's stone construction, a roof was installed over the trail to protect trail users from falling debris.



Border-to-Border Trail in Dexter, Michigan where the boardwalk portion passes underneath a stone arch railroad bridge. Trail roof can be seen under the bridge on the right. (Photo courtesy of the City of Dexter)

At-Grade Trail-Road Crossings

At-grade crossings between rails-with-trails and roads can be complex areas that require the designer to think from the perspective of all types of users who pass through the intersection: train crews, motorists, bicyclists, and pedestrians. Typically, such crossings require the involvement of both the road agency and the railroad company. Each crossing must be evaluated on a case-by-case basis through engineering analysis.

Trail-road intersections are covered in detail by both the AASHTO Guide and the MUTCD. While these manuals do not specifically recommend solutions for rail-with-trail crossings, they cover basic safety principles that apply to all at-grade trail-road crossings. Variables to consider when designing trail-road intersections include right-of-way assignment, traffic control devices, sight distances, access control, pavement markings, turning movements, traffic volume, speed, and number of lanes.

[79] AASHTO Guide for the Development of Bicycle Facilities, 4th Edition

In 2018, the Transportation Research Record published an article titled *Rails-Next-to-Trails: A Methodology for Selecting Appropriate Safety Treatments at Complex Multimodal Intersections*.[80] The University of Washington researchers propose a methodology for addressing safety issues at locations where rails-with-trails and railroad tracks cross roadways. The methodology addresses the design of the crossing and information to be provided to all users (train crews, motorists, bicyclists, and pedestrians). It is meant to incorporate the professional judgment of the agency evaluating the crossing with a prescriptive approach to designing intersections where rails-with-trails cross roadways.

There are three methods for handling at-grade rail-with-trail-road crossings:

- **Signalized Crossing** (see Figure 36): This is the most costly option, as it involves a reconfiguration of the road and installation of traffic signals and signage. However, it may be appropriate on high-speed, high-volume roadways. The new signal should be coordinated with other nearby signals so as to preclude two contradicting signals being given simultaneously.
- **Unsignalized Crossing** (see Figure 37): Unsignalized crossings, those without traffic signals or other active warning devices, can create safety hazards for trail users and motorists along busier roads, but may be acceptable where sight lines are good and traffic volumes are low.
- **Reroute Trail Users to the Nearest Signalized Intersection** (see Figure 38): This is likely to be the preference of the road agency, as it would not require a new signal or as much new signage. However, depending on the detour distance required for trail users to resume their route and the frequency of such crossings, trail users may be inclined to continue straight instead of crossing at the light, potentially negating the safety benefits of this crossing type (though this can be mitigated with barriers). In cases where the nearest signalized intersection is on the opposite side of the tracks, requiring trail users to cross the tracks twice would pose additional safety risks and should be avoided.

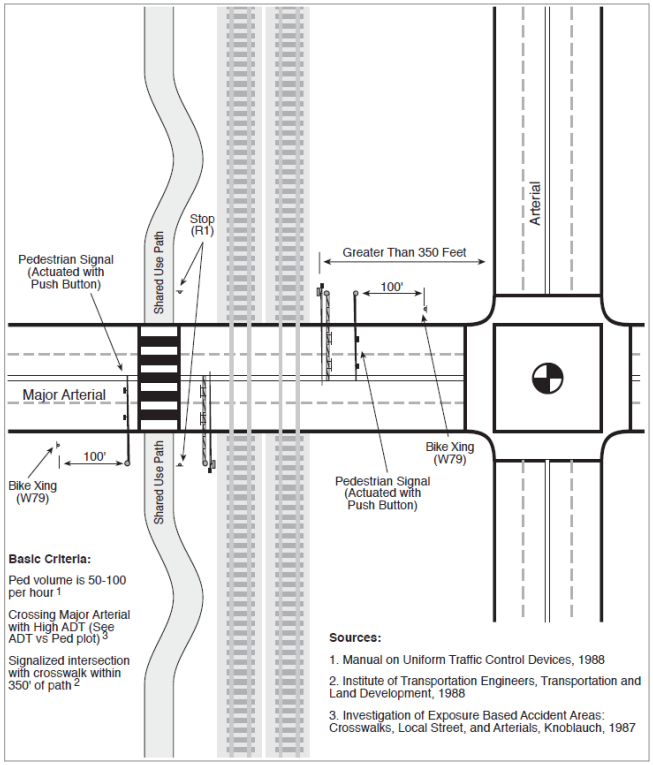


Figure 36: Roadway Crossing Type 1 (Signalized Crossing)

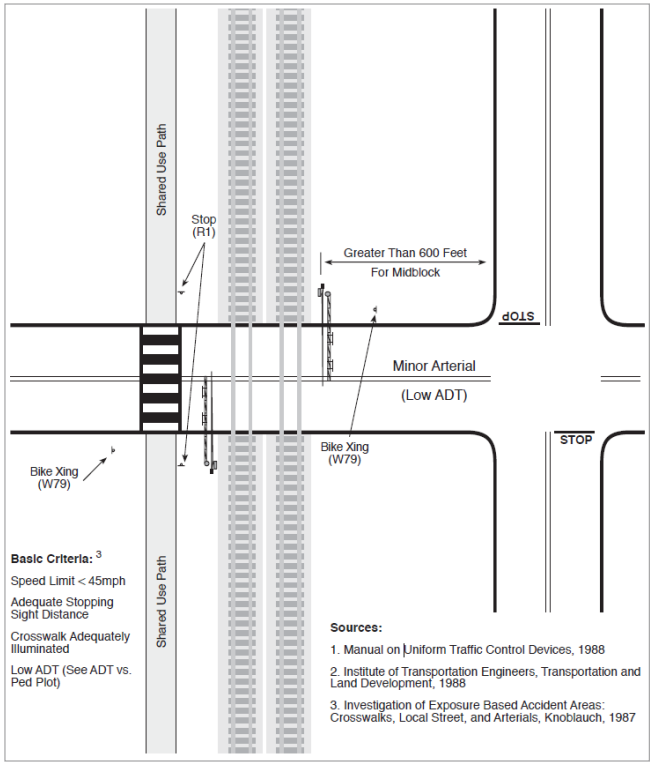


Figure 37: Roadway Crossing Type 2 (Unsignalized Crossing)

[80] *Rails-Next-to-Trails: A Methodology for Selecting Appropriate Safety Treatments at Complex Multimodal Intersections.* 2018. Transportation Research Record, 2672(10), 12–27. https://doi.org/10.1177/0361198118792763

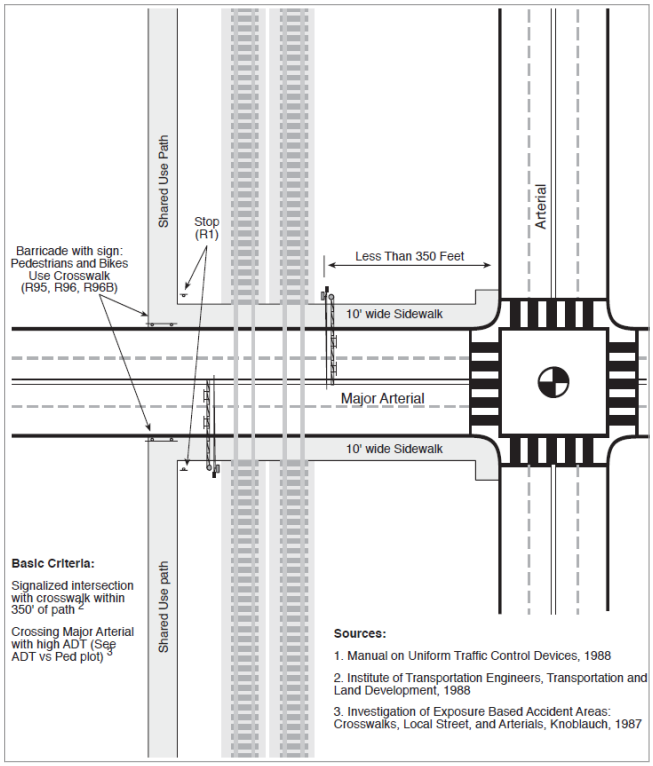


Figure 38: Roadway Crossing Type 3 (Reroute Trail Users to Nearest Signalized Intersection)

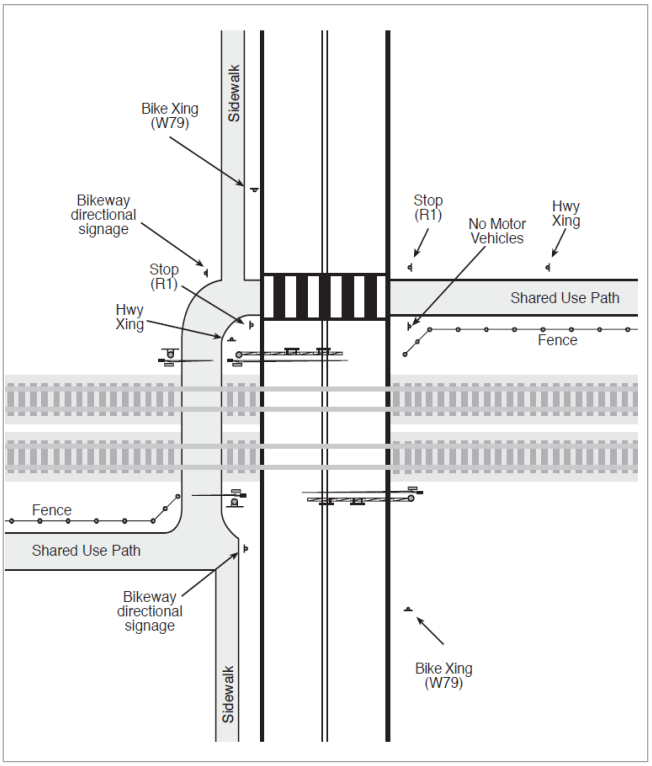


Figure 39: Roadway and Track Crossing

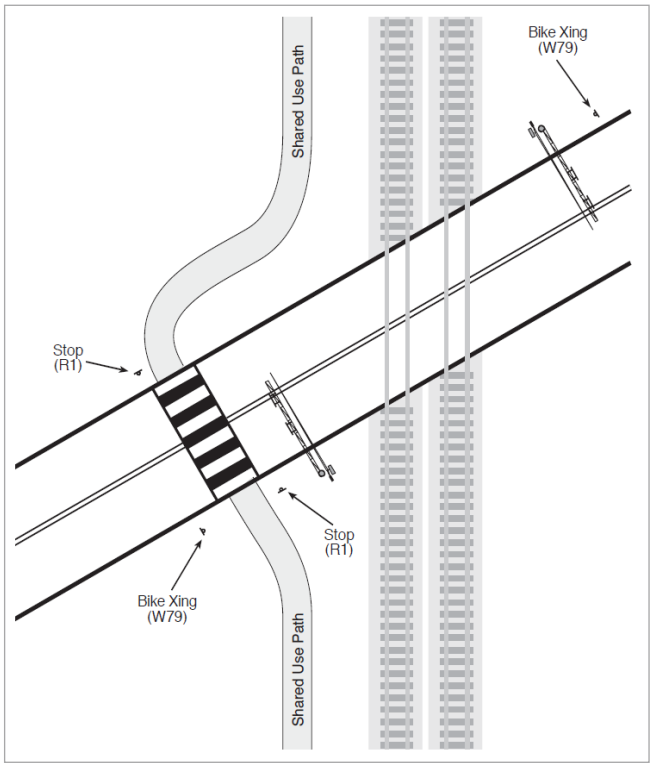


Figure 40: Angled Intersection with Roadway

While new at-grade crossings between trail users and the tracks should be avoided whenever possible, sometimes a rail-with-trail must move to the opposite side of a rail line at a road crossing. This is undesirable, as there will naturally be competition for trail user attention between the successive trail-road and trail-rail crossings, potentially raising safety concerns. If such a crossing must be installed, the passive or active warning devices discussed earlier in this section should be evaluated.

For any of these crossing designs, road users should be warned of both types of crossings (trail-rail and trail-road). Care should be taken to keep warning devices simple and clear; ambiguous and overly complicated signage and pavement markings can distract both motorists and trail users. If a pedestrian-actuated traffic signal is warranted at a mid-block rail-with-trail-road crossing, the traffic signal should be interconnected with the active warning devices at the railroad crossing. This may require interconnection and preemption of the highway traffic signals at any adjacent intersection within 200 feet of the rail-with-trail crossing

If automatic gates are used, they should be placed between the trail-rail crossing and active track(s). Where possible, the stop line on the road should be located behind the trail crosswalk. However, if the crossing is located at too great a distance from the automatic gate, the stop line should be placed in a standard position near the gate, and a DO NOT BLOCK CROSSWALK sign should be used at the trail crossing.

If active warning devices are used, they should make trail users aware of approaching trains. Trail users may either elect to travel straight across the road, or may exit the trail and continue their journey on the roadway. In this scenario, turning movements towards the tracks could be hazardous if the trail user is unable to view active warning devices, or if sight distances are restricted. The angle of approach for these trail users must be considered when placing warning devices. In cases where flashing light signals (post mounted) are used, it is important to locate these devices so that they can be seen by trail users, and to include bells and other audible warning devices to provide additional warning to bicyclists and pedestrians. This is especially true where a rail-with-trail crosses a road and rail line in immediate succession. In these cases, automatic gates should extend across both the road and trail, or a separate gate scaled appropriately for the trail should be installed, as is the case along New Mexico's Santa Fe Rail-Trail, which upgraded their crossing treatments.

At-Grade Trail-Road Crossing Examples

The Montgomery County, Pennsylvania, portion of the Schuylkill River Trail features approximately 45 instances where the trail crosses roads at-grade alongside the adjacent tracks used by NS, Amtrak, and SEPTA (Southeastern Pennsylvania Transportation Authority) regional rail service. Montgomery County hired a consultant to assess 20 of the crossings and develop a standard treatment (signage, pavement markings, gates, and bollards) that will be used as a template for existing and future crossings. Crossings needing improvement will be noted and ultimately upgraded. A specific priority is identifying the safest location for a vehicle to stop at the crossings when a train or trail user is present.



Schuylkill River Trail in Pennsylvania. (Photo courtesy of the Circuit Trail Coalition)

The Oregon DOT has produced a guidebook that suggests appropriate treatments for rail-with-trail crossings at-grade, as the "possible conflicts at intersections within these design parameters are of concern to ODOT."[81] The guidebook's methods and suggested treatments may be useful to trail developers and railroads working to develop or improve a rail-with-trail.

[81] https://www.oregon.gov/ODOT/Programs/ResearchDocuments/SPR794_MultiModalIntersections.pdf

Grade-Separated Trail-Road Crossings

Where a proposed rail-with-trail will cross a major road or highway carrying heavy traffic volumes and/or traffic at high speeds, grade separation should be explored regardless of where the adjacent railroad tracks are located.

Utilities

Railroad corridors provide an ideal, uninterrupted conduit for utility infrastructure. Many types of utilities, including water, sewer, natural gas, electric, and fiber optic, can have their lines buried underground along a railroad corridor, while telecommunications, cable, and electric utilities can run above and across a corridor. While it is not uncommon for a trail to be constructed on top of a subsurface utility, there typically are easement restrictions and requirements that will impact the trail design, location, and feasibility. To avoid redesign costs and future disruptions, involve the proper utility agencies and stakeholders in the early stages of planning.

Most railroads have internal communication systems that can be located underground or on poles within their corridors. Railroads may require trail developers to locate the rail-with-trail far from these communications systems, or relocate them per the railroad's specification.

Rails-with-trails may be constructed with buried conduit under or adjacent to the path to serve existing or future utilities. Conduit and auxiliary equipment (e.g., repeater boxes) should not present slip, trip, or fall opportunities, visual obstacles, or other hazards, nor should it interfere with railroad operations or maintenance. Railroad, trail developer, and utility representatives should meet to discuss any concerns or requirements related to the adjacent rail use.

Schuylkill River Trail

In some cases, a parallel utility line may provide the ideal, off-corridor opportunity for rail-with-trail development. The Valley Forge-to-Philadelphia portion of Pennsylvania's Schuylkill River Trail, for example, is built on an easement granted by a utility company that parallels a SEPTA rail transit line. Their agreement requires the trail manager to perform corridor maintenance, such as mowing and trash pickup. The utility also requires them to remain at least 15 feet from the power transmission structures.



Schuylkill River Trail along SEPTA transit line with power transmission structures. (Photo courtesy of Google)

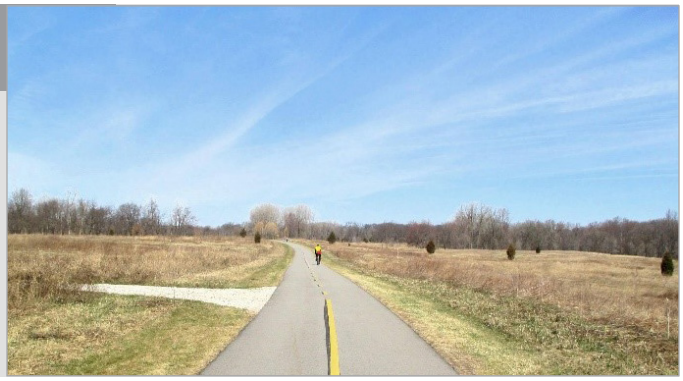
Accommodating Future Tracks and Sidings

The possible addition of new tracks or sidings will have a direct impact on rail-with-trail design and alignment. In many cases, a railroad may not have specific expansions plans, but may want to reserve room to expand in the future if it is needed. In other cases, a public transportation agency may already have plans to use part of the corridor for future transit or commuter rail service. Where specific plans for additional tracks exist, the rail-with-trail project could be deemed infeasible within the rail right-of-way.

In all cases, a rail-with-trail should be designed and located so as not to preclude potential future rail expansion. Where corridor width, topography, and other factors allow, the rail-with-trail should be located on the opposite side of the proposed track or siding expansion. Alternatively, the rail-with-trail should be located at the extreme edge of the rail right-of-way to allow sufficient room for additional tracks.

Border-to-Border Trail

In the case of the Border-to-Border Trail in Washtenaw County, Michigan, Michigan DOT had developed plans to upgrade the tracks for use as a higher-speed passenger rail corridor. The design for the new section of the Border-to-Border Trail includes ample room for the existing track, a second track, and a service road.



The Border-to-Border Trail in Michigan (Photo courtesy of trailink.com/dgoodwin).

Access to Stations

As noted previously, rails-with-trails along passenger rail lines can be complementary to the rail system. When designed effectively, rails-with-trails can enhance passenger access to rail and transit systems and can increase trail access to users.

Access to rail and transit stations may be built into the trail design, taking into account both accessibility and safety. If the entrance or exit of a rail station is immediately connected to the trail, proper signs should be installed near the stations to notify trail users of pedestrian traffic exiting stations, and vice versa. To facilitate multimodal transportation, and in accordance with FTA recommendations,[82] bicycle parking should be installed near the stations in coordination with the rail or public transportation agency.

Where rail stations are located on the opposite side of the tracks from the trail, a tunnel or bridge could be constructed to provide safe access. In some cases, trail-rail grade crossings to facilitate access to the station may be appropriate. Such crossings must follow accessibility and MUTCD requirements.

Metropolitan Branch Trail

In Washington, DC, a bicycle/pedestrian bridge was installed over active Amtrak, CSX, and regional rail tracks to provide direct access from the Metropolitan Branch Trail to the Washington Metro's Rhode Island Avenue–Brentwood station. In this case, strict construction guidelines from all the rail operators had to be followed, and the bridge had to be built high enough to accommodate double-stack trains. Similarly stringent guidelines and construction processes would likely need to be followed for any new bridge or tunnel crossing of an active rail line to reach a transit station.



Metropolitan Branch Trail in Washington DC, with bridge over railroad connecting Metro station to trail. (Photo courtesy of Google)

[82] Federal Transit Administration. 2017. Manual on Pedestrian and Bicycle Connections to Transit. https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/64496/ftareportno0111.pdf

Railroad Bridges

Railroad bridges have the potential to loom large as a challenge to the overall feasibility of a rail-with-trail project. Virtually all railroad corridors will have at least some minor bridges or culverts, either as part of the local drainage system or the local network of streams and creeks. In some cases, there will be longer bridges over roads, rivers, or canyons. Railroads are generally opposed to sharing existing rail bridges with trails, whether or not there is space to accommodate a trail. In almost all cases, railroad bridges are not designed to accommodate pedestrians or cyclists and thus represent a real safety hazard to trespassers and a major challenge to overcome for successful rail-with-trail development.

If a rail-with-trail project includes the construction of a new bridge over a waterway, trail planners will have to consider the potential environmental impacts on the water below. Trail planners will also need to comply with FHWA's floodplain regulation (23 CFR 650 Subpart A) during planning, environmental review, design, and construction. These environmental considerations might affect the feasibility of the entire project. Regular consultation with and permitting from local, State, and Federal agencies will likely be required, potentially adding significant time and expense to the rail-with-trail project.

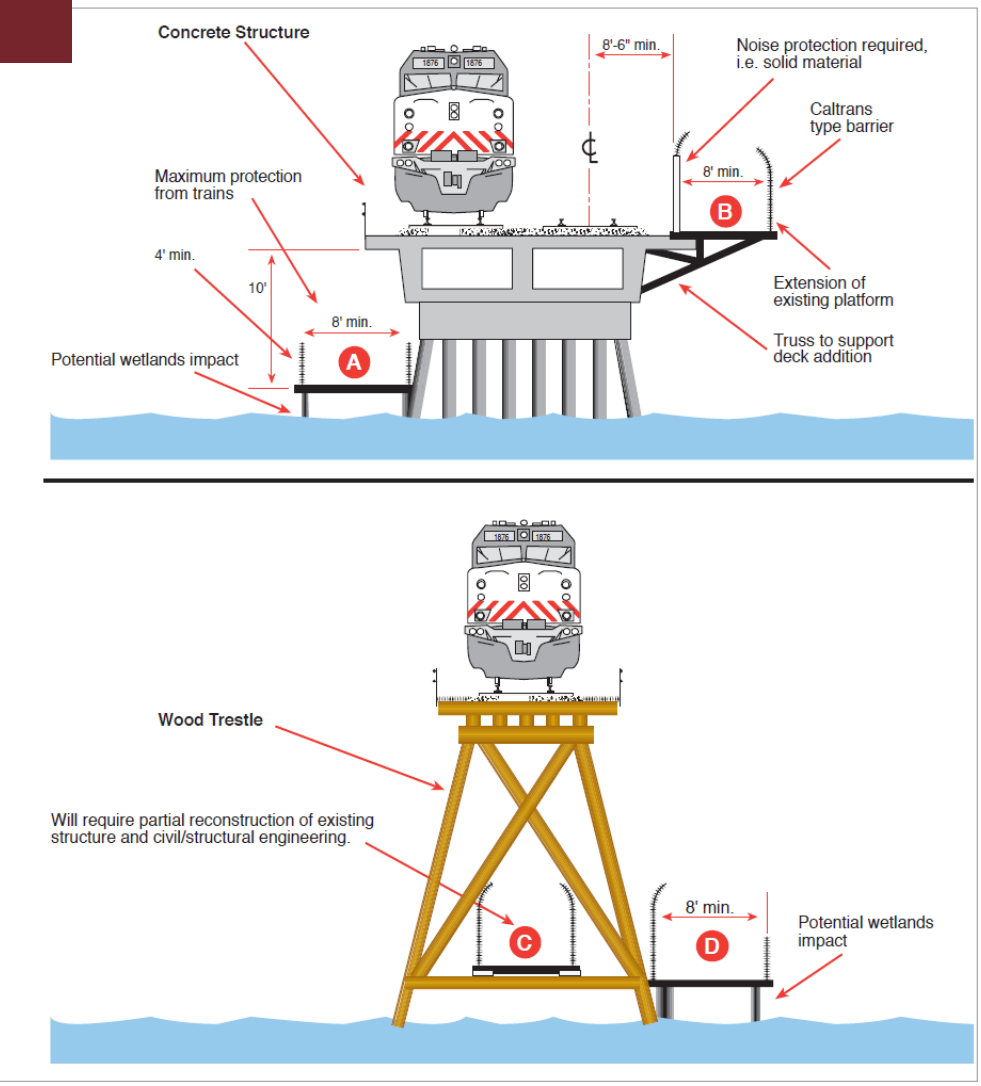


Figure 41: Trestle Options

Meanwhile, a new bridge over a road or canyon may have high costs, and may, in some cases, represent the single greatest cost on the project. There will be additional permits to secure, and for bridges over roads, construction hours will likely be limited to nighttime or other non-commuting hours, potentially adding time and expense to the project.

Rail-with-trail bridges constructed over existing roads, trails, or bikeways pose a special problem. Neighboring residents and trail users may want access to the new rail-with-trail from the roadway, requiring construction of ramps that must meet accessible gradient standards. These access points can add considerable expense to any project.

If the railroad will allow a rail-with-trail to be incorporated into an existing rail bridge, the rail-with-trail must not impede bridge maintenance and inspection access. Engineers should be consulted during the planning and design phases to ensure load allowances will not be exceeded when the new trail opens. The trail planner must also be prepared to assume maintenance and liability protection for the new combined structure. In some cases, accessible ramps may also need to be constructed to route the trail onto the existing bridge.

Some of the potential solutions for rails-with-trails on corridors with bridges include:

- **Abutments:** In some cases, unused abutments on an existing structure that once carried a parallel track may be available to repurpose for trail use.
- **Unused Bridge Space:** Using space on the bridge and trestle that is not used for planned for use by rail traffic or operations may be an option. However, securing the desired trail width and railroad permission for such an arrangement may prove difficult.
- **Cantilever:** Adding a cantilever that is attached in some fashion to the existing bridge may be less expensive than constructing a completely new bridge, but the rail-with-trail developer may be required to make structural integrity improvements to the existing bridge.
- **New Structure:** Constructing a new structure may be very expensive and may have negative environmental impacts if it requires construction in a riparian or other habitat. Safety benefits may be most apparent from construction of a new bridge, rather than using an existing structure or installing an at-grade road crossing.



A trail bridge was built parallel to the rail bridge on the White River Greenway in Indiana. (Photo courtesy of the Rails-to-Trails Conservancy).

Tunnels

Like bridges, rail tunnels can be one of the most significant physical challenges to overcome for successful rail-with-trail development. Tunnels were generally built by railroads only if the topography necessitated it; these same topographical extremes can make rerouting an otherwise parallel trail around a railroad tunnel nearly impossible.

Single-track tunnels shared by both trains and trail users should be avoided, although in rare cases, excursion lines or other rail carriers with very limited service may be willing to consider it.

Where a single-track tunnel exists along a proposed rail-with-trail, lengthy detours may be the only option. Nearby roads can be signed as an on-road detour, or where wide enough, road right-of-way could be redesignated for bicycle and pedestrian use. Occasionally, nearby out-of-use railroad corridors may be available. Rarer still is finding an alternate route around the tunnel not currently used as a transportation corridor that meets gentle grade requirements. A waterway near the rail line, such as a stream or river, may be one such option.

Heritage Rail Trail County Park

There is a shared rail-with-trail single-track tunnel is along Heritage Rail Trail County Park in Pennsylvania, where the trail narrows significantly along the track used by steam-powered excursion trains. Trail users must use caution and yield when trains are approaching the historic Howard Tunnel, as there are no passive or active warning devices present.



The Howard Tunnel on the Heritage Rail Trail County Park, Pennsylvania (Photo courtesy of Wikimedia Commons/Onore Baka Sama)

In select cases, the topography may be gentle enough to allow for the trail to ascend and descend over the mouth of the tunnel. Rail-with-trail planners must ensure the trail's ascent and descent meet accessible grade requirements, and the trail should be wider, particularly around curves, to help counter the effects of cyclists gaining speed on their descent.

Metropolitan Branch Trail

The next planned phase of the Metropolitan Branch Trail in Washington, DC, will ascend and descend over a Washington Metro rail tunnel at Fort Totten station. Paralleling the transit system's Red Line heading north, the trail will ascend the mouth of the perpendicular Metro tunnel, then descend to a non-rail-with-trail route on the other side. On the trail's descent, a retaining wall will be constructed to hold the hill in place.



The Metropolitan Branch Train will cross the Green/Yellow line Metro tunnel on the west side of the Metro station and then parrellels the Red Line Metro tracks (Image courtesy of the District Department of Transportation)

Multitrack tunnels where one or more of the tracks are out of service or there is ample space adjacent to the tracks may be able to accommodate dual trail and rail uses, although such an arrangement is rare. Similar rail-with-trail tunnel co-use would need to consider and budget for appropriate separation and ventilation techniques as well as lighting and other features standard in more traditional trail tunnels.

Cal Park Hill Tunnel

In Marin County, California, the Cal Park Hill Tunnel was designed to accommodate both the future Sonoma-Marin Area Rail Transit commuter line and the SMART Pathway in a former freight rail tunnel. Because the trail is so close to the rail line through the tunnel, a floor-to-ceiling concrete wall separates the two, while the trail portion is also ventilated separately from the rail half to protect trail users from the train's diesel emissions.

Where a new rail-with-trail is constructed in tandem with a new rail line, tunnel co-use is easier to accomplish, as adequate width, ventilation, and safety measures can be factored into the tunnel design. Most commonly, these shared tunnels are developed for transit (more specifically, light rail) use.



The shared-use Cal Park Hill Tunnel along the SMART commuter rail line in California (Photo courtesy of the Marin Independent Journal)

Capital Crescent Trail

One such example is a future tunnel in downtown Bethesda, Maryland, that will accommodate both the planned Purple Line light rail and a future extension of the Capital Crescent Trail. An existing rail-trail tunnel under a commercial building was deemed to be too narrow to accommodate both the transit line and upgraded trail, so an agreement was reached with the property owner to vacate and rebuild with a wider tunnel underneath (in exchange for higher density and other benefits). Design and construction of the new building and wider tunnel are being coordinated with the Maryland Transit Administration, the trail and transit project manager.



The Capital Crescent Trail passes under the road above and alongside disused tracks. The trail extension will parallel active tracks in a tunnel such as this. (Photo courtesy of trailink.com/barry ladwig)

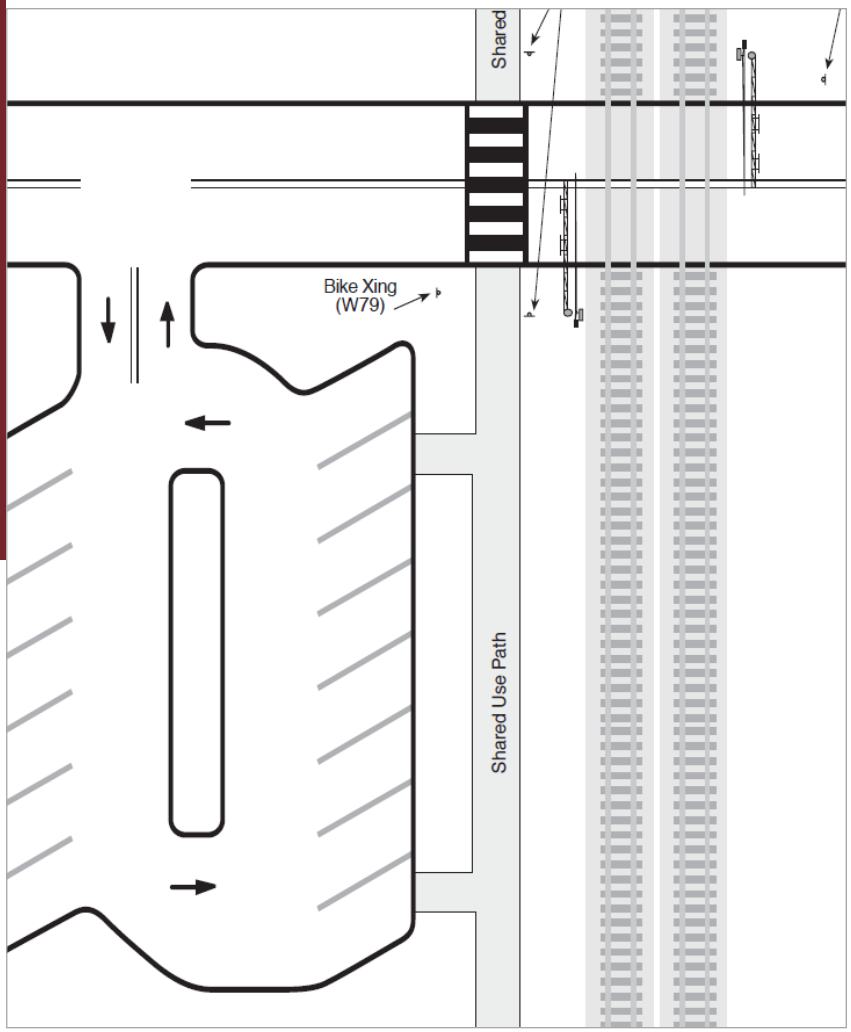


Figure 42: Trailhead and Parking Design

Trailheads and Parking Areas

As with any trail, a new rail-with-trail will attract locals and visitors alike to drive and park near the facility, potentially impacting local neighborhoods. To avoid additional crossings over the active rail line, rail-with-trail design should locate trailheads, parking areas, restrooms, and other facilities on the same side of the tracks as the trail.

Drainage

Railroad corridors are constructed with both lateral and cross roadbed drainage to keep water away from the tracks and ballast structure. Lateral drainage consists of the ditches seen parallel to most tracks and ballast, which helps direct water into natural or built waterways. Cross-roadbed drainage pipes are used to connect lateral drainage ditches via a connection under the tracks.

Maintaining the integrity of the railroad drainage system is of paramount importance for any rail-with-trail design.[83] If a rail-with-trail is planned for construction where there is an existing lateral drainage ditch or swale, a new drainage system must be designed. Rail-with-trail planners should coordinate with the railroad or rail corridor owner throughout the planning and design process, even if the proposed trail is adjacent to railroad property.

Maintenance practices of the railroad can also negatively affect drainage along the trail, especially in areas where the existing railroad drainage system has deteriorated or is otherwise in poor shape. Examining the existing railroad drainage system and observing railroad maintenance practices during the rail-with-trail planning phase could significantly benefit the trail long after it opens.

Failure to adequately address drainage can be costly for a trail manager. In addition, rail-with-trail developers must also consider the impact the trail's surface will have on local water runoff; the impact will be higher with a paved trail. Additionally, if any action is conducted within the base floodplain, FHWA's floodplain regulation (23 CFR Part 650 Subpart A) will also apply.

H.U.M. Trail

The H.U.M. Trail in McHenry County, Illinois, was constructed without adequate improvements to an existing railroad drainage ditch. As a result, recurrent flooding on the trail is a headache for both trail management and users. In 2007, heavy rainfall caused severe damage to the trail that required it to be closed for several months for reconstruction.

[83] FRA's regulation on drainage is found at 49 CFR § 213.33.

Lighting

As with all trails, lighting a rail-with-trail is dependent on a variety of factors, including cost to install, maintain, and operate; whether the trail will be used in the winter and low-light hours; and potential impact on neighbors. Many trail managers elect to only illuminate their trail at grade crossings and undercrossings, where lighting is a matter of safety and visibility, particularly if the rail-with-trail is closed at night.

Schuylkill River Trail

Along the Schuylkill River Trail in Berks County, Pennsylvania, the trail manager notes that the grade on the track has increased over time, leading to large flows of water inundating the trail during rain.

Trail developers should take into account lighting impacts on train operation and visibility for any crossing of railroad tracks. One innovative pathway lighting concept that may be considered is to have lighting activated by motion detectors, so that the trail is illuminated while people approach and a few minutes after they pass, but not for the entire night.

Signage and Markings

Prominent signing at trailheads and along the trail aimed at deterring users away from the railroad tracks may be desired or required. In many cases, existing "No Trespassing" signage posted by the railroad prior to rail-with-trail development may be sufficient. Where such signage does not already exist, railroads may require its installation at a set spacing, such as 500 feet. Adequate signage is a necessity at trail-rail crossings—see Chapter 8D of the MUTCD for more information.

Equestrian Considerations

Due to horses' lack of experience near railroads, instinctual flight behavior, and general wariness of new and potentially challenging situations, specific design considerations should be made when planning for equestrian use on rails-with-trails.

Trail width is an overriding design issue when considering equestrian use on rails-with-trails. Separate pathway treads dedicated solely or primarily for equestrian use are a common feature of many trails that allow horses. Narrow railroad rights-of-way that afford width for only a single paved trail, or that provide inadequate shy distance for horses frightened by nearby or oncoming trains, are not appropriate candidates for accommodation of equestrian use.

Some equestrian users advocate fences of sufficient height to prevent horses jumping them when startled or frightened; however, this concern should be balanced with the need for visibility of trains for both horses and riders. Horses that cannot see an oncoming or approaching train will experience greater fear and confusion than if they are able to see and identify the source of noise.



Lighting on the Cedar Lake Trail in Minnesota. (Photo courtesy of the Rails-to-Trails Conservancy)

Bridges require additional considerations. Many horses are frightened by bridges and other elevated environments, particularly lattice or perforated bridges that allow the animal a view of the ground substantially below the bridge deck. Most horses are not accustomed to this environment and will respond unpredictably with potentially negative consequences. One possible solution where a bridge low to the ground crosses a c onsistently shallow waterway is to bypass the bridge altogether and allow equestrian users to cross the water itself. For such crossings, rail-with-trail planners would need to secure approval from any agency that owns, manages, or regulates the waterway, as well as perform a careful analysis of the risks and benefits to equestrian users. Signage clearly indicating the crossing type in advance of the crossing and at trailheads also should be developed and installed.



A sign on the Thun Trail in Pennsylvania explaining that bicycles should yield to pedestrians and horses, and pedestrians should also yield to horses. (Photo courtesy of traillink/jmcginnis12)



Denton Branch Rail Trail in Texas. (Photo courtesy of Jake King/Denton Record-Chronicle)

Section VII: Construction, Operations, and Maintenance

Close coordination among stakeholders during the construction, maintenance, and operation of rails-with-trails is important to ensure that the trail continues to meet the needs of its users while addressing the safety and security requirements of the railroads. Once open, a rail-with-trail should minimize impacts on the adjacent railroad while offering a safe experience for both trail users and railroad operators.

This section describes effective practices related to the construction, operation, and maintenance of rail-with-trail facilities.

Overview of Construction, Operations, and Maintenance Effective Practices

Effective strategies for constructing, operating, and maintaining rails-with-trails include:

- **Construction Coordination:** Because of the trail's proximity to active rail lines, planning for the construction of a rail-with-trail should be done in coordination with the railroad owner and operator(s). Trail developers should engage railroads as early as possible so that their feedback can be incorporated into a detailed plan for the trail construction phasing and overall construction schedule.
- **Railroad Requirements:** When engaging in construction activities, the trail developer will need to coordinate with the adjacent railroads to address issues related to public safety, potential impact on operations, and protection of rail facilities.
- **Trail Maintenance:** The trail manager should have a comprehensive operations and management plan that details the procedures and responsibilities for both the railroad and trail manager. The plan should include:
  - » Trail closure procedures and details for removing and reinstalling fences or other barriers, including identification of the entity responsible (and any compensation to be provided), if the trail is damaged or destroyed during rail maintenance activities, and
  - » Defined roles for maintaining vegetation, including how often it is maintained and any shared responsibilities.
- **Education:** The trail manager should consult the railroad to determine whether trail user education related to the adjacent railroad activities is necessary. In many cases, railroads and trail developers may agree that signage, adequate setback, and

separation between the trail and tracks is sufficient. If more active education is desired or required, the trail developer could conduct online or in-person safety trainings, safety briefings in advance of organized walks, runs, or rides, or direct outreach to schools and workplaces.

- **Security, Crime, and Vandalism:** In many cases, the presence of a rail-with-trail channelizes would-be trespassers onto the trail, reducing trespassing and vandalism. In locations where security remains a concern, the trail manager, in coordination with local police, could establish organized activities and trail patrols. Strategies such as the clearing of vegetation or installation of lighting or damage-resistant fencing can also be effective to help address security concerns along a rail-with-trail, provided regular maintenance is also performed.

Construction Management

Planning for the construction of a rail-with-trail should be done in close coordination with the railroad owner and operator(s). Throughout the construction of a rail-with-trail, the trail developer will need to coordinate with the adjacent railroads to address issues with respect to public safety, potential impact on operations, and protection of rail facilities. Early in the rail-with-trail planning and design process, trail developers should consider how the rail-with-trail will be staged and constructed, as well as how much room is needed for construction activities around the active railroad corridor.

Whether the rail-with-trail is located on or adjacent to railroad property, access to the railroad property may be required during construction. Most railroads have a detailed process for allowing activities on their property. Prior to construction, the trail developer will need to coordinate with the railroad and other authorities to obtain all the necessary permits and permissions to access the site. Written permission from the railroad will usually be required for any railroad site access, even if only for preliminary activities such as surveying. Insurance will also likely be required before a railroad grants access to a site.

In some cases, construction might involve the temporary use of railroad property or temporary permission to cross railroad tracks. Temporary easements may be needed for construction activities, including staging, grading, and the installation of stormwater infrastructure. Further, any construction activity that will impact rail operations, such as a new undercrossing or changes to bridges, will require extensive review and approval by the railroad's engineering and operations departments. Hiring engineering and construction firms that have experience working with the railroad could be helpful.

Trail developers should coordinate with the railroad owner and operator(s) early in the planning process to understand these requirements so that they can appropriately account for them in the construction plans and schedule. Construction budgets and schedules should also account for any unanticipated issues that may arise during construction, including those related to geology, undocumented utilities, encroachment, and flagging services, as these issues can disrupt the project timeline and add considerable expense.

Flagging

Flaggers are typically railroad employees (though they can be contractors officially trained by the railroad) who direct or restrict rail traffic for the duration of a project's construction period to keep workers, railroad employees, and customers safe. Railroads require flagging services when project activities are conducted near active tracks or when they could otherwise impact rail operations. For example, flaggers are required when tunneling under or building a bridge over active tracks. Arrangements for flagging services must be made well in advance to ensure that flagging staff are available according to the project schedule. Failure to make adequate arrangements might delay construction. Depending on the level of work to be performed, the railroad will likely provide right-of-way worker protection training to non-railroad employees working on or near active railroad tracks.

Trail developers are typically responsible for the cost of flagging services required during trail construction. These costs can be substantial, and typically depend on the number of days the flaggers are needed, rather than the number of hours per day. If flaggers are needed outside of regular work hours, an overtime rate will likely apply. Strategies to minimize the costs for flagging services include having the flaggers only work during regular business hours or providing incentives to the project contractor to complete certain tasks early. It is important to note that trail developers should not enter railroad property without prior coordination or permission from the railroad; otherwise, they are considered trespassers.

Flagging Examples

Along an upcoming extension of the Border-to-Border Trail in Washtenaw County, Michigan, two flaggers are required to be present during construction at a rate of approximately $1,200 per person per day. Where fencing separation and safety signage exists, however, construction proceeded without the use of flaggers. Even then, flaggers were mandated during construction of the fence itself.

Along the Denton Branch Rail Trail in Denton County, Texas, both the rail line and rail-with-trail were being constructed simultaneously, eliminating the need for flaggers. However, because design of a bicycle and pedestrian bridge was delayed, it was installed after the adjacent transit tracks were already active. This ended up costing the project manager $100,000 solely for flagging services; money that would have been saved had design and construction of the new bridge proceeded as planned.

Education

Few rail-with-trail managers report conducting formal safety education related to the adjacent active rail line; rather, most education efforts along rails-with-trails appear to comprise the same safety and etiquette guidelines common to all shared use paths. Still, trail developers and managers should explore potential education efforts with the railroad, as they may help allay safety concerns.

The safety education associated with existing rails-with-trails is primarily passive, such as signing, online resources, or print materials. In many cases, the existing "No Trespassing" signage installed by the railroad prior to trail development may be sufficient. Where fences are constructed along with the trail, similar signing may be required or desired at a regular interval, such as every 500 feet. Active safety education efforts, which are used less often, consist of online or in-person trail safety training, safety briefings in advance of organized walks, runs, or rides, or direct outreach to schools and workplaces. Ongoing education can prove to be an important tool to encourage safe behavior among trail users and potentially reduce liability exposure to both trail managers and railroads.

For many rails-with-trails, especially where the trail is constructed within the railroad right-of-way, design strategies negotiated with the railroad may reduce the need for safety education for trail users. High fences, safe crossings, adequate setback, and other solutions are all effective at minimizing trail user interaction with active tracks, often making additional signage or formal safety education unnecessary.

Many railroads participate in safety outreach, including posting signs at trailheads and crossings, attending community events, regular monitoring of tracks, and enacting and enforcing penalties for trespassers. In some cases, railroads often work with trail managers to promote rail-with-trail safety. UTA, for example, holds training programs about rail safety along trails intended specifically for children.[84]



SEPTA Customer Safety Day educates children and adults. (Photo courtesy of SEPTA)

[84] Operation Lifesaver, in partnership with Utah Transit Authority produced a video PSA about bike safety around tracks and trains: https://oli.org/video/view/bike-safety-tips-around-tracks-and-trains.

Education Examples

Along the Schuylkill River Trail and Five Star Trail, both in Pennsylvania, signs display an advisory warning to stay on the path. Trail managers need to ensure that warning signs explaining the importance of staying on authorized trails and directing trail users away from active tracks, where required or deemed necessary, are prominently displayed and regularly maintained.

Managers of the Traverse Area Recreation and Transportation Trail in Grand Traverse County, Michigan, organize approximately 10 events per year on trail safety education, in addition to regularly hosting both online and in-person safety trainings.



Traverse Area Recreation and Transportation Trail in Grand Traverse County, Michigan. (Photo of courtesy trailink.com)

Operation Lifesaver, Inc.

Most railroads also support and participate in Operation Lifesaver,[85] which is a nationally recognized nonprofit organization sponsored cooperatively by a wide variety of partners, including Federal, State, and local government agencies, highway safety and transportation organizations, and railroads. The organization is dedicated to educating the public about the dangers associated with highway-rail grade crossings and railroad rights-of-way, with the aim of ultimately ending collisions, deaths, and injuries at these locations.

The program specifically seeks to improve driver, bicyclist, and pedestrian behavior at highway-rail grade crossings by encouraging compliance with crossing signs and signals. Another focus is educating the public that trespassing on railroad rights-of-way, tunnels, trestles, and other railroad property is both illegal and dangerous.

Operation Lifesaver can be a valuable resource for both rail-with-trail managers and public and private railroad companies. As part of the safety education for a new or existing rail-with-trail, trail managers and railroad companies should encourage their State's Operation Lifesaver coordinator to discuss the possibility of arranging safety presentations and other education events for trail users. Additionally, they can help identify where safety information materials might be made available on a regular basis (e.g., at a trailhead information kiosk). Also, consider whether local bicycle sales or rental shops would be willing to distribute safety information.

Security, Crime, and Vandalism

While stakeholders and community members may raise fears of crime and other security concerns during the rail-with-trail planning process, in general, trails are unlikely to experience security and safety issues significantly different from the surrounding area. Strategies to reduce or prevent crime that are commonly used for many shared use paths can be applied effectively to rails-with-trails. These include regular patrols, frequent trail programming, clear sight lines, and lighting.

[85] https://oli.org/

However, with rails-with-trails, the trail manager has the added responsibility of ensuring that trail users stay away from railroad operations and only cross tracks at designated locations. While no formal study has evaluated the effect of rails-with-trails on trespassing and vandalism along parallel rail lines, there is anecdotal evidence that some rails-with-trails have demonstrated a positive impact on crime along adjacent tracks. In many cases, simply the presence of an alternate and designated route for pedestrians can reduce trespassing on tracks and other off-limits railroad property. In addition, design strategies can also reduce or prevent crime along rails-with-trails (see Section VI for more information). Strong, secure, and damage-resistant construction materials and landscaping should be used, particularly where it serves as separation between the trail and tracks. Secured access areas (e.g., parking lots, storage areas), barrier systems (e.g., gates, fences, access control), lighting, and video monitoring can also be installed to address security concerns.

Most railroads rely on local police departments to enforce trespassing and vandalism laws along their corridors. However, most police departments respond as needed, rather than having regular patrols. While some railroads conduct their own monitoring, railroad monitoring typically does not extend to the trail issues unless activities on the trail impact the railroad property.

Unless specifically required in the acquisition or development agreement with the railroad, rail-with-trail managers should use their discretion as to whether trail patrols are necessary and how frequently they should occur. While some law enforcement agencies may be willing to conduct patrols, volunteers can also be used to patrol a rail-with-trail. When using volunteers, rail-with-trail managers should be sure to inform and empower participants in any such program with whom to call and what intervention to take if they witness trespassing or other crime on active railroad tracks.

The railroad and trail managers should cooperate to develop protocols for notifying each other of scheduled activities or events that could affect co-located uses or of any observed instances of trespassing or unauthorized activity, or of the occurrence of accidents or injuries, so that appropriate responsive action can be taken.

Security, Crime, and Vandalism Examples

The Frisco Trail in Fayetteville, Arkansas is located on a site that once saw frequent pedestrian use of an active Arkansas & Missouri Railroad line that ran through the city's downtown area. Now, city residents and visitors instead use the rail-with-trail to access nightlife and other amenities. Similarly, along the Camp Chase Trail in Columbus, Ohio, a new rail-with-trail bridge provides a safe way for pedestrians to cross Interstate 270 in the same location where trespassing was once a frequent occurrence on the railroad bridge itself.

Local officials familiar with the County Line Trail in Wayne County, Ohio, report seeing a reduced frequency of illegal dumping, trespassing on railroad property, and illegal all-terrain vehicle activity since the trail opened, despite not having any formal patrolling program.



Cafe along the Frisco Trail in Fayetteville, Arkansas. (Photo courtesy of the City of Fayetteville)

The manager of the Thun Trail section of Pennsylvania's Schuylkill River Trail runs a grant-funded, dedicated volunteer patrol program called the Schuylkill River Trail Ambassadors. Each ambassador commits to eight-hour shifts of traveling the trail and filing incident reports when appropriate. The Washington, DC, section of the Metropolitan Branch Trail features a similar program called the DC Trail Rangers. The program, funded by the DC DOT and run by the Washington Area Bicyclist Association, also equips Trail Rangers with the tools and skills necessary to perform simple maintenance tasks. The Frisco Trail in Fayetteville, Arkansas has a similar program.

Trail Maintenance

As with any shared use path, maintenance is important to mitigate or eliminate safety issues, extend the life of a trail, and provide trail users with a quality experience. Maintenance activities may include sweeping, mowing or cutting debris, patching holes in fences, replacing signs, and resurfacing. The majority of existing rails-with-trails are maintained by government agencies; less common are trail groups and volunteers who take a primary or secondary role in maintenance activities. Railroad owners are rarely involved in conducting regular trail maintenance activities.

An important aspect of maintenance for a rail-with-trail is related to the railroad's own maintenance activities along the adjacent tracks. Railroads require access to their tracks for routine and emergency maintenance and other activities, including tie and track replacement; drainage culvert cleaning; bridge and tunnel inspection and repairs; switching and communications equipment access and maintenance; and crossing equipment servicing and repairs. While railroads often service their tracks, drainage systems, bridges, and other structures on or from the tracks, many prefer to have landside access as well, with enough space to allow ample room for truck access, turning, and tie replacement.

Maintenance activities performed off-track are most commonly accomplished by having trucks drive alongside the tracks on maintenance roads or, in some cases, on the side of the ballast near the rails themselves. Even situations where work is performed primarily from the tracks can impact an adjacent trail. For example, tie replacement machines, which are track-mounted, release old ties out on one side while installing new ties from the other side.

If a rail-with-trail is located near an active track, the trail manager should assume that the trail itself may well become the maintenance road for the railroad. Several possible methods are available to address shared trail-railroad maintenance roads. For example, the trail can be constructed to accommodate heavy railroad trucks and equipment. Fencing can be designed for easy removal and reinstallation or constructed with sliding gates. Entrance signs should include a warning that, "Trail May Be Closed at Any Time Without Notice." The trail should also include a gate or other barrier to quickly close the facility to public access.

Whether rail maintenance activities are performed directly from the rail-with-trail or immediately adjacent to it, they can significantly impact the trail's surface, vegetation, separation techniques, and trailside amenities. Debris and other objects left on the trail by railroad personnel during maintenance activities might become the responsibility of the trail manager. Such debris should be removed promptly. Typically, a rail-with-trail manager will be responsible for closing the trail when the railroad requires access that may impact the public's safety.

Camp Chase Trail

Along Ohio's Camp Chase Trail, the trail manager is required to notify the railroad in advance of any type of work being done on the trail, as well as inform them of how close maintenance workers will be to the tracks. Maintenance staff were also required to attend railroad safety classes to adequately prepare them for the responsibilities and limitations of working within an active rail corridor.



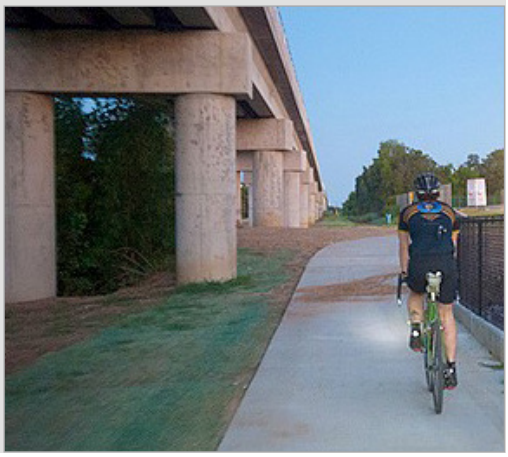
Camp Chase Trail in Georgesville, Ohio.
(Photo courtesy of the Rails-to-Trails Conservancy)

A comprehensive operations and management plan should detail the procedures and responsibilities when the railroad has either a routine or emergency maintenance access need. The plan should specifically lay out trail closure procedures should the railroad or trail manager ever anticipate the possibility. Details on how to remove and reinstall any fence or other barrier, as well as identification of the entity responsible and any compensation to be provided should the trail's surface, fence, landscaping, or other trail amenities be damaged or destroyed by maintenance activities of the railroad, should also be formally included in an operations and management plan and/or the trail acquisition agreement. While occasions where trail maintenance activities impact rail operations or maintenance are rare, an operations and management plan should also outline the procedure and responsibilities associated with any such activities.

Another important issue is responsibility for retaining walls, cut-and-fill areas, drainage culverts, barriers and signs, and bridges. For example, a new rail-with-trail may require extension of an existing cut area or construction of a retaining wall. This area may already have erosion or landslide problems that are handled by the railroad. Rail-with-trail managers may need to assume full responsibility for any structure, culvert, or natural condition within its easement, regardless of whether or not it is a preexisting condition.

Denton Branch Rail Trail

When the Denton Branch Rail Trail was converted back to rail use, a public outreach campaign was conducted to alert trail users that the trail would be temporary closed, relocated within the right-of-way, and reopened adjacent to the new DCTA A-train commuter line. The Department of Parks and Recreation for the city (Parks Department) relied heavily on social media to raise awareness, put articles in the local newspaper as well as in the *Playguide* (the Parks Department's semi-annual mailer that is sent to every household in Denton), and installed signage along the trail corridor. DCTA also conducted an ad campaign and used various forms of outreach to raise awareness of the new transportation route, including both train and trail. These methods by the Parks Department and DCTA were meant to alert residents and trail users of the impending change.



Denton Branch Trail in Texas. (Photo courtesy of the Rails-to-Trails Conservancy)

Vegetation Management

Managing vegetation along any shared use path is important to ensuring safety. Along rails-with-trails, trail managers should take extra care to ensure that trail vegetation does not infringe on the railroad right-of-way or obstruct railroad sight lines.[86] Vegetation management includes tree pruning, tree removal (including fallen trees), and mowing. Such activities can be labor intensive and costly, so trail developers should consider vegetation management as part of a trail's feasibility analysis. Specifically, this should include a delineation of which entity, the trail manager or railroad, is responsible for maintaining vegetation, how often, and any shared responsibility for vegetation management.

[86] FRA's regulation on drainage is found at 49 CFR § 213.33.

Metropolitan Branch Trail

Some of the maintenance on the Washington, D.C., section of the Metropolitan Branch Trail is done by seasonal Trail Rangers employed by the Washington Area Bicyclist Association and funded by the D.C. DOT. The rangers carry tools that allow them to prune vegetation that is encroaching onto the trail or rail corridor and weed such potentially harmful vegetation as poison ivy. For larger tasks, such as tree removal, the rangers file maintenance requests with the city's Department of Public Works.

Vegetation maintenance on the Washington, D.C., section of the Metropolitan Branch Trail is done by a combination of seasonal trail rangers and the city's Department of Public Works (Photo courtesy of Wikimedia Commons)



Section VIII: Next Steps

The purpose of this report is to document the current state of the practice, perspectives, and context for rails-with-trails and identify effective practices for planning, designing, constructing, and maintaining rails-with-trails. Through conducting extensive research into existing and planned rails-with-trails, the research team identified opportunities for additional research and guidance on rails-with-trails. These may include:

- Developing additional specifications, standards, and guidelines for planning, designing, constructing, and maintaining rails-with-trails;
- Conducting research on the effect that rails-with-trails have on trespassing on private property, including railroad rights-of-way;
- Conducting additional research on effective practices for designing and constructing rails-with-trails at common pinch points, including bridges and tunnels; and
- Conducting additional research on rails-with-trails in other countries, including where they are successful and effective processes for developing these facilities.

Appendix A: Definitions

Americans with Disabilities Act: The Americans with Disability Act (ADA) was signed into law on July 26, 1990. It is one of America's most comprehensive pieces of civil rights legislation that prohibits discrimination against people with disabilities.

Architectural Barriers Act: The Architectural Barriers Act of 1968 requires that buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968 be accessible to people with disabilities.

At-Grade Crossing: An intersection (crossing) where roadways, trails (including rails-with-trails), and railroad tracks cross at the same level.

Centerline: An imaginary line midpoint between the track rails that conforms to the geometry of that track. «Centerline» often is used in reference to the nearest track to a rail-with-trail when discussing such issues as setback and separation.

Class I Railroad: As currently defined by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1-1), a railroad with annual operating revenue of $447,621,226 or more based on 2017 dollars.

Class II Railroad: As currently defined by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1-1), a railroad with annual operating revenue of between $35,809,699 and $447,621, 225 based on 2017 dollars.

Class III Railroad: As currently defined by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1-1), a railroad with annual operating revenue of $35,809,698 or less based on 2017 dollars. These include short-line and light-density railroads.

Code of Federal Regulations (CFR): The codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

Commuter Rail: Urban passenger train service for travel generally between a central city and its suburbs, excluding rapid transit (e.g., subways) and light rail service.

Dynamic Envelope: The clearance required for light rail transit traffic or a train and its cargo overhang due to any combination of loading, lateral motion, or suspension failure.

Excursion Trains: Generally, trains used by a private enterprise catering to the leisure or tourism market, such as dinner trains or tourist trains to an historical destination.

Federal Highway Administration: As a modal administration of U.S. DOT, the Federal Highway Administration (FHWA) coordinates highway transportation programs in cooperation with States and other partners to enhance the country's safety, economic vitality, quality of life, and the environment. Major program areas include the Federal-Aid Highway Program, which provides Federal financial assistance to the States to construct and improve the National Highway System, urban and rural roads, bridges, and pedestrian and bicycle facilities.

Federal Railroad Administration: As a modal administration of U.S. DOT, the Federal Railroad Administration (FRA) promotes safe and environmentally sound rail transportation. FRA sets and enforces safety standards for track, signals, motive power and equipment, hazardous materials, operating practices, and highway-rail crossings. The FRA conducts research and development projects to support its safety mission and enhance the railroad system as a national transportation resource. FRA also administers public education campaigns addressing highway-rail grade crossing safety and the danger of trespassing on rail property.

Federal Transit Administration: As a modal administration of U.S. DOT, the Federal Transit Administration (FTA) assists in developing improved mass transportation systems for cities and communities nationwide. Through its grant programs, FTA helps plan, build, and operate transit systems with convenience, cost, and accessibility in mind.

Flangeway: An opening, parallel to a rail, made through platforms, pavements, track structures, etc., to permit passage of wheel flanges. The groove between the rail and the pavement edge.

Grade-Separated Crossing: An intersection of road or trail and railroad tracks where two or more crossing routes are at different elevations such that the flow of traffic is not disrupted. This can be achieved by using an underpass (tunnel) or overpass (bridge). A grade-separated crossing can reduce delay and risk to users and equipment, as compared to an at-grade crossing.

Heavy Rail Transit: Exclusive rights-of- way, multi-car trains, high speed rapid acceleration, sophisticated signaling, and high platform loading characterize heavy rail transit. In general terms, heavy rail transit is also known as subway, elevated railway, or metropolitan railway (metro).

Invitee: A person entering upon the property of another for business purposes or because of a public invitation extended by the property owner.

Licensee: A person who is privileged to enter or remain on land by virtue of the possessor's consent, such as a social guest.

Light Rail Transit: Light rail transit may involve exclusive or shared rights-of-way, high or low platform loading, and multi-car trains or single cars which are automated or manually operated. In general usage, light rail includes trolley cars, streetcars, and tramways.

Manual on Uniform Traffic Control Devices: The Manual on Uniform Traffic Control Devices (MUTCD) provides standards and guidelines for traffic control devices that regulate, warn, and guide road users along the highways and byways in the United States. FHWA published the most recent edition in 2009 with revisions in 2012. Part 8 provides guidelines for signs, signals, markings, and other warning devices at all highway-rail grade crossings. Part 9 provides standards for bicycle facilities including on-road treatments and shared use paths. See https://mutcd.fhwa.dot.gov/ for more information.

National Highway Traffic Safety Administration: As a modal administration of U.S. DOT, the National Highway Traffic Safety Administration (NHTSA) sets and enforces safety and performance standards for motor vehicles and equipment; helps States and local communities reduce the threat of impaired drivers; promotes the use of safety belts, child safety seats, and air bags; provides consumer information on motor vehicle safety topics; conducts research on driver behavior and traffic safety; and promotes traffic safety for pedestrians and bicyclists.

Passenger Rail: Rail transportation that carries passengers rather than freight, such as Amtrak and other intercity carriers, but typically not referring to heavy rail transit or light rail transit.

Railbanking: The use of voluntary agreements between railroads and trail agencies to preserve out-of-service railroad corridors as a trail until a railroad might need the corridor again for rail service.

Railroad Right-of-Way: The private property limits owned by the railroad.

Rail-Side Trail: Alternate term for rail-with-trail commonly used internationally.

Rails-to-Trails Conservancy (RTC): A nonprofit organization dedicated to creating a nationwide network of trails from former rail lines and connecting corridors to build healthier places for healthier people.

Rail-Trail, or Rail-to-Trail: A trail developed on an abandoned or converted railroad line where there is no active rail service.

Rail-with-Trail: A shared-use path or trail open and developed for public use that is located on or directly adjacent to an active railroad or rail transit corridor.

Separation: A barrier, such as fencing, wall, vegetation, body of water, or vertical elevation difference, that separates a railroad track or railroad corridor and a rail-with-trail, in order to prevent or discourage access to an active rail right-of-way by trail users.

Shared-Use Path: A trail (including rails-with-trails and rail-trails) that is physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way. Shared-use paths may be used by bicyclists, pedestrians, skaters, wheelchair users, runners and other nonmotorized users.

Short-Line Railroad: See Class III Railroad.

Siding: A track auxiliary to the main track used for meeting, passing, or storing trains.

Trespasser: A person who enters any private property without permission of the owner or without having an official reason to enter that property.

U.S. Department of Transportation: Established by an Act of Congress in 1966, the U.S. Department of Transportation's (U.S. DOT) mission is to *serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.*

Appendix B: Resources

Rail Safety Information

The Federal Railroad Administration provides information on freight railroad safety statistics nationwide, including rail trespassing. Under 49 CFR Part 225 (Railroad Accidents/Incidents, Reports Classification, and Investigations), freight railroads are required to provide monthly reports to FRA on accidents, incidents, or fatalities that meet certain criteria. Among other information, railroads indicate whether an individual was trespassing at the time of the casualty. Information and data on rail safety is available at the following websites:

- Safety Analysis webpage: https://safetydata.fra.dot.gov/officeofsafety/default.aspx.
- Trespasser Casualties Database: https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/castally4.aspx.
- Trespassing Prevention webpage: https://www.fra.dot.gov/Page/P0846.

Federal Railroad Administration. December 2016. *Rail Safety Fact Sheet.* Available at https://cms7.fra.dot.gov/newsroom/rail-safety-fact-sheet.

Federal Railroad Administration. *Train Horn Rule and Quiet Zones*. Available at https://www.fra.dot.gov/Page/P0889.

Federal Transit Administration. January 2016. *Rail Safety Statistics Report 2007-2013.* Available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Rail%20Safety%20Statistics%20Report.pdf.

Federal Railroad Administration. *High-Security Fencing for Rail Right-of-way Applications: Current Use and Best Practices* (October 2015). Available at www.fra.dot.gov/Elib/Document/15476.

Federal Transit Administration. *National Transit Database (NTD).* Available at https://www.transit.dot.gov/ntd.

Federal Transit Administration. *Safety & Security Major-Only Time Series Data.* Available at https://www.transit.dot.gov/ntd/data-product/safety-security-major-only-time-series-data.[87]

Bureau of Transportation Statistics. *National Transportation Statistics.* Available at https://www.bts.gov/topics/national-transportation-statistics.[88]

Operation Lifesaver Inc. https://oli.org/

Trail Design Resources

American Association of State Highway and Transportation Officials. 2012. *Guide for the Development of Bicycle Facilities, 4TH Edition.*[89]

American Association of State Highway and Transportation Officials. 2004. *Guide for the Planning, Design, and Operation of Pedestrian Facilities, 1st Edition*.[90]

Federal Highway Administration. Multiple design resources are available on FHWA's Bicycle and Pedestrian Resources webpage at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/resources/. Many documents have concepts applicable to rails-with-trails.

Federal Highway Administration. September 2015. *FHWA Guidance: Bicycle and Pedestrian Provisions of Federal Transportation Legislation.* Available at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/guidance_2015.cfm.

[87] As of 2008, the NTD no longer reports trespassing as a separate data category.

[88] Provides summaries of rail safety data including for freight, transit, and intercity passenger rail (Amtrak).

[89] At the time of publishing this report, a new version is under development.

[90] At the time of publishing this report, a new version is under development.

Federal Highway Administration. May 2012. *Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 Edition with Revisions Number 1 and 2 incorporated.* Available at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/pdf_index.htm.

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Federal Highway Administration. November 2002. *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings.*

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Rails-to-Trails Conservancy. 2013. *A Preliminary Assessment of Safety and Grade Crossings*. Available at http://atfiles.org/files/pdf/rwtgradex05.pdf.

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Transportation Research Board. *TCRP Report 175: Guidebook on Pedestrian Crossings of Public Transit Rail Services*. 2015. Available at http://www.trb.org/Main/Blurbs/172320.aspx.

U.S. Access Board. *Guide to the ADA Standards.* Available at https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards.

U.S. Access Board. *Guidelines and Standards: Streets & Sidewalks*. Available at https://www.access-board.gov/guidelines-and-standards/streets-sidewalks.

U.S. Access Board. *Guidelines and Standards: Outdoor Developed Areas*. Available at https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas.

Railroad and Public Transportation Agency Rail-with-Trail Policies CSX Transportation. July 2017. *Public Project Information*: *For Construction and Improvement Projects that May Involve the Railroad.* Available at https://www.csx.com/index.cfm/library/files/about-us/property/public-project-manual/.

Norfolk Southern Corporation. September 2013. *Public Projects Manual.* Available at http://www.nscorp.com/nscorphtml/pdf/Customers/public_projects_manual.pdf.

North Coast Rail Authority. May 13, 2009. *Policy and Procedures Manual.* Available at http://www.northcoastrailroad.org/Agendas/2009/Item_G.8.pdf.

SEDA Council of Governments Joint Rail Authority. June 2008. *Rails-with-Trails Standards.* Available at http://www.sedacograil.org/Documents/Rails%20with%20Trails%20Standards%20with%2008%20amendments.pdf.

Southern California Regional Rail Authority. May 2010. *Rail-with-Trail Design Guidelines.* Available at https://www.metrolinktrains.com/globalassets/about/engineering/rail_with_trail_design_guidelines.pdf.

Union Pacific Railroad and BNSF Railway. January 5, 2016. *Guidelines for Railroad Grade Separation Projects.* Available at https://www.up.com/cs/groups/public/documents/document/pdf_rr_grade_sep_projects.pdf.

Utah Transit Authority. July 2010. *Light Rail Design Criteria Guidelines.* Available at http://www.rideuta.com/uploads/UTALRTDesignCriteriaRevision5.pdf.

State Rail-with-Trail Guidelines

California Department of Transportation. July 2005. *Pedestrian and Bicycle Facilities in California. A Technical Reference and Technology Transfer Synthesis for Caltrans Planners and Engineers*. Available at https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/f0018152-technical-reference-a11y.pdf.

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Massachusetts Highway Department. 2006. *Project Development & Design Guide. Chapter 11: Shared Use Paths and Greenways.* Available at https://www.mass.gov/files/documents/2018/08/08/pddg.pdf.

Minnesota Department of Natural Resources. 2007. *Trail Planning, Design, and Development Guidelines*.

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U.S. Department of Transportation
Federal Railroad Administration



U.S. Department of Transportation
Federal Highway Administration

DOCUMENT # FHWA-HEP-20-028

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 9 – Willits Rail with Trail Project Update and Notice of Determination

NOD - Notice of Determination

Received
2/20/2024

Posted
2/20/2024

Document Description
The project would construct an approximately 1.6-mile Class 1 Trail (pedestrian and bicycle) from East Commercial Street to East Hill Road within the Great Redwood Trail Agency (formerly North Coast Railroad Authority) right of way and Willits City limits. Installation of the trail would improve access and safety for pedestrian and bicycle users as well as create opportunities for nature study and recreation.

Contact Information

Name
Elaine Hogan

Agency Name
Great Redwood Trail Agency

Job Title
General Manager

Contact Types
Lead/Public Agency

Address
419 Talmage Road Suite M
Ukiah, CA 95525

Phone

Notice of Determination

Approving Agency
Great Redwood Trail Agency

Approving Agency Role
Responsible Agency

Approved On
2/13/2024

County Clerk
Mendocino

Final Environmental Document Available at
https://cityofwillits.org/285/Rail-Trail-Project City of Willits 111 E. Commercial Street Willits, CA 95490

Determinations

(1) The project will have a significant impact on the environment
Yes

(2a) An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA
No

(2b) A Mitigated or a Negative Declaration was prepared for this project pursuant to the provisions of CEQA
Yes

(2c) An other document type was prepared for this project pursuant to the provisions of CEQA
No

state.clearinghouse@opr.ca.gov or via phone at (916) 445-0613. For more information, please visit OPR's Accessibility Site.

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 10 – Great Redwood Trail Agency website Excerpt

Print Form

Notice of Determination

Appendix D

To:

☒ Office of Planning and Research

U.S. Mail:	*Street Address:*
P.O. Box 3044	1400 Tenth St., Rm 113
Sacramento, CA 95812-3044	Sacramento, CA 95814

☒ County Clerk
County of: Mendocino
Address: 501 Low Gap Road
Ukiah, CA 95482

From:
Public Agency: Great Redwood Trail Agency
Address: 419 Talmage, Suite M
Ukiah, CA 95482
Contact: Elaine Hogan, General Manager
Phone: 916-759-7802

Lead Agency (if different from above):
City of Willits
Address: 111 East Commercial Street
Willits, CA 95490
Contact: Dusty Duley, Community Dvpmt Directo
Phone: 707-459-7112

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2022030663

Project Title: Willits Rail with Trail Project

Project Applicant: City of Willits

Project Location (include county): Willits, Mendocino County, CA

Project Description:

The project would construct an approximately 1.6-mile Class 1 Trail (pedestrian and bicycle) from East Commercial Street to East Hill Road within the Great Redwood Trail Agency (formerly North Coast Railroad Authority) right of way and Willits City limits. Installation of the trail would improve access and safety for pedestrian and bicycle users as well as create opportunities for nature study and recreation.

This is to advise that the Great Redwood Trail Agency has approved the above
(☐ Lead Agency or ☒ Responsible Agency)

described project on 2/13/24 (date) and has made the following determinations regarding the above described project.

1. The project [☒ will ☐ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☒ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☒ was not] adopted for this project.
6. Findings [☐ were ☒ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
Willits Community Development Dept., 111 East Commercial St, Willits, CA 95490

Signature (Public Agency): _____ Title: General Manager

Date: 02.20.2024 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 11 – BUILD Application Letters of Support

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON THE JUDICIARY - RANK'NG MEMBER
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON APPROPRIATIONS
COMMITTEE ON RULES AND ADMINISTRATION

United States Senate

July 10, 2019

The Honorable Elaine L. Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20590

Dear Secretary Chao:

I write to express my support for the City of Fort Bragg's application for funding from the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development (BUILD) grant program to rebuild Mendocino Railway's tunnel and rehabilitate and renew the rural rail line.

The City of Fort Bragg is requesting BUILD funds to assist Mendocino Railway in repairing a collapsed tunnel, replacing both 30,000 chromated copper arsenate railroad ties and worn rail ties, renewing an access trail, and creating eight fire suppression staging areas to benefit railroad operations and public safety. This would rehabilitate the Railway's approximately 40 mile rail line and allow for the resumption of freight and passenger services. Funding would allow Fort Bragg to facilitate efficient and safe freight and passenger transportation, reduce truck traffic, and further all aspects of the public interest.

Thank you for your consideration of the City of Fort Bragg's request. If you have questions, please do not hesitate to contact my San Francisco office at (415) 393-0707.

Sincerely,

Dianne Feinstein
United States Senator

DF:ae

WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

JARED HUFFMAN
2ND DISTRICT, CALIFORNIA

WASHINGTON OFFICE
1527 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-5161
FAX: (202) 225-5163

WEBSITE: huffman.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–0502

COMMITTEE ON
NATURAL RESOURCES
WATER, OCEANS, AND WILDLIFE – CHAIR
NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
ENERGY AND MINERAL RESOURCES

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
HIGHWAYS AND TRANSIT
WATER RESOURCES AND ENVIRONMENT

SELECT COMMITTEE ON THE
CLIMATE CRISIS

July 10, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

Dear Secretary Chao:

I am writing to support the City of Fort Bragg's FY2019 BUILD Grant application for approximately $24.8 million to repair the Mendocino Railway, formerly the California Western Railroad, which is known locally as the Skunk Train.

This project is an important public-private venture, with Mendocino Railway ready to contribute a 51% match through private donations and fees. Funds will be used to repair a tunnel that collapsed in 2015, as well as installing fencing, gates, and cameras to improve security. The project will also restore maintenance and storage buildings, allowing the railway to rehabilitate their entire 40-mile rail line while providing a crucial secondary access route between the geographically-isolated City of Fort Bragg and the rest of Mendocino County.

The Skunk Train carries an average of 60,000 tourists per year who contribute to the local economy, and it provides alternative transportation for public safety officers and visitors when roads close, or for those who do not want to drive. The project will also improve operational efficiencies by replacing 30,000 chromated copper arsenate railroad ties, which have half the life expectancy of regular ties and must be disposed of as hazardous waste.

The City of Fort Bragg and region would benefit from the renovation and re-opening of this historic railway, and I hope you will give this application your full and fair consideration.

Sincerely,

Jared Huffman

JARED HUFFMAN
Member of Congress

SAN RAFAEL
999 FIFTH AVENUE, SUITE 290
SAN RAFAEL, CA 94901
PHONE: (415) 258-9657
FAX: (415) 258-9913

PETALUMA
206 G STREET, #3
PETALUMA, CA 94952
PHONE: (707) 981-8967
FAX: (415) 258-9913

UKIAH
200 S. SCHOOL ST., SUITE 1
UKIAH, CA 95482
PHONE: (707) 671-7449
FAX: (707) 962-0905

FORT BRAGG
430 NORTH FRANKLIN STREET
P.O. BOX 2208
FORT BRAGG, CA 95437
PHONE: (707) 962-0933
FAX: (707) 962-0905

EUREKA
317 THIRD STREET, SUITE 1
EUREKA, CA 95501
PHONE: (707) 407-3585
FAX: (707) 407-3559

PRINTED ON RECYCLED PAPER

MIKE THOMPSON
5TH DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES
CHAIRMAN
SUBCOMMITTEE ON HEALTH

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

DISTRICT OFFICES:
2721 NAPA VALLEY CORPORATE DRIVE
NAPA, CA 94558
(707) 226-9898
420 VIRGINIA STREET, SUITE 1C
VALLEJO, CA 94590
(707) 645-1888
2300 COUNTY CENTER DRIVE, SUITE A100
SANTA ROSA, CA 95403
(707) 542-7182
CAPITOL OFFICE:
406 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3311
WEB: http://mikethompson.house.gov

July 9, 2019

The Honorable Elaine L. Chao
Secretary, U.S. Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, D.C. 20590-9898

RE: City of Fort Bragg – Application to the BUILD Grant Program

Dear Secretary Chao:

I am writing to request full and fair consideration of the recent application submitted by the City of Fort Bragg to the Better Utilizing Investments to Leverage Development (BUILD) grant program.

Specifically, Fort Bragg is seeking funds to assist the Mendocino Railway (MR) in repairing a collapsed tunnel, to replace 30,000 railway ties and a limited quantity of worn rail, and to create eight fire suppression staging areas. Among other things, the funds in question would also be used to install fencing, gates and security cameras and to renew an access trail.

These projects are intended to bolster the regional economy, create jobs, reduce greenhouse gas emissions, improve railway safety, and strengthen wildfire response capacities in the region. As a Member of Congress representing the neighboring Congressional district, I know well the importance of these goals to my constituents and the entire region. The collapse of one of the MR tunnels in 2015, in particular, has had a severe economic impact, undermining a rail system that for decades has been a major economic engine in the area.

Given the importance of these projects to my constituents and the surrounding communities, I ask that you fully and fairly consider Fort Bragg's application to the BUILD grant program.

Sincerely,

MIKE THOMPSON
Member of Congress

Printed on recycled paper

California State Senate

SENATOR MIKE McGUIRE

NORTHERN CALIFORNIA'S SECOND SENATE DISTRICT

June 27, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao:

I am writing to express my support for the City of Fort Bragg's application for the Better Utilizing Investments to Leverage Development (BUILD) grant on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train."

This grant will assist MR in repairing a collapsed tunnel, replacing 30,000 chromated copper arsenate railroad ties and worn rail. This important funding will also help MR with renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety by installing fencing, two gates, and security cameras to improve security. In addition the funding will help restore an engine house and add an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line.

The Project will not only promote economic development in the region, but it will improve the quality of life for the region's residents, result in environmental benefits, improve the safety of railroad operations, take trucks off the region's roads, create jobs, and could even help save lives.

As part of the Project, MR is also making improvements to assist it and local police and emergency responders with responding to incidents and fighting wildfires along the Line and in the region. Enhanced access for emergency responders and police provides residents with peace of mind. Moreover, such improvements will allow for a faster response time when major incidents occur. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has assisted with transporting fire crews and equipment into the surrounding

mountains to fight fires, transporting law enforcement officers to various emergencies, and transporting water during droughts.

MR was originally created to haul redwood logs from the forests to the oceanfront sawmill located at Fort Bragg; however, the railroad has also operated its world-renown Skunk Train (passenger operations) for many decades. Collectively, the MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years. MR also served as the last daily postal railroad in the United States. MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, when one of two tunnels on the MR (at approximately milepost 3.5) collapsed, the Line was severed and operations from over the entire 40 mile Line from Fort Bragg, California to Willits, California halted.

The collapse of the tunnel has had a profound effect on the region's economy because the tunnel collapse not only severed the Line and prevented MR from continuing to offer freight services, but also eliminated a large percentage of the Skunk Train's passenger offerings. For six decades, the Skunk Train has been named one of the 10 best tourist trains in North America. The Skunk Train has been a major economic engine for the region. With an average of 60,000 tourists riding the Line a year, the region benefits greatly because tourists spend an average of $9 on local businesses for every $1 spent on the MR. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

If awarded a 2019 BUILD Grant, the Project will benefit local industry, facilitate efficient and safe freight and passenger transportation, improve quality of life from the region's residents, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs. Not only does the Project supports economic growth of the surrounding area, but full restoration of the Line will allow MR to provide freight rail services to the soon to be opened, GP Lumber Mill, a 420-acre parcel between the ocean and downtown Fort Bragg. The GP Lumber Mill will bring jobs to Fort Bragg and Mendocino County, both of which are very rural and economical challenged. Other entities that have also expressed an interest in freight services once operations resume over the entire 40-mile Line, include Flowbeds, North Coast Brewing Company, Willits Redwood Company, Mendocino Land Trust, Lyme Timber, ER Energy, and Geo Aggrigates.

Additionally, the City of Fort Bragg currently ships its municipal solid waste ("MSW") over State Route 20 to get the MSW to Willits where it is processed. The City of Fort Bragg would like to eliminate this truck traffic. Transporting MSW alone will generate 1,000 annual carloads. However, the Line fully rehabilitated will open up countless freight possibilities and reduce truck traffic.

Without the repairs, Fort Bragg is cut off from MR and has no prospects for the resumption of freight and/or passenger service. MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape

because the previous owner Kyle Railroad cut corners on maintenance. MR has already invested heavily millions of dollars in rehabilitating the 40-mile Line, and simply cannot afford to undertake the approximately $25 million Project on its own.

While MR cannot fund the approximately $25 million Project entirely and still meet its other obligations, MR is fully committed to contributing 51% towards the project to ensure that the Line continues to drive economic growth in the region for the foreseeable future.

The City has submitted the Project for funding because rehabilitation of the tunnel is critically linked to ongoing and future economic growth in the region. Additionally, once the tunnel and the Line are fully rehabilitated and brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves.

Without funding from the 2019 BUILD Grant it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR only a finite window of time before reopening the entire Line could become cost-prohibitive.

The Project is fully consistent with the administration's goal to utilize transportation investments to drive the economy. The Project would allow the continuation of freight operations over the entire Line, would benefit local industry, would facilitate efficient and safe freight and passenger transportation, would enhance quality of life for the region's residents, and would stimulate economic growth not only in Fort Bragg, but also in the greater Mendocino County region.

I urge you to give the City of Fort Bragg's application your full consideration, as the Project would be a true economic catalyst for growth in the region. If our office can be of any assistance, please do not hesitate to call us at 916-651-4002.

Warmest Regards,



Mike McGuire
Senator

COMMITTEES
CHAIR: HEALTH
BUDGET
JOINT LEGISLATIVE AUDIT
WATER, PARKS, AND WILDLIFE

SUBCOMMITTEE
BUDGET SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES

Assembly
California Legislature

JIM WOOD
ASSEMBLYMEMBER, SECOND DISTRICT

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0002
(916) 319-2002
FAX (916) 319-2102

DISTRICT OFFICES
200 S SCHOOL STREET, SUITE D
UKIAH, CA 95482
(707) 463-5770
FAX (707) 463-5773

50 D STREET, SUITE 450
SANTA ROSA, CA 95404
(707) 576-2526
FAX (707) 576-2297

1036 5TH STREET, SUITE D
EUREKA, CA 95501
(707) 445-7014
FAX (707) 455-6607

June 28, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's BUILD 2018 Grant Application To Repair the Mendocino Railway's Tunnel and Rehabilitate Its Track

Dear Secretary Chao:

As Assemblymember of the 2nd District, I am writing to express my support for the City of Fort Bragg California's (the "City") 2018 Build Grant Application on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking money to allow MR to repair a collapsed tunnel and replace 30,000 chromated copper arsenate railroad ties (the "Project") using a combination of federal funding and MR funding (a public-private partnership). The tunnel, which is located on the approximately 40-mile MR rail line ("Line") at approximately milepost 3.5 serves as the link that connects Fort Bragg, California to Willits, California. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has assisted with transporting fire crews and equipment into the surrounding mountains to fight fires, transporting law enforcement officers to various emergencies, transporting water during droughts, and acted as the last daily postal railroad in the United States. MR was originally created to haul redwood logs from the forests to the oceanfront sawmill located at Fort Bragg; however, the railroad has also operated its world-renown Skunk Train (passenger operations) for over a century. Collectively, the MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years.

MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, one of two tunnels on the MR (at approximately milepost 3.5) foreclosed operations over 75% of the Line.

The collapse of the tunnel has had a profound effect on the region's economy because the tunnel collapse not only severed the Line and prevented MR from continuing to offer freight services, but also eliminated 75% of the Skunk Train's passenger offerings. For six decades, the Skunk Train has been named one of the 10 best tourist trains in North America. The Skunk Train has been a major economic engine for the region. With an average of 60,000 tourists riding the Line a year, the region benefits greatly because tourists spend an average of $9 on local businesses for every $1 spent on the MR. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

Printed on Recycled Paper

If awarded a BUILD grant, the Project will benefit local industry, facilitate efficient and safe freight and passenger transportation, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs. Not only does the Project support economic growth of the surrounding area, but restoration of the Line will allow MR to provide freight rail services to the soon to be opened, GP Lumber Mill, a 420-acre parcel between the ocean and downtown Fort Bragg. The GP Lumber Mill will bring jobs to Fort Bragg and Mendocino County, both of which are very rural and economical challenged. Other entities that have also expressed an interest in freight services once operations resume over the entire 40-mile Line, include Flowbeds, North Coast Brewing Company, Willits Redwood Company, Mendocino Land Trust, Lyme Timber, ER Energy (perhaps for propane), and the City of Fort Bragg for transportation of water.

Additionally, the community of Fort Bragg currently ships its municipal solid waste ("MSW") through town over State Route 20 and has long been looking for a way to eliminate the truck traffic and get the MSW to Willits where it is processed. Transporting MSW alone will generate 1,000 annual carloads. However, the Line fully rehabilitated will open up countless freight possibilities, reduce truck traffic, improve the quality of life for residents, and truly serve and further all aspects of the public interest.

Without the repairs, Fort Bragg is cut off from MR and has no prospects for the resumption of freight and/or passenger service. MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape because the previous owner Kyle Railroad cut corners on maintenance and installed 30,000 chromated copper arsenate railroad ties. The ties installed by Kyle Railroad have half the life expectancy of regular ties and need to be disposed of as hazardous waste. While MR has already invested millions of dollars in rehabilitating the 40-mile Line, MR simply cannot afford to undertake the Project, which is anticipated to cost approximately $16 million on its own.

While MR cannot fund the $16 million Project entirely and still meet its other obligations, MR is fully committed to contributing $8 million towards the project (50%) to ensure that the Line continues to be drive economic growth in the region for all industries. The City has submitted the Project for funding because rehabilitation of the tunnel is critically linked to ongoing and future economic growth in the region. Additionally, once the tunnel and railroad tracks are brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves.

In closing, the Project is fully consistent with the administration's goal to utilize transportation investments to drive the economy, would allow resumption of freight operations over the entire 40-mile Line, would benefit local industry, would facilitate efficient and safe freight and passenger transportation, and would stimulate economic growth not only in Fort Bragg, but also in the greater Mendocino County region. The Project would truly be an economic catalyst for growth in the region. Accordingly, I am asking that the Department of Transportation give through consideration to selecting the Project for a BUILD grant. Please feel free to contact me should have any additional questions, or if you need further information.

Sincerely,

JIM WOOD
Assemblymember, 2nd District

111 E. COMMERCIAL STREET
WILLITS, CALIFORNIA 95490
(707) 459-4601 TEL
(707) 459-1562 FAX

June 27, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

As City Manager of Willits, California I am writing to express my support for the City of Fort Bragg California's (the "City") application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train."

We understand that Fort Bragg is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[1] replacing 30,000 chromated copper arsenate railroad ties[2] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of services over MR's entire Line.

Willits is a small economically disadvantaged community with a median income of less than $30,000. Caltrans recently built a bypass around Willits which, while calming traffic, negatively affected our tourist industry to a large degree. The "Skunk Train" is an important asset that brings needed visitors to our community. The route to Fort Bragg through the

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[1] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, California to Willits, California.

[2] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

111 E. COMMERCIAL STREET
WILLITS, CALIFORNIA 95490
(707) 459-4601 TEL
(707) 459-1562 FAX

redwoods was a legendary and breathtakingly beautiful journey that few have the opportunity to witness. When I tell people that I am from Willits, typically the first thing they say, if they have been in the region, is how memorable it was to ride the train through the woods. Losing this route has been devastating to our community and to our economy.

The Project will promote economic development in the region and will improve the quality of life for the region's residents. As part of the Project, MR is even making some improvements to assist it and police and emergency responders with fighting wildfires and responding to incidents along the Line and in the region. Enhanced access for emergency responders and police provides residents with peace of mind that threats to their quality of life can be effectively handled. Moreover, such improvements will allow for a faster response time when major incidents occur. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has assisted with transporting fire crews and equipment into the surrounding mountains to fight fires, transporting law enforcement officers to various emergencies, and transporting water during droughts.

MR was originally created to haul redwood logs from the forests to the oceanfront sawmill located at Fort Bragg; however, the railroad has also operated its world-renown Skunk Train (passenger operations) for many decades. Collectively, the MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years. MR also served as the last daily postal railroad in the United States. MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, when one of two tunnels on the MR (at approximately milepost 3.5) collapsed, the Line was severed and operations from over the entire 40 mile Line from Fort Bragg, California to Willits, California halted.

The collapse of the tunnel has had a profound effect on the region's economy. For six decades, the Skunk Train has been named one of the 10 best tourist trains in North America. The Skunk Train has been a major economic engine for the region. With an average of 60,000 tourists riding the Line a year, the region benefits greatly because tourists spend an average of $9 on local businesses for every $1 spent on the MR. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

If awarded a 2019 BUILD Grant, the Project will benefit local industry, improve quality of life for the region's residents, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs.

111 E. COMMERCIAL STREET
WILLITS, CALIFORNIA 95490
(707) 459-4601 TEL
(707) 459-1562 FAX

MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape because the previous owner Kyle Railroad cut corners on maintenance. MR has already invested millions of dollars in rehabilitating the 40-mile Line, and simply cannot afford to undertake the approximately $25 million Project on its own.

It is our understanding that while MR cannot fund the approximately $25 million Project entirely and still meet its other obligations, MR is fully committed to contributing 51% towards the project to ensure that the Line continues to drive economic growth in the region for the foreseeable future. We also understand that once the tunnel and the Line are fully rehabilitated and brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves.

In closing, the City of Willits believes that The Project would truly be an economic catalyst for growth in the region. Accordingly, I am asking that the Department of Transportation give thorough consideration to selecting the Project for a 2019 BUILD Grant.

Sincerely,

Stephanie Garrabrant-Sierra
City Manager

Cc: Mayor Gerardo Gonzales, City of Willits

THOMAS D. ALLMAN
Sheriff-Coroner

Undersheriff Matthew Kendall

Captain Gregory L. Van Patten
Field Services
Captain Tim Pearce
Corrections

County of Mendocino
Office Of The Sheriff-Coroner

July 2, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

As Sheriff-Coroner of The Mendocino County Sheriff's Office ("MCSO")[1] I am writing to express MCSO's support for the City of Fort Bragg California's (the "City") application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[2] replacing 30,000 chromated copper arsenate railroad ties[3] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line.

The Project will not only promote economic development in the region, but it will improve the quality of life for the region's residents, result in environmental benefits, improve the safety of railroad operations, take trucks off the region's roads, create jobs, and could even help save lives. As part of the Project, MR is making some improvements, which will assist

[1] MCSO is committed to being an effective, professional and community oriented public safety agency through cooperative efforts. Time and again, MR have proven to be a valued partner of MCSO.

[2] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, California to Willits, California.

[3] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

951 Low Gap Road
Ukiah, California 95482-3734

707-463-4411
Fax 707-468-3404

MCSO and other police[4] and fire departments, and federal and state agencies in responding to incidents along the Line and in the region. MR and its predecessor's operations have been guided by its founder's mission to serve the communities in which it operates. In the modern era, MR's commitment to its community is extraordinary. MR constantly stands ready to do all it can to not only ensure that it serves as an engine for economic growth and region, but to simultaneously ensure that it supports a better quality of life for everyone in the communities which it serves. Put simply, no ask is too big for MR.

MR's proposed improvements include renewing the rail line's existing access trail and creating eight fire suppression staging areas. Such access/improvements will allow emergency responders, fire departments, and police departments to address incidents that do occur more quickly. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has provided MCSO and other neighboring police and fire departments critical assistance by moving responders and equipment into the surrounding mountains to fight fires and respond to other emergency and police situations.[5]

MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, when one of two tunnels on the MR (at approximately milepost 3.5) collapsed, the Line was severed and operations from over the entire 40 mile Line from Fort Bragg, California to Willits, California halted. The collapse of the tunnel has had a profound effect on the region's economy because the tunnel collapse not only severed the Line and prevented MR from continuing to offer freight services, but also eliminated a large percentage of the Skunk Train's passenger offerings. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

If awarded a 2019 BUILD Grant, the Project will benefit local industry, facilitate efficient and safe freight and passenger transportation, improve quality of life from the region's residents, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs. Not only does the Project supports economic growth of the surrounding area, but full restoration of the Line will allow MR to provide freight rail services to the soon to be opened, GP Lumber Mill.

Without the repairs, Fort Bragg is cut off from MR and has no prospects for the resumption of freight and/or passenger service. MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape because the previous owner Kyle Railroad cut corners on maintenance. MR has already invested heavily millions of dollars in rehabilitating the 40-mile Line, and simply cannot afford to undertake the approximately $25 million Project on its own and still meet its other obligations. However, MR is fully committed to contributing 50% or more towards the project to ensure that the Line continues to drive economic growth in the region for the foreseeable future. The City submitted the Project

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[4] Due to the region's unique topography, when necessary MCSO has looked to MR to assist law enforcement in search and rescue missions, and recovery of bodies. For example, in 2011, MR provided support for the manhunt for Aaron Basler, who murdered two people one along the route of the Skunk Train. MR supported the 41-day manhunt, by transporting equipment and personnel and providing logistics support to identify potential hiding places. MR's support was crucial because drone and aircraft (military grade) heat sensing technology couldn't successfully penetrate the forest. As such, law enforcement resorted to "boots on the ground," and the most logical means for transporting personnel in and out was by train.

[5] On average, MR provides the region's fire and police departments' assistance two to four times a year. Improving response time could without question save lives.

for funding because rehabilitation of the tunnel and the Line are critically linked to ongoing and future economic growth and quality of life in the region.

Once the tunnel and the Line are fully rehabilitated and brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves. Unfortunately, MCSO understands that if 2019 BUILD Grant funds are not obtained soon, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR a narrow window of opportunity before reopening the entire Line could become impossible.

In closing, the Project is fully consistent with the administration's goal to utilize transportation investments to drive the economy; would allow resumption of freight operations over the entire Line; would benefit local industry; would facilitate efficient and safe freight and passenger transportation; would enhance quality of life for the region's residents; would stimulate economic growth not only in Fort Bragg, but also in the greater Mendocino County region, and most important to MCSO could help the department save lives and property. As such, I am asking that the Department of Transportation give thorough consideration to selecting the Project for a 2019 BUILD Grant. Please feel free to contact me should have any additional questions, or if you need further information at 707-272-4924 (cell).

Sincerely,



Thomas D. Allman
Sheriff-Coroner

FORT BRAGG FIRE PROTECTION AUTHORITY

141 N. Main Street
Fort Bragg, California 95437
(707) 961-2831
Fax (707) 961-2821

STEVE ORSI
Fire Chief

July 2, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

As Chief of Fort Bragg Fire Department ("FBFD")[1] I am writing to express FBFD's support for the City of Fort Bragg California's (the "City") application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[2] replacing 30,000 chromated copper arsenate railroad ties[3] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate

[1] The City of Fort Bragg and the Fort Bragg Rural Fire Protection District formed a Joint Powers Authority in 1990 to jointly provide fire services as the FBFD within the City of Fort Bragg and outlying rural areas. FBFD is an extraordinarily strong and capable volunteer fire department with 36 firefighters and four auxiliary members. FBFD has four paid positions in the department: a full-time Fire Chief, an Office Manager, a Maintenance Engineer, and a Fire Prevention Officer. FBFD's paid personnel and volunteer firefighters actively dedicate themselves to protecting life and property. FBFD's operations are conducted out of three facilities.

[2] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, California to Willits, California.

[3] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line.

The Project will not only promote economic development in the region, but it will improve the quality of life for the region's residents, result in environmental benefits, improve the safety of railroad operations, take trucks off the region's roads, create jobs, and could even help save lives. As part of the Project, MR is also making some improvements, which will assist FBFD and other fire departments, police departments, and emergency responders with fighting wildfires and responding to incidents along the Line and in the region. These improvements include renewing the rail line's existing access trail and creating eight fire suppression staging areas. Such access/improvements will allow emergency responders and the police department to address incidents that do occur more quickly. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has provided FBFD and other neighboring fire departments critical assistance by moving responders and equipment into the surrounding mountains to fight fires and respond to other emergency situations.[4]

MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, when one of two tunnels on the MR (at approximately milepost 3.5) collapsed, the Line was severed and operations from over the entire 40 mile Line from Fort Bragg, California to Willits, California halted. The collapse of the tunnel has had a profound effect on the region's economy because the tunnel collapse not only severed the Line and prevented MR from continuing to offer freight services, but also eliminated a large percentage of the Skunk Train's passenger offerings. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

If awarded a 2019 BUILD Grant, the Project will benefit local industry, facilitate efficient and safe freight and passenger transportation, improve quality of life from the region's residents, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs. Not only does the Project supports economic growth of the surrounding area, but full restoration of the Line will allow MR to provide freight rail services.

Without the repairs, Fort Bragg is cut off from MR and has no prospects for the resumption of freight and/or passenger service. MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape because the previous owner Kyle Railroad cut corners on maintenance. MR has already

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[4] On average, MR provides the region's fire and police departments assistance two to four times a year. Strategically locating fire surpression equipment could generally reduce emergency response time by 30 minutes. Moreover, should an accident cut off highway access in the mountaneous regions the benefit would be even greater. Improving fire response time even a handful of years has tremendous value not only with respect to saving property, but also with respect to saving lives.

invested heavily millions of dollars in rehabilitating the 40-mile Line, and simply cannot afford to undertake the approximately $25 million Project on its own and still meet its other obligations. However, MR is fully committed to contributing 50% or more towards the project to ensure that the Line continues to drive economic growth in the region for the foreseeable future. The City submitted the Project for funding because rehabilitation of the tunnel and the Line are critically linked to ongoing and future economic growth and quality of life in the region.

Once the tunnel and the Line are fully rehabilitated and brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves. Unfortunately, FBFD understands that if 2019 BUILD Grant funds are not obtained soon, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR only a finite window of time before reopening the entire Line could become cost-prohibitive.

In closing, the Project is fully consistent with the administration's goal to utilize transportation investments to drive the economy; would allow resumption of freight operations over the entire Line; would benefit local industry; would facilitate efficient and safe freight and passenger transportation; would enhance quality of life for the region's residents; would stimulate economic growth not only in Fort Bragg, but also in the greater Mendocino County region, and most important to FBFD could help the department save lives and property. As such, I am asking that the Department of Transportation give thorough consideration to selecting the Project for a 2019 BUILD Grant. Please feel free to contact me should have any additional questions, or if you need further information.

Sincerely,

Steve Orsi
Chief

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
17901 N. Hwy 101
Willits, CA 9549
707-459-7412
Website: www.fire.ca.gov

July 2, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

As Battalion Chief of Cal Fire Mendocino Unit ("CFMU")[1] I am writing to express CFMU's support for the City of Fort Bragg California's (the "City") application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[2] replacing 30,000 chromated copper arsenate railroad ties[3] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line.

The Project will not only promote economic development in the region, but it will improve the quality of life for the region's residents, result in environmental benefits, improve the safety of railroad operations, take trucks off the region's roads, create jobs, and could even help save lives. As part of the Project, MR is also making some improvements, which will

[1] The California Department of Forestry and Fire Protection (Cal Fire) serves and safeguards the people and protects the property and resources of California.
[2] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, California to Willits, California.
[3] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

assist CFMU and other fire departments, police departments, and emergency responders with fighting wildfires and responding to incidents along the Line and in the region. These improvements include renewing the rail line's existing access trail and creating eight fire suppression staging areas. Such access/improvements will allow emergency responders and the police department to address incidents that do occur more quickly. Fort Bragg, California is located on a remote section of the coast, with difficult roads, so historically MR has provided CFMU and other neighboring fire departments critical assistance by moving responders and equipment into the surrounding mountains to fight fires and respond to other emergency situations.[4]

MR's predecessor origins date back to 1885 when Charles R. Johnson opened a large oceanfront sawmill and created the CWR to transport redwood logs from the hills to the mill. Historically, CWR and the Skunk Train provided significant freight and passenger services. However, by the early 2000s, the lumber mill closed, and the railroad was in financial peril. In 2004, MR's parent company rescued MR and began efforts to fully restore freight and passenger operations. Unfortunately, in 2015, when one of two tunnels on the MR (at approximately milepost 3.5) collapsed, the Line was severed and operations from over the entire 40 mile Line from Fort Bragg, California to Willits, California halted. The collapse of the tunnel has had a profound effect on the region's economy because the tunnel collapse not only severed the Line and prevented MR from continuing to offer freight services, but also eliminated a large percentage of the Skunk Train's passenger offerings. Without the MR and the Skunk Train, the region's rural economy will be missing the catalyst that keeps the region financial viable.

If awarded a 2019 BUILD Grant, the Project will benefit local industry, facilitate efficient and safe freight and passenger transportation, improve quality of life from the region's residents, and stimulate economic growth. Rehabilitation of the tunnel will maintain a critical transportation asset, stimulate new economic opportunities, and create new jobs. Not only does the Project supports economic growth of the surrounding area, but full restoration of the Line will allow MR to provide freight rail services to the soon to be opened, former GP Lumber Mill. Even more important, the Project will ensure that MR can continue to provide invaluable support to CFMU and the firefighters, who risk their lives every day to protect life and property.

Without the repairs, Fort Bragg is cut off from MR and has no prospects for the resumption of freight and/or passenger service. MR, a small company, simply does not have the funds or resources to take on this Project alone. At the time MR purchased the Line it was in bad shape because the previous owner Kyle Railroad cut corners on maintenance. MR has already invested heavily millions of dollars in rehabilitating the 40-mile Line, and simply cannot afford to undertake the approximately $25 million Project on its own and still meet its other obligations. However, MR is fully committed to contributing 50% or more towards the project to ensure that the Line continues to drive economic growth in the region for the foreseeable future. The City submitted the Project for funding because rehabilitation of the tunnel and the Line are critically linked to ongoing and future economic growth and quality of life in the region.

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[4] On average, MR provides the region's fire and police departments assistance two to four times a year. Strategically locating fire suppression equipment could generally reduce emergency response time by 30 minutes. Moreover, should an accident cut off highway access in the mountainous regions the benefit would be even greater. Improving fire response time even a handful of years has tremendous value not only with respect to saving property, but also with respect to saving lives.

Once the tunnel and the Line are fully rehabilitated and brought into a state of good repair, MR is fully committed to maintaining the Line to ensure the Line remains an engine for continued economic growth in the rural region that MR serves. Unfortunately, CFMU understands that if 2019 BUILD Grant funds are not obtained soon, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR only a finite window of time before reopening the entire Line could become cost-prohibitive.

In closing, the Project is fully consistent with the administration's goal to utilize transportation investments to drive the economy; would allow resumption of freight operations over the entire Line; would benefit local industry; would facilitate efficient and safe freight and passenger transportation; would enhance quality of life for the region's residents; would stimulate economic growth not only in Fort Bragg, but also in the greater Mendocino County region, and most important to CFMU could help the department save lives and property. As such, I am asking that the Department of Transportation give thorough consideration to selecting the Project for a 2019 BUILD Grant. Please feel free to contact me should have any additional questions, or if you need further information.

Sincerely,

Tod Patten

Tod Patten
Battalion Chief
CAL FIRE, Mendocino Unit

Camp Noyo LLC.
137 Porterfield Creek Drive
Cloverdale, California 95425

June 21, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West building
1200 New Jersey Ave., S.E.
Washington D.C. 20590-9898

Re: City of Fort Bragg California's BUILD Grant Application to Repair the Mendocino Railways tunnel and Rehabilitate Track

Dear Secretary Chao,

Camp Noyo LLC., recently became aware that the City of Fort Bragg, California (the "City") will be submitting an application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway

Camp Noyo LLC., owns and operates Camp Noyo a remote wilderness area on the "Skunk" railroad line located at milepost 16.4.

Camp Noyo LLC., leases a summer camp to the Redwood Empire Council Boy Scouts of America and other youth groups for a very nominal fee. Additionally, the camp is open to family camping at other times.

Since 1933 the only safe route to and from Camp Noyo has been via the Mendocino Railway's "Skunk Train". The alternative is over 10 miles of dirt logging road that is closed due to weather most of the year. Recent curtailment of rail service has had a significant impact on our camp. Attendance has fallen sharply due to road concerns and related safety issues. As a result, the camp may need to close.

Although the railroad serves thousands of tourists and is a mainstay to the Mendocino County economy, it is our **only** reliable means of transportation. We strongly support the "2019 Build Grant" submitted by the City of Fort Bragg and urge your approval of the grant to restore the railroad.

Sincerely,

Allan Hemphill
Managing Partner
Camp Noyo LLC.

Wylatti Enterprises LLC
dba Geo Aggregates
1221 N. Main Street
Fort Bragg, CA 95437
707-964-4033 tel 707-964-7011 fax

June 27, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

My company, Geo Aggregates, recently became aware that the City of Fort Bragg, CA (the "City") will be submitting an application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[1] replacing 30,000 chromated copper arsenate railroad ties[2] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line. As explained herein, Geo Aggregates fully supports the City's efforts because resumption of freight and passenger operations over the entire Line is necessary not only for our company but to also help drive economic growth in the region, which includes Fort Bragg, CA and greater Mendocino County, both of which are decidedly rural.

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[1] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, CA to Willits, CA.

[2] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years. MR/CWR have also helped transport police and fire emergency responders, transported water during droughts, and been the bedrock of the community. The Line and the freight and passenger services offered is the critical infrastructure that drives the region's economy, which has taken a hit since the tunnel collapsed. MR's inability to operate the Line from Fort Bragg, CA to Willits, CA has increased transportation cost for industries and businesses and reduced the flow of customers to the region.

Currently, Geo Aggregates utilizes trucks for our freight transportation needs; However, if freight rail services over the entire Line were restored we would happily consider switching to freight rail because it would result in reduced operating cost, improved on-time delivery, reduced congestion of area roads, and a smaller environmental footprint. We currently ship 2,000 truckloads of aggregate annually over region's roads, including between Fort Bragg, CA to Willits, CA, which is the starting and ending point for the Line. Unfortunately, the tunnel collapse in 2015, eliminated our ability to ship aggregate via rail. The collapse of the tunnel split the Line in half and prevented Mendocino Railway from operating over the entire Line. Geo Aggregates' transportation costs have increased in recent years, having rail as an alternative would help us improve efficiency and could significantly lower our cost of operations.

Geo Aggregates knows MR, CWR, and the Skunk Train well. Since taking ownership of the Line in 2004, MR has invested heavily in the railroad for the good of the region and has partnered with the region's industries and businesses. MR's actions to date have been impressive. For starters, MR took a lightly used rail line that was in poor condition and spent millions of dollars on the Line to make it essential infrastructure for the region and its economy. To be clear, MR has become and continues to be a responsible partner with the community it serves. The collapse of the tunnel set back much of the progress that MR was able to make in rehabilitating the Line. In the light of the money MR has spent to date, MR, a small company, simply does not have the funds necessary to complete the Project in the foreseeable future. We have been told that Mendocino Railway has offered to pay 50% or more of the total Project cost of approximately $25,000,000 out of its limited resources, and we hope that 2019 BUILD Grant funds can provide the matching funds needed for this crucial Project. We understand that if 2019 BUILD Grant funds are not obtained, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR a small window of time to take action before reopening the entire 40-mile line could become infeasible.

On the other hand, if awarded a 2019 BUILD Grant, the Project will contribute to safer roads, rejuvenate a transportation asset that has served the region for well over a century, enhance the quality of life in the region, promote economic sustainability, and improve economic competitiveness in our largely rural region. Not only is the Project critically linked to Geo Aggregates's ability to continue to operate and grow, but collectively the Project is imperative for future economic growth in the region. As such, Geo Aggregates requests that the U.S. Secretary of Transportation give this Project the utmost consideration and approve the funding necessary to make repairs to the tunnel and rehabilitate the Line.

Very truly yours,



Brian Hurt
President

June 27, 2019

The Honorable Elaine L. Chao
Secretary, United States Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590-9898

RE: City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line

Dear Secretary Chao,

My company, Flobeds, recently became aware that the City of Fort Bragg, CA (the "City") will be submitting an application for a Better Utilizing Investments to Leverage Development ("2019 BUILD Grant") pursuant to the Department of Transportation's National Infrastructure Investments under the Consolidated Appropriations Act, 2019 on behalf of Mendocino Railway ("MR"), which was formerly the California Western Railroad ("CWR") and is commonly known in the community as the "Skunk Train." The City is seeking a 2019 BUILD Grant to assist MR in repairing a collapsed tunnel;[1] replacing 30,000 chromated copper arsenate railroad ties[2] and some worn rail; renewing an access trail and creating eight fire suppression staging areas to benefit railroad operations and public safety; installing fencing, two gates, and security cameras to improve security; restoring an engine house; and adding an extension to an existing car shed (the "Project") in order to rehabilitate MR's approximately 40-mile rail line ("Line") to allow for the resumption of freight and passenger services over MR's entire Line. As explained herein, Flobeds fully supports the City's efforts because resumption of freight and passenger operations over the entire Line is necessary not only for our company but to also help drive economic growth in the region, which includes Fort Bragg, CA and greater Mendocino County, both of which are decidedly rural.

MR, CWR, and the Skunk Train have filled a crucial role in driving and sustaining the economy of the region for over 130 years. MR/CWR have also helped transport police and fire emergency responders, transported water during droughts, and been the bedrock of the community. The Line and the freight and passenger services offered is the critical infrastructure that drives the region's economy, which has taken a hit since the tunnel collapsed. MR's inability to operate the Line from Fort Bragg, CA to Willits, CA has increased transportation cost for industries and businesses and reduced the flow of customers to the region.

Currently, Flobeds utilizes trucks for our freight transportation needs; However, if freight rail services over the entire Line were restored, we would strongly consider switching. We currently ship

[1] Tunnel #1, which is located on the approximately 40-mile MR rail line at milepost 3.5 serves as the sole rail link connecting Fort Bragg, CA to Willits, CA.

[2] The ties installed by the previous owner of MR's rail line began to fail after only two decades, which is half the normal life expectancy for ties. This increased MR's maintenance costs.

12-14 truckloads of mattress components and latex foam rubber annually over region's roads, including between Fort Bragg, CA to Willits, CA, which is the starting and ending point for the Line. Unfortunately, the tunnel collapse in 2015, eliminated our ability to ship mattress components and latex foam rubber via rail. The collapse of the tunnel split the Line in half and prevented Mendocino Railway from operating over the entire Line. Flobeds's transportation costs have increased in recent years, having rail as an alternative would help us improve efficiency and could significantly lower our cost of operations.

Flobeds knows MR, CWR, and the Skunk Train well. Since taking ownership of the Line in 2004, MR has invested heavily in the railroad for the good of the region and has partnered with the region's industries and businesses. MR's actions to date have been impressive. For starters, MR took a lightly used rail line that was in poor condition and spent millions of dollars on the Line to make it essential infrastructure for the region and its economy. To be clear, MR has become and continues to be a responsible partner with the community it serves. The collapse of the tunnel set back much of the progress that MR was able to make in rehabilitating the Line. In the light of the money MR has spent to date, MR, a small company, simply does not have the funds necessary to complete the Project in the foreseeable future. We have been told that Mendocino Railway has offered to pay 50% or more of the total Project cost of approximately $25,000,000 out of its limited resources, and we hope that 2019 BUILD Grant funds can provide the matching funds needed for this crucial Project. We understand that if 2019 BUILD Grant funds are not obtained, it is likely this century+ transportation route could be severed forever. The collapse of the tunnel in 2015 decreased MR's overall revenues and that combined with the rising cost of materials leave MR a small window of time to take action before reopening the entire 40-mile line could become infeasible.

On the other hand, if awarded a 2019 BUILD Grant, the Project will contribute to safer roads, rejuvenate a transportation asset that has served the region for well over a century, enhance the quality of life in the region, promote economic sustainability, and improve economic competitiveness in our largely rural region. Not only is the Project critically linked to Flobeds's ability to continue to operate and grow, but collectively the Project is imperative for future economic growth in the region. As such, Flobeds requests that the U.S. Secretary of Transportation give this Project the utmost consideration and approve the funding necessary to make repairs to the tunnel and rehabilitate the Line.

Very truly yours,



Dave Turner
President
Turner Express Company, Inc.
FloBeds

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 12 – FRA/DOT Website Announcement

An official website of the United States government Here's how you know

United States Department of Transportation

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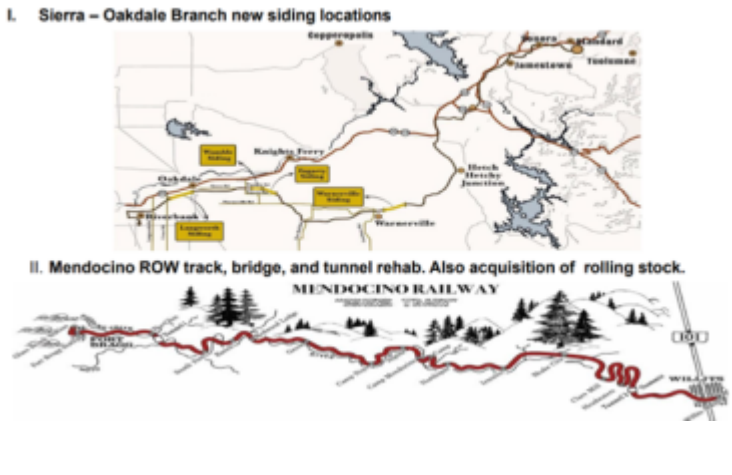
Sierra Northern Railway and Mendocino Railway Improvements

Alternate Project Name
Central Valley of California and Mendocino County Railway Improvements

Project Type
Railroads

Financing Type
RRIF

Status
Credit Agreement Executed



Sponsor/Borrower
Sierra Northern Railway (SNR) and Mendocino Railway (MRY)

Project Description
The loan finances nearly 100 percent of the planned improvements, including SNR expansion of 6.7 miles of Oakdale Branch track for engine and carriage storage; MRY rehabilitation of Noyo Canyon Tunnel No. 1, 27 bridges and 40 miles of track.

The project should be complete in 2027 and will provide many benefits to the community, including:

- Increased safety, operating capacity, efficiency
- Reduction of derailments and grade-crossing incidents
- Reduced congestion and air pollution on local roads and highways

Read the press release HERE.

Project Details

RRIF Assistance
$31.40M

Primary Revenue Pledge
Project Revenues

Project Cost
$31.40M

Fiscal Year Closed
FY2024

Application Details

Applicant
Sierra Northern Railway (SNR) and Mendocino Railway (MRY")

LOI Fiscal Year Received
FY2021

LOI Received Date
Wed, 04/14/2021 - 12:00

Application Received Fiscal Year
FY2024

Application Received Date
Wed, 10/11/2023 - 12:00

Credit Agreement Executed
Thu, 01/11/2024 - 12:00

Initial Eligibility Review
Review Complete

Creditworthiness Review
Review Complete

Application Review
Review Complete

Estimated Project Cost
$31.40M

RRIF Request
$31.40M

Instrument Type
Direct Loan

U.S. Department of Transportation
Build America Bureau
1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-2300

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BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 13 – Build America Bureau Press Release

An official website of the United States government Here's how you know

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Tags

- Build America Bureau
- RRIF
- TIFIA

Media Contact

Press Office
US Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590
United States
Email: pressoffice@dot.gov
Phone: 1 (202) 366-4570

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U.S. Department of Transportation Announces $31.4 Million Loan to Upgrade Critical Rail Lines in California

Monday, January 29, 2024

New and Improved Rail Infrastructure Will Enhance Safety and Supply Chain for the Region

WASHINGTON – The U.S. Department of Transportation (DOT) today announced that its Build America Bureau (Bureau) provided a $31.4 million Railroad Rehabilitation and Improvement Financing (RRIF) loan to the Sierra Northern Railway (SNR) and Mendocino Railway (MRY) to expand and rehabilitate rail infrastructure in the Central Valley and Mendocino County, California. By providing RRIF and Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, the Bureau helps communities expedite infrastructure projects and reduce project costs.

“USDOT is pleased to support this important project in California that will increase safety, reduce harmful greenhouse gas emissions, and improve freight service benefitting the entire region,” said **Deputy Secretary Polly Trottenberg**. “The Biden-Harris Administration is committed to investing in clean transportation and enhancing supply chains.”

The loan finances nearly 100 percent of the planned improvements, including SNR expansion of 6.7 miles of Oakdale Branch track for engine and carriage storage; MRY rehabilitation of Noyo Canyon Tunnel No. 1, 27 bridges and40 miles of track.

“Sierra’s and Mendocino’s RRIF loan will help modernize the rail line, which will greatly enhance existing freight service and make the railroad more attractive to new freight customers.” said **Build America Bureau Executive Director Morteza Farajian, Ph.D**. “We are pleased that a short-line railroad has been able to take advantage of our low-interest financing and deliver improvements that might not have been possible otherwise.”

The project should be complete in 2027 and will provide many benefits to the community, including:

- Increased safety, operating capacity, efficiency
- Reduction of derailments and grade-crossing incidents
- Reduced congestion and air pollution on local roads and highways

"We appreciate the Bureau and all their hard work helping us with the RRIF loan," said **Sierra Northern Railway President Kennan H. Beard III**. "This project will provide the region with new construction jobs and greatly benefit the Central Valley."

"The RRIF loan helps enhance our freight and passenger services in Mendocino County by providing additional jobs, improving safety, lowering emissions, and advancing our regional transportation options," said **Mendocino Railway President Robert Jason Pinoli**.

The RRIF program maintains a $7 billion set-aside to support small railroads like SNR and MRY. This is the Bureau's first loan to a short-line (Class III) railroad since it was created in 2016. In total, DOT has closed $7.6 billion RRIF loans, $39.8 billion in TIFIA financings, supporting more than $143 billion in infrastructure investment across the country.

For more information and to learn more about the Build America Bureau, please visit the website here. For updates, subscribe to the Bureau newsletter and announcements here.

###

The Build America Bureau advances investment in transportation infrastructure by lending Federal funds to qualified borrowers; clearing roadblocks for credit worthy projects; and encouraging best practices in project planning, financing, delivery, and operations. The Bureau draws on expertise across DOT to serve as a point of coordination for states, municipalities, private partners, and other project sponsors seeking Federal financing and technical assistance.

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BEFORE THE
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AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 14 – FRA RRIF Environmental Review Letter

U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 19, 2024

Ms. Kate Huckelbridge
Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

Dear Ms. Huckelbridge:

I am writing to inform you that the Federal Railroad Administration (FRA) has reviewed the California Coastal Commission's (Commission) objection to FRA's negative determination, submitted on January 12, 2024, for the Mendocino Railway Rehabilitation Project and has determined that the project will not result in reasonably foreseeable effects to coastal resources or uses of the coastal zone. FRA is notifying the Commission that the U.S. Department of Transportation's (USDOT) Build America Bureau (Bureau) will disburse federal funds to Mendocino Railway to complete project activities.

Background

In January 2024, Mendocino Railway was approved for a loan through the USDOT's Railroad Rehabilitation and Improvement Financing (RRIF) Express Program (RRIF Express), which is administered by the Bureau.[1] The RRIF Program provides direct loans and loan guarantees to finance development of railroad infrastructure, including improving or rehabilitating existing railroad infrastructure, such as track, bridges, and components of track. The RRIF Express Program expanded the ability of short line and regional railroad borrowers, such as Mendocino Railway, a Class III Surface Transportation Board licensed carrier, to access RRIF Program funds. The loan funds track and tie replacement and maintenance work along the Mendocino Railway line that extends from Willits, CA to Fort Bragg, CA. As part of FRA's analysis of project activities under the National Environmental Policy Act, FRA considered whether the project would result in effects to coastal resources or uses of the coastal zone, consistent with the Coastal Zone Management Act (CZMA). FRA determined that due to the nature and scope of the project (i.e., maintenance along an existing rail line), the project would not result in reasonably foreseeable effects to coastal uses or resources of the coastal zone. FRA documented its determination of no effect in a categorical exclusion worksheet.[2]

In January 2024, the Commission's staff contacted FRA and the Bureau regarding the status of the loan. The Bureau advised the Commission that the loan was approved, and FRA provided a copy of its categorical exclusion worksheet to the Commission's staff on January 12, 2024,

[1] https://www.transportation.gov/buildamerica/financing/rrif/rrif-express.
[2] In the categorical exclusion worksheet, FRA also documented its review of the State's enforceable policies.

which documented FRA's finding of no effect. On February 13, 2024, FRA and Commission agreed to an alternative notification schedule, and that FRA's categorical exclusion worksheet, submitted on January 12, would be considered a negative determination for the project. FRA agreed that no disbursements on the loan would be made while the Commission reviewed the negative determination, consistent with 15 CFR 930.35. On February 25, 2024, the Commission requested a 15-day extension to review the negative determination, which FRA granted.

On March 14, 2024, the Commission held a public hearing on the negative determination to solicit feedback from the public and other stakeholders on the Commission's proposed objection FRA's negative determination. On March 26, 2024, the Commission objected to FRA's negative determination and requested that FRA submit a consistency determination based on the Commission's determination that the project would result in reasonably foreseeable effects on coastal resources. In April, FRA met with the Commission's staff to discuss the Commission's objection.

Finding of No Reasonably Foreseeable Effect

FRA has reviewed the Commission's objection and considered additional information provided by the Commission in its assessment of effects, and for the reasons discussed in this section, FRA has determined the project will not result in reasonably foreseeable effects on coastal uses or resources of the coastal zone.

The Commission's objection identifies a broad range of general effects:

- "degrading water quality and the biological productivity of coastal waters, streams and estuaries;
- putting at risk sensitive coastal species and habitats due to degraded water quality and hazardous materials;
- adversely affecting wildlife movement and habitat use through the installation of fencing along the rail line from Fort Bragg to Willits; and
- disturbing wildlife and habitats due to the noise, lights and vibrations that would be generated during train operation."[3]

The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity. 15 CFR 930.11(g). The RRIF Express loan funds several railroad rehabilitation and maintenance activities that will occur on Mendocino Railway's existing rail line and within the railroad right-of-way. FRA's

[3] California Coastal Commission's Objection to FRA's Negative Determination, dated March 26, 2024 (Objection), pg. 6.

determination that no reasonably foreseeable effects on coastal uses or resources will occur from the project activities is based on the following:

Tie Replacement[4]

As described in the categorical exclusion worksheet, and in the scope of work provided to the Commission on March 7, 2024, the project includes the replacement of approximately 32,100 of the approximately 130,000 railroad ties along the 40-mile corridor. Old ties will be mechanically removed using on-track machinery (tie inserter) to grab the end of the tie and pull it from under the rails. New ties will be mechanically installed using an on-track tie inserter. Machinery will operate on existing rail and will not result in any grading or nearby ground disturbance. Old ties will be placed into a dumpster after being removed from the railbed and will be disposed of properly per state and local regulations. The Commission asserts that the removal of railroad ties would result in a reasonably foreseeable effect due to the potential "discharge of treated-wood pieces, fragments and sawdust into coastal waters."[5] The Commission also acknowledges that "the sawdust, wood pieces and fragments … is expected to be relatively small," but "cumulatively significant" given the number of ties proposed to be removed.[6] However, the removal of ties with a tie inserter will not result in the discharge of treated wood-pieces, fragments and sawdust into coastal waters, including the Noyo River and Pudding Creek, as all activities related to the tie replacement will occur within the existing railroad right-of-way, and the replacement process does not require activities that would generate sawdust. In addition, Mendocino Railway will have personnel on site monitoring the removal and installation of the ties.

In addition to the Best Management Practices (BMPs) described in the categorical exclusion worksheet, FRA will require:

- **CZBMP #1: Railroad will monitor for debris and wood pieces and (if identified) will immediately remove them from the site and dispose of them in accordance with applicable waste management laws.**
- **CZBMP #2: Railroad will dispose of ties in accordance with applicable waste management laws and will not leave ties onsite following removal. Ties must be removed from the site the day they are removed.**

In addition, the Commission asserts that the discharge of CCA chemicals and treated-wood debris into Pudding Creek and the Noyo River would degrade the water quality of these streams, including downstream in the coastal zone and affect aquatic life within them. The

[4] The project also includes the replacement of 2,150 sticks of rail, which was not raised as a specific concern in the Commission's objection. FRA notes the replacement of rail will occur on the rail line and removed sticks of rail will be removed from the site and disposed.
[5] Objection, pg. 7.
[6] Objection, pg. 7.

Commission identifies several aquatic species of concern that are sensitive to these chemicals, even at low concentrations. However, there are currently approximately 130,000 rail ties along the 40-mile line, which Mendocino understands were installed over two decades ago by a prior owner, and the project will not increase the number of ties along the existing rail corridor. Based on the Commission's concerns, this project may have the beneficial effect of reducing the likelihood that older worn ties could leach creosote into the railbed as they degrade.

In addition to the BMPs described in the categorical exclusion worksheet, FRA will require:

- **CZBMP#3: During inspection of worn or damaged ties, Railroad will also inspect ties and surrounding areas for evidence of leaching out of the ties, and if present will replace such ties.**

Sediment and Turbidity

The Commission asserts that the project includes "extensive construction activities" that may result in "substantial amounts of sediment" into Pudding Creek and the Noyo River.[7] The Commission notes that such discharge of sediment would "generate turbidity plumes and/or fill pools and aquatic refugia with heavy sediment. Such effects would impair coastal water quality downstream, degrade or damage in-stream and riparian habitat, and smother aquatic species."[8]

However, the project does not include any extensive construction activities and is limited to maintenance/rehabilitation of the existing rail line and infrastructure. The project does not involve construction of new infrastructure, but instead rehabilitates existing infrastructure within the railroad right-of-way. The Commission asserts that the tie removal process will generate significant ground disturbance; however, as discussed above, the tie removal process will occur on the rail line through the use of a tie inserter machine. This process is not likely to disturb soils beneath the ballast – and will not generate "substantial amounts" of sediment that can flow into nearby waterways. The Commission also states the project includes "the excavation of the partially collapsed railroad tunnel and subsequent installation of replacement supports and reinforcement."[9] The project does not include excavation of the tunnel, but includes restoring the entrance to the west tunnel portal and stabilizing the inside of the tunnel, including making repairs to 50-60 structurally impaired sets, which are wooden support beams inside the tunnel and modernizing other sets inside the tunnel. These activities will occur inside the tunnel and any minor debris or materials from this work will be reintegrated into the tunnel for stabilization or removed. Mendocino Railway will install temporary erosion and sediment control measures which will prevent any transfer of sediment. In addition, stabilization and

[7] Objection, pgs. 11-12.
[8] Objection, pg. 12.
[9] Objection, pg. 11.

rehabilitation of the tunnel will prevent further sediment discharge into the environment that may have resulted from the tunnel collapse. The Commission also states the project includes "the creation and installation of four railroad sidings (shorter lengths of rail line constructed parallel to the main line);"[10] however, the project will only rehabilitate and repair previously existing sidings along the line and does not involve the construction of new sidings. Similarly, the Commission states the project includes "installation of electrical utilities … which may involve extensive subsurface drilling to install up to 1,600 power poles."[11] The project does not include installation of new power poles – and does not include subsurface drilling for installation. The project includes maintenance of existing power infrastructure, such as replacing worn boxes and cables. The Commission also states the project includes "construction or clearing of maintenance walkways and paths along the entire railroad length."[12] The project does not include construction of any new walkways – but does include routine clearing and maintenance of existing walkways (i.e., removing debris and vegetation). Finally, the Commission states the project includes "installation of footings and supports for the security fencing and cameras proposed to be installed along the line from Fort Bragg to Willits."[13] The project does include installing of portions of fencing along the rail line where existing fencing has been damaged or displaced or where trespassing is an issue and the installation of security cameras, which would not affect coastal uses or resources by affecting access to coastal resources or resulting in the discharge of sediment into coastal waters, including the Noyo River and Pudding Creek.

In addition to the BMPs described in the categorical exclusion worksheet, FRA will require:

- **CZBMP#4: When clearing walkways, Railroad will not conduct activities, such as blowing, that could generate dust or sediment near water resources.**

- **CZBMP#5: For materials, such as sticks of rail, that the Railroad will not reuse or sell for scrap, Railroad will remove materials from the site and recycle/dispose of sticks of rail.**

- **CZBMP#6: Railroad will remove all discarded materials from the tunnel via railcar and dispose of discarded materials in the proper location based on material type.**

[10] Objection, pg. 11.
[11] Objection, pg. 11.
[12] Objection, pg. 11.
[13] Objection, pg. 11.

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Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

- **CZBMP#7: In areas where project component activities will occur near water resources, Railroad will employ BMPs as described in Attachment A.**

The project does not include the extensive construction activities identified by the Commission. The project activities funded by the RRIF Express loan will not result in a reasonably foreseeable effect on coastal resources or uses. In addition, the use of BMPs, including the additional BMPs identified in this letter, will further ensure that project activities do not result in any reasonably foreseeable effects from sedimentation and erosion.

Air Pollutants

The RRIF Express loan does not fund the acquisition or operation of locomotives that would generate the air quality effects referenced in the Commission's objection. The loan does not fund activities to expand the rail line, but instead funds needed maintenance work along the line. As such, the project will not result in any new emissions of criteria pollutants that could result in a reasonably foreseeable effect on coastal uses or resources.

Herbicides

The Commission asserts that "[e]xtensive and ongoing use of herbicide" is likely to occur as a result of the RRIF Express loan.[14] The RRIF Express loan does not fund activities related to the use of herbicides within or along the railroad right-of-way. Mendocino Railway is required to comply with FRA's safety regulations, which require that vegetation on railroad property be controlled to avoid potential affects to railroad safety. However, the RRIF Express loan does not require Mendocino Railway to use herbicides along the rail line.

Spills

The Commission asserts that if "a derailment were to occur along the rail line, the effect on the environment could be significant, due to the line's location in close proximity to protected riparian areas for the majority of its length."[15] The Commission cites to a recent Time Magazine article that notes that "the FRA reported an average of 1,475 train derailments per year between 2005 and 2021."[16] This same article; however, notes "[d]espite the relatively high number of derailments, they rarely lead to disaster."[17] Although FRA broadly construes reasonably foreseeable effects under the CZMA, the remote possibility of an incident that results in the types of effects described in the Commission's objection is not reasonably foreseeable. In addition, this maintenance and rehabilitation project – which is intended to

[14] Objection, pg. 13.
[15] Objection, pg. 14.
[16] Objection, pg. 14.
[17] Why Train Derailments Are More Common Than You Think | TIME (cited in Objection, pg. 14).

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bring the rail line to a state of good repair – will support needed maintenance throughout the entire rail line and lessen the likelihood of derailments.

Conclusion

For the reasons stated above, FRA has determined the project will not result in reasonably foreseeable effects on costal resources or uses of the coastal zone. FRA has considered the Commission's objection in making this determination and in response to the Commission's objection, FRA is requiring the use of additional BMPs, as described in this letter, and is clarifying that the use of BMPs is a condition of the Bureau's loan. FRA appreciates the Commission's interest in the project and the information provided to inform FRA's consideration of costal effects.

Stephanie B. Perez, PG

Chief, Environmental Review Division
Federal Railroad Administration, USDOT

Enclosure: Attachment A: *Erosion and Sediment Control BMPs*

Cc (via email):
Cassidy Teufel, Deputy Director, California Coastal Commission

U.S. Department
of Transportation

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Attachment A: Erosion and Sediment Control BMPs

The following Erosion and Sediment Control Best Management Practices (BMPs) are also included in the California Stormwater Quality Association's ("CASQA") Municipal and Construction Stormwater BMP Handbooks as suggested measures for erosion and sedimentation where there is potential for soil disturbance, and it is determined necessary based on the Mendocino Railway scope of work being performed. Mendocino Railway will apply the erosion and sedimentation control BMPs below as appropriate.

Scheduling
• Avoid heavy rainy periods. Schedule grading operations during dry months when practical and avoid major soil disturbance during periods with high wind velocities.

Silt Fence
• If soil disturbing activities are scheduled when rainfall is predicted, deploy a silt fence below areas where sheet flow discharges from the work area as a sedimentation control. Fiber rolls, gravel bag berms, manufactured linear sediment controls, compost socks and berms, and biofilter bags may also be used for a similar purpose.

Fiber Rolls
• Fiber rolls (also known as wattles or logs) are placed at the toe and on the face of slopes along contours where necessary to intercept runoff, reduce its flow velocity, release the runoff as sheet flow, and provide removal of sediment from the runoff. By interrupting the length of a slope, fiber rolls can also reduce sheet and rill erosion until vegetation is established. If used in a permanent application, select a fiber roll wrapped in non-plastic material.

Outdoor Storage of Raw Materials
• For small stockpiles, cover and contain the stockpiles of raw materials as necessary to prevent stormwater from running into the covered piles. Cover material when working with the stockpiles is not occurring. If stockpiles are too large to be feasibly covered and contained, implement erosion control practices at the perimeter of the work area and at catch basins to prevent erosion offsite.

Housekeeping Practices
• Keep work sites clean and orderly. Remove debris in a timely fashion.

Landscape Maintenance
• Avoid loosening the soil when conducting mechanical or manual weed control, which could lead to erosion. Use mulch or other erosion control measures as necessary when soils are exposed.

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• To the extent compatible with FRA requirements for track maintenance, perform mowing at optimal times. Mowing should not be performed if significant rain events are predicted.
• Place temporarily stockpiled material away from watercourses, and berm or cover stockpiles as necessary to prevent material releases to storm drains or waterways. Do not mix or prepare pesticides for application near storm drains or waterways.
• To the extent compatible with FRA requirements for pesticide application, calibrate fertilizer and pesticide application equipment to avoid excessive application. Prepare the minimum amount of pesticide needed for the job and use the lowest rate that will effectively control the pest. Do not apply pesticides if significant rain is expected. Apply pesticides only when wind speeds are low (less than 5 mph).

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 15 – Grist Creek Aggregates Letter

Grist Creek Aggregates, LLC
P.O. Box 575, Covelo, CA 95428

January 3, 2024

Mendocino Railway
Robert Jason Pinoli, President
Foot of Laurel Street
Fort Bragg, CA 95437

Dear Mr. Pinoli,

I am writing to you on behalf of Grist Creek Aggregates, LLC to formally express our interest in utilizing the California Western Railroad (CWR) for shipping our freight, specifically aggregate from Willits to Fort Bragg. This letter serves as a preliminary agreement showing our intent, contingent upon the completion of necessary repairs to the tunnel along the CWR route.

We understand, based on Mendocino Railway / CWR's Tariff 9500, effective from January 1, 2022, that the current rate stands at $1,440.00 per carload. Considering out operational needs, we estimate the requirement of the ten cars per week or at least 400 carloads annually. This volume represents a significant amount of business and commitment to CWR, and we are eager to establish this partnership.

Additionally, we are interested in exploring the availability and terms for transload facilities in both Fort Bragg and Willits. These facilities are crucial for the efficient loading and unloading of our shipments and will play pivotal role in our logistics chain. We also would like to discuss the necessary rock cars for this move, their cost and utilization plan.

To proceed further, we would appreciate detailed information regarding the timeline and plans for the tunnel repair work. This information will help us align our shipping schedules and logistics accordingly.

We look forward to a fruitful and long-lasting business relationship with Mendocino Railway / CWR. Please consider this letter as our formal letter of intent, subject to the completion of the tunnel repairs and finalization of the terms and conditions that are mutually agreeable.

Thank you for considering this partnership. We are excited about the potential opportunities this collaboration presents for our company. We await your response and the subsequent steps towards formalizing this agreement.

Sincerely,

Brian K. Hurt
President
Grist Creek Aggregates, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 16 - Redheaded Blackbelt Report on Lumber Truck Accidents



LUMBER TRUCK OVERTURNS ON HWY 101 NORTH OF GEYSERS RD IN SOUTHERN MENDOCINO COUNTY

Friday, 19 April 2024, 9:19 am | Kym Kemp | 16 comments

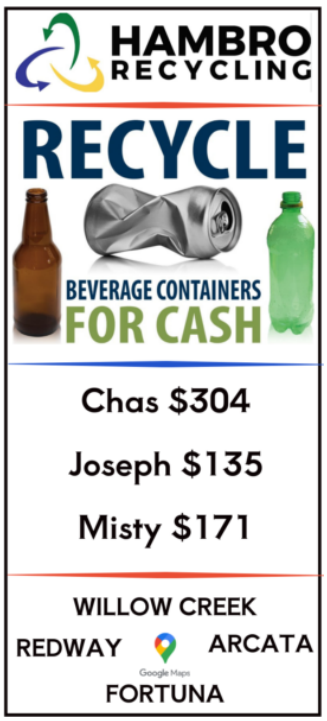


This morning at approximately just before 8 a.m., a truck carrying lumber overturned in the southbound lanes of Hwy 101 just north of the Sonoma County line. [Photos from the CHP]

A lumber truck overturned on Hwy 101, spilling its cargo across the southbound lanes. The Ukiah California Highway Patrol (CHP) reports that the

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HOW YOU CAN MAKE US SMILE

accident happened at approximately 7:55 a.m. near mile post marker 1.96, just north of Geysers Rd.

As a result of the crash, traffic on Hwy 101 is moving slowly, according Caltrans QuickMap. The highway has been reduced to one lane in each direction. Emergency personnel are on the scene, working to remove the truck and clear the lumber from the roadway.

The CHP is currently investigating the cause of the crash. Initial reports confirm that fortunately, there were no injuries as a result of the incident.







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Humboldt County Jail Reports: Daily Booking Sheet – June 17, 2024

Maintenance Worker Injured in Vehicle Accident at Twin Pines Casino

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 17 – Variable Cost to Operate

FILED UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 18 -

Resolution of the Fort Bragg City Council to Submit a Department of Transportation

("DOT") Build Grant for the MRY to Repair its Tunnel and Rehabilitate its Track,

Resolution No. 4181-2019, passed June 24, 2019

RESOLUTION NO. 4181-2019

RESOLUTION OF THE FORT BRAGG CITY COUNCIL TO SUBMIT A DEPARTMENT OF TRANSPORTATION ("DOT") BUILD GRANT FOR THE MENDOCINO RAILWAY TO REPAIR ITS TUNNEL AND REHABILITATE ITS TRACK

WHEREAS, MENDOCINO RAILWAY ("MR") (known in the community as the California Western Railroad ("CWR") and the "Skunk Train") has served the Mendocino region since 1885, providing freight, passenger, and mail service to businesses and residents in and around Fort Bragg and Willits, California; and

WHEREAS, MR has also long operated a world-renowned tourist train, one of our nation's Top Ten, attracting millions of visitors to the region; and

WHEREAS, in 2015 one of MR's tunnels collapsed, cutting the railroad in two and preventing the MR from operating between Fort Bragg and Willits. The tunnel collapse has severely constrained the effectiveness of railroad operations, effectively cutting off freight and passenger services between Fort Bragg and Willits; and

WHEREAS, MR needs to replace more than 30,000 chromated copper arsenate railroad ties installed by a prior owner with new strong and environmentally safe railroad ties in order to provide effective commuter passenger and freight services between Fort Bragg and Willits CA; and

WHEREAS, MR seeks to repair and replace the Engine House; and

WHEREAS, MR seeks to implement various health and safety features; and

WHEREAS, the Better Utilizing Investments to Leverage Development, or BUILD Transportation Discretionary Grant program, provides a unique opportunity for the Department of Transportation (DOT) to invest in road, rail, transit and port projects that promise to achieve national objectives; and

WHEREAS, At least 60 percent of BUILD funds must be awarded to projects located in rural areas and Fort Bragg and Mendocino County are very rural in nature; and

WHEREAS, MR will contribute a 50 percent match for the project; and

WHEREAS, the eligibility requirements of BUILD allow project sponsors at the State and local levels to obtain funding for multi-modal, multi-jurisdictional projects that are more difficult to support through traditional DOT programs; and

WHEREAS, the City of Fort Bragg is an eligible grant sponsor; and

WHEREAS, the Project is exempt pursuant to the California Environmental Quality Act ("CEQA") and Title 14, the California Code of Regulations ("CEQA Guidelines"), Section 15301; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. The repair of the Mendocino Railway tunnel and tracks would be a significant economic benefit to the Fort Bragg and the surrounding rural economy of Mendocino County;

2. The City is committed to the success of Mendocino Railway and the Skunk Train; and
3. This funding is critical for the repair of the tunnel and the upgrade to the rail lines and the ultimate success of the Skunk Train and our local rural and regional economy.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby Authorize the City Manager to submit the BUILD program grant and act as the sponsor and grant administrator for the Mendocino Railway project.

The above and foregoing Resolution was introduced by Peters, seconded by Councilmember Albin-Smith, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 24th day of June, 2019, by the following vote:

AYES:	**Councilmembers Albin-Smith, Morsell-Haye, Norvell, Peters and Mayor Lee.**
NOES:	**None.**
ABSENT:	**None.**
ABSTAIN:	**None.**
RECUSED:	**None.**

William V. Lee

William V. Lee
Mayor

ATTEST:

June Lemos

June Lemos, CMC
City Clerk

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 19 – Summary Page of the FY2019 City of Fort Bragg California's BUILD

2019 Grant Application

FY 2019 - CITY OF FORT BRAGG CALIFORNIA'S
BUILD 2019 GRANT APPLICATION

Project Title	City of Fort Bragg California's 2019 BUILD Grant Application To Rebuild Mendocino Railway's ("MR") Tunnel and Rehabilitate and Renew Its Rural Rail Line	
Project Location	City of Fort Bragg, CA, and Mendocino County, CA, both of which are rural.	
Type Of Application	A project to repair a collapsed tunnel; replace 30,000 chromated copper arsenate railroad ties and some worn rail; renew an access trail and establish eight fire suppression staging areas to benefit operations and public safety; install fencing, two gates, and security cameras to improve security; restore an engine house; and add an extension to connect the existing car shed to the engine house (the "Project") in order to restore freight and passenger operations over MR's entire 40-mile rail line (referred to herein as "Line"), which extends from Fort Bragg, CA to Willits, CA. MR's collapsed tunnel at approximately Milepost 3.5 links Fort Bragg, CA, which is located on a remote section of the California coast, with difficult roads, to Willits, CA, a town 40 miles inland to the east. The Project is being undertaken because the railroad's freight and passenger offerings have historically been the economic engine for the region. After 130 years of interrupted service, the collapse The collapse of tunnel severed the Line, prevented MR from renewing freight services, significantly reduced passenger offerings, and caused the region's fragile economy to experience setbacks. The Project will have a significant regional impact by benefiting industry, facilitating efficient safe freight rail transportation, and stimulating economic growth.	
Applicant/ Applicant Type	Marie Jones, Community Development Director City of Fort Bragg, CA 416 N. Franklin Street Fort Bragg, CA 95437 Phone: (707) 961-2823	
First Tier Sub-Awardee/ P3 Partner	Mendocino Railway (aka California Western Railroad ("CWR") and the "Skunk Train") Foot of Laurel Street Fort Bragg, CA 95437	
	Contact: Christopher G. Hart, President Mendocino Railway / Skunk Train 1222 Research Park Drive Davis, CA 95618 (530) 554-2522 chart@sierrarailroad.com	**Counsel:** William A. Mullins, Esq. Baker & Miller, PLLC 2401 Pennsylvania Avenue, N.W., Ste. 300 Washington, DC 20037 (202) 663-7823 wmullins@bakerandmiller.com
Project Area /Type	Repair of Collapsed MR Tunnel #1 and Rehabilitation of a 40-Mile Rural Rail Line	
Total Cost	$24,849,950.00	
BUILD Funds	$12,265,655.00 (49%) FY 2019 BUILD Funds (Rural Funds).	
P3 Local Match	$12,584,295.00 (51%) from MR	
Completion Date	All funds will be obligated in advance of the September 30, 2021 deadline for FY 2019 funds and the Project will be complete by December 31, 2025.	
NEPA Status	The lead agency for purposes of an Environmental Assessment ("EA") would be the Federal Railroad Administration ("FRA"). Under FRA regulations, the Project likely qualifies for a Categorical Exclusion.	
Congressional Districts	CA– 2nd Congressional District: CA Assembly Member Jim Wood CA– 2nd Congressional District: CA State Senator Mike McGuire United States House of Representatives: Jared Huffman	

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF ROBERT PINOLI

Attachment 20 – Project Description from RRIF Loan Application

Mendocino Railway
RRIF Express Application Overview

Mendocino Railway ("MR") seeks to fund five projects with a Railroad Rehabilitation and Improvement Financing Express Program ("RRIF Express") loan in the amount of $21,491,071.

Also known under the trade name California Western Railroad ("CWR"), MR is a Class III rail carrier. MR's current ownership began in 2004, when MR's parent company, Sierra Railroad Company ("SRC"), purchased the railroad. The RRIF Express funds would be used to improve track bridges and other infrastructure, purchase rolling stock, and do a planning study.

MR connects the coastal town of Fort Bragg, CA with Willits, CA, which is 40 miles inland.[1] The railroad includes numerous stations, two major tunnels, and 30 bridges as it winds its way through the Noyo Canyon. For the people along the Line, the railroad is the primary means of access. Further, MR is an important means of transportation to the remote City of Fort Bragg and the Mendocino Coast.

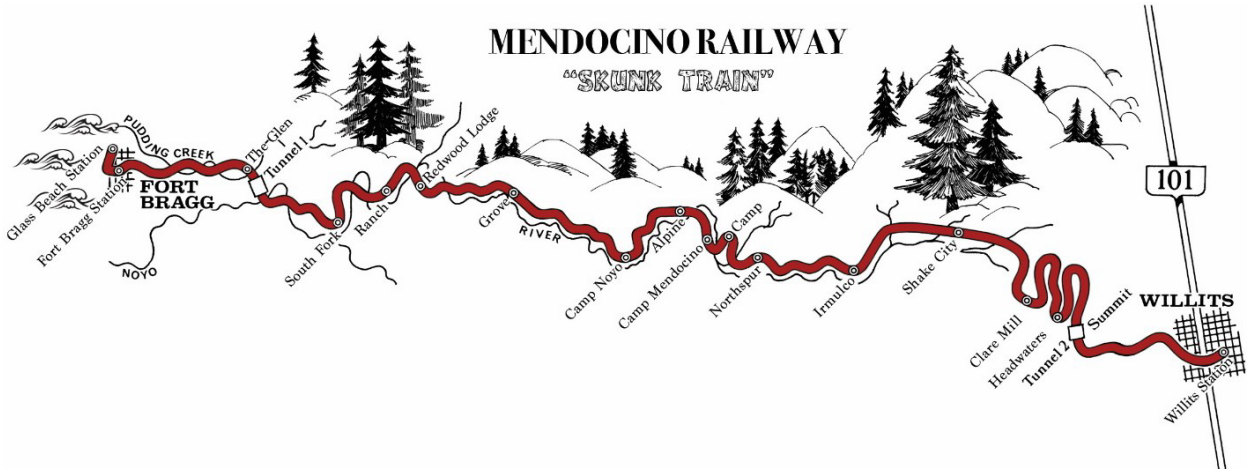


Figure 1: 40-mile Mendocino Line

MR has continuously provided freight and or passenger service since 1885. The railroad's ability to ship freight, however, is severely hampered by problems in the Noyo Canyon section (milepost 3.5 to milepost 32.6) of the railroad. Nevertheless, MR continues to operate with thriving passenger operations in both Fort Bragg and Willits. According to Mendocino County, MR's "Skunk Train" is the top commercial tourist attraction in Mendocino County, carrying about 60,000 passengers per year.[2] Whether for freight or passenger service, MR continues to be one of the region's key economic drivers since its' inception.

[1] MR's rail line extends from Milepost 0 (at the City of Fort Bragg, California) to Milepost 40 (at Willits, California) (the "Line").

[2] https://visitmendocino.com/mendocino-county-bucket-list/.



Figure 2: Track Improvement Projects

MR seeks to fund five projects. Three of the projects are track improvement projects shown in Figure 2. The primary focus of this work is replacing chromated copper arsenate railroad ties. These ties were installed by the previous owner of the Line and they began to fail all at once after only two decades, which is approximately half the normal life expectancy for ties. Even though MR has continually maintained a significant maintenance of way ("MOW") effort, the challenge of replacing so many ties at once has proven difficult. This RRIF Express loan would provide the needed capital to make significant improvements to the track situation.

The fourth project improves 27 bridge rehabilitation sites along the Line.

The fifth project is acquiring rolling stock.

Each project includes 2.5% for permits, 2.5% administrative fees, and 5% contingency. The total anticipated cost for the seven projects is $21,491,071.

1. <u>Right of Way ("ROW"): Willits Block Track Improvement $2,159,264</u>

MR plans to improve 7.4 miles of track between Willits (milepost 40) and Headwaters (milepost 32.6). MR has a point of interchange with the Northwestern Pacific Railroad in Willits, CA. This segment of track is used to support MR's Willits-based passenger operation and will support freight operations once resumed.

This project will include the installation of 5,119 new ties, 299 sticks of rail, grading, and broader walkways in existing right-of-way for train & MOW crew. By improving the quality of the infrastructure, MR will greatly improve safety and efficiency.

Project 1 includes the refurbishment of a much-needed siding at Headwaters. Existing sidings cannot accommodate locomotive run-arounds for trains sets with more than three cars. These run-arounds are a necessity given the importance of having the locomotive in the lead position on this railroad given grades of 3.3% and as much as 33-degree horseshoe curves.

By improving the track and refurbishing the siding in the existing right-of-way, the capacity of the train will be increased with an estimated $750,000 in additional annual revenue.

This application includes adding power to the ROW to better allow for power-dependent equipment that could make crossings safer, such as lights and improved radio or cellular communications options.



Figure 3: 7.4-mile Willits Block in Red

2. <u>Right of Way: Noyo Canyon Block Track Improvement</u> <u>$16,001,387</u>

Project 2 (The Noyo Canyon Block Track Improvement) will rehabilitate 29.1 miles of track between Glen Blair Junction (milepost 3.5) and Headwaters (milepost 32.6). An estimated 23,360 ties would be installed, as well as 1,604 new sticks of rail in existing right-of-way.[3]



Figure 4: Noyo Canyon Block in Blue

Walkways for crew will be expanded or added. Due to the remote and mountainous nature of the Line, these walkways will improve the safety and efficiency of MOW crews, as well as provide access to resolve train operation issues. This work is also being done in existing ROW.

Project 2 includes the refurbishment of sidings to existing wye on the ROW at Northspur (milepost 21.3) and Redwood Lodge (milepost 10.0) to better allow for locomotive run-arounds and trains to pass one another.

Project 2 includes adding power to the ROW to better allow for power-dependent equipment that could make crossings safer, such as lights and improved radio or cellular communications options. Fencing will also be installed to restrict access to these crucial facilities, which contribute to the safety of rail operations.

Project 2 includes repairs to Tunnel #1 at MP 3.5.[4] MR has already spent over $1.8 million on this project (not included in the RRIF Express application sought to fund future work). The

[3] Throughout this document, the term "sticks of rail" refers to the 39' long steel portion of railroad tracks. The weight of the rail may vary depending upon the specific needs of a track section and the availability of rail that adheres to Buy America. Note, MR intends to upgrade existing rail (replace existing rail with heavier rail where possible) to being able to accommodate a return to historical track operations. Operations have been limited in recent years in part due to the current condition of the tracks.

[4] The tunnel links Fort Bragg, CA, on a remote section of the California coast, with difficult roads, to Willits, CA, a town 40 miles inland to the east. The tunnel was entirely rebuilt in 1976 and the earthen area surrounding the tunnel was subsequently rebuilt and stabilized in 2018 as part of a separate project (see attached tunnel construction and stabilization as-built plan). The tunnel work proposed as part of this Project will all occur on the interior structural elements of the tunnel and will not involve exterior ground disturbance outside of the tunnel.

remaining cost is $7,234,500 based on a bid by Granite Construction to do the tunnel work in starting in 2023.

The cause of the collapse in 2013 was a very large rock that broke loose and came in through the ceiling. The partial collapse and landslide on the west face in 2015 (not 2016) was directly caused by contractor negligence. Unfortunately, it was determined in the months that followed that the contractor did not have insurance in effect to compensate Mendocino Railway for its loss. In 2013 the damage was to the interior. In 2015 the damage was to the exterior and minimal to the interior.

In 2013, the railroad sought the services of outside consultants and construction crews to modernize the tunnel with the intent of immediate service restoration The contractor was modernizing Tunnel #1 by removing timber sets and replacing worn sets with soil nails, mesh, and shotcrete. The 2013 repairs led to service restoration on August 17, 2013, while ongoing repairs continued. Unfortunately, the contractor making the repairs committed negligence in 2015. As a result of the 2015 incident, the contractor was removed from the project and consultants were called in to assess the necessary next steps to stabilize the tunnel and reopen service. During the consultants' assessment of the condition of Tunnel#1, it was determined that the rebuilding of the tunnel in the 1970s after an excess height box car was taken through resulted in the tunnel/ hillside being reconstructed in a sloped fashion. As a result of the 2015 incident, the consultants determined that the long-term preservation and operation of the tunnel required improvements above-ground to be reconstructed in a terraced fashion. This work was overseen under the auspices of the North Coast Regional Quality Control Board, which signed off on the completion of the Cleanup and Abatement and 13267 Order No. R1-2016-0036 by letter dated August 15, 2019. The scope of the work completed between 2015 and 2019 addressed exterior improvements and stabilization measures. The RRIF proposed tunnel work will all occur on the interior structural elements of the tunnel and will not involve exterior ground disturbance outside of the tunnel. Of course, to perform the work as noted by the FRA in the CE, Mendocino will have to clear the west portal (including exposing and shoring Tunnel#1's entrance on the western end). For the RRIF scope of work, Granite Construction is the most competent firm to do the project. The specific scope of the tunnel improvements is identified on page 3 of the CE worksheet.

As noted in the CE Worksheet, Granite will make repairs to 50 to 60 structurally impaired sets, which are wooden support beams located inside the tunnel (replacement of non-original materials) and modernization to other sets (non-original materials) in partially collapsed Tunnel #1 at Milepost 3.52.

Specifically, the repairs to Tunnel #1 involve the following work.

a) clearing the west portal (including exposing and shoring Tunnel #1's entrance on the western end; including temporary erosion control;
b) geotechnical sampling;
c) applying temporary tunnel safety procedures;
d) temporary shoring install (includes temporary shoring to secure Tunnel #1 to perform the wall treatment);
e) perform soil nailing (soil nails average 14 long and 4 center) throughout Tunnel #1

f) applying Shotcrete; restoring the entrance; and stabilizing the tunnel interior.

Given that the Tunnel was completed in 1893 and repairs to it have been a part of ongoing annual maintenance, there are, to the best of Robert Pinoli's, President of Mendocino Railway, knowledge no original sets. This should be expected as the excess height box car in the 1970s required the replacement of nearly 60% of the sets, and nothing that was scarred survived. Additionally, in 1997 and 2005 both portals were replaced after winter storms triggered landslides that sealed off the entrance with mud and debris. The west portal's set was replaced with a steel and concrete structure and the east portal sets was replaced with a curved steel prefabricated structure.

By improving the track and refurbishing a siding in the existing right-of-way, the capacity of the train will be increased with an estimated $1.3M in additional annual revenue.

3. <u>Right of Way: Fort Bragg Block Track Improvement</u> <u>$1,542,920</u>

The most congested segment of the MR is the 3.5 miles between Fort Bragg (milepost 0.0) and Glen Blair Junction (milepost 3.5). Project 3 will provide for the installation of 3,620 ties and 230 sticks of rail. Similar to the previous two projects, Project 3 includes the expansion of walkways for crew in the existing right-of-way.

Project 3 also includes the refurbishment of a siding at Glen Blair Junction. Other than at the Fort Bragg railroad facility, there are no passing sidings on this block. With approximately 700 trips per year and expectations for increased traffic, the refurbished siding is needed to allow for better traffic flow. Further, MR would greatly prefer the added safety of having locomotives always as the lead unit, especially when crossing the busy Highway 1 and the City of Fort Bragg.

By improving the quality of the track and alleviating traffic congestion, MR expects to increase annual revenue by almost $200,000.



Figure 5: 3.5-mile Fort Bragg Block in Green

4. <u>Right of Way: Mill Site Track Rebuilding Track Construction[5]</u> <u>$0</u>

June 2022 UPDATE - No RRIF funds are being used for the Mill Site Block, this has been removed and the ties and rail for this project have been shifted to the Noyo Canyon Block.



Figure 6*: *GP Site Freight and Passenger Facilities Illustration

5. Bridge Rehabilitation $742,500

There are 30 bridges on the Line. While there are no major repairs needed on any of the bridges, MR has an extensive list of desired small fixes and improvements. MR completed work on three of the bridges. MR has allocated $25,000 for each of the remaining bridges plus administration, fees, and contingency costs to make these improvements.[6]

One notable common issue with all the bridges is MR's desire to address safety concerns for those of its employees (such as track inspectors and MOW employees) who need to work on, or cross, its bridges as part of carrying out their duties. MR also wishes to ensure that its bridges are safe for members of the public to cross on foot should any emergency require it (e.g., the breakdown of a passenger train). MR has also been called upon to ferry law enforcement or fire department employees into the forest, as following which such personnel has at times been required to cross MR's bridges on foot. And MR wishes to add signage and other protective features to prevent trespassers from accessing MR's property, including its bridges.

Figure 7 on the following page shows the exact location of the bridges.

[6] MR attaches as Exhibit A, a Project Scope & Timeline, which summarizes the repairs being made to the bridges.

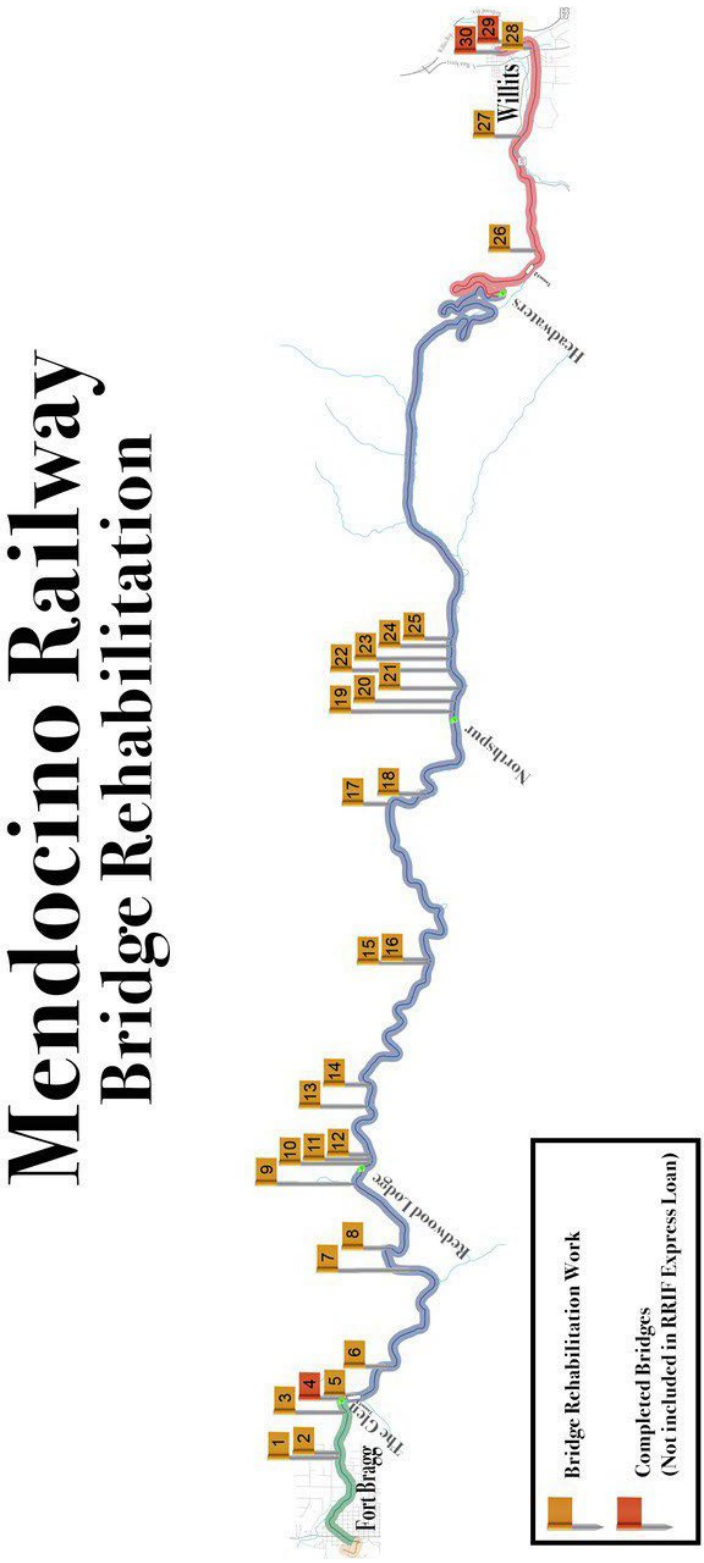


Figure 7*: *Mendocino Railway Bridge Rehabilitation locations

6. Rolling Stock $1,045,000

Project 5 includes $1.0 million for several rolling stock acquisitions. The acquisitions will include flat cars for a variety of uses on the Line, including MOW, storage, and transportation of materials. MR also intends to purchase two additional passenger coaches that will supplement rolling stock used for Willits and Glen Blair Junction blocks. Finally, MR seeks to acquire a locomotive for use in Fort Bragg. Given the unique needs and remote nature of the Line, an alternative approach for Project 6 would be the repair of an existing locomotive.

By expanding the diversity of our rolling stock and increasing our capacities along with trip offerings we estimate an additional $450,000 in annual revenue, plus an additional $100,000 in cost reductions to operations.

CONCLUSION

Consistent with the March 16, 2020 Notice of Funding Opportunity, MR provided two years of audited financial statements.

The projects set forth in this Statement of Work will be a boom to both the railroad and the region's economy. In 2018, an economic development study identified the regional benefits if a similar package of projects was funded:

> *The combinations of a high operating budget, projected capital costs for tunnel repair, and a very high overnight stay impact combine for a very significant economic impact to Mendocino County and all of Northern California. The totals of $47 million in economic impact and over 1650 equivalent jobs is one of the higher economic impact analysis totals that Stone Consulting has seen on a national basis.*[8]

MR greatly appreciates the Build America Bureau's consideration of its RRIF Express loan request. As demonstrated in this project scope, MR intends to utilize the RRIF Express funds to address key challenges on MR resulting from prior ownership's management decisions. With the envisioned improvements, MR anticipates that it will be well-positioned to provide another century-plus of service to our region

[7] Stone Consulting Inc "Skunk Train Excursion Economic Impact Analysis" 07/15/2018.

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX B

ECONOMIC IMPACT ANALYSIS OF THE MRY (SKUNK TRAIN), CITY OF FORT BRAGG, 2018

ECONOMIC IMPACT ANALYSIS *of* THE MENDOCINO RAILWAY (SKUNK TRAIN)









MARIE JONES
CITY OF FORT BRAGG
2018

CURRENT SITUATION & ECONOMIC DEVELOPMENT OPPORTUNITY

The Challenge. From 2002 through 2015, Fort Bragg and the Mendocino Railroad (MR aka the Skunk Train) were hit by a series of economic shocks which restructured our local economy:

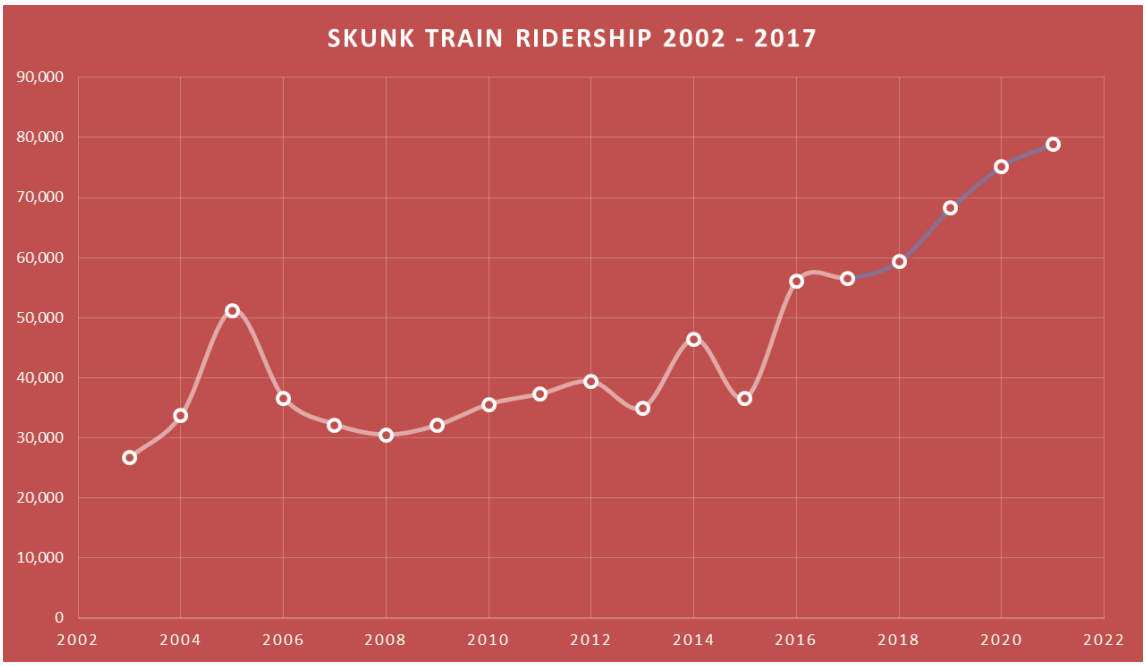
- In 2002 the Georgia-Pacific Mill Site (owned by Koch Industries) closed resulting in a total direct job loss of 2,000 in a city of 7,200 residents. The closure of the lumber mill impacted the MR, which had historically transported raw logs and finished lumber to and from the Mill.
- In 2013 Tunnel 1 of MR was damaged by a rock slide. It was reopened again in 2014 and yet suffered a second more significant collapse in 2015, which eliminated freight service and significantly reduced the distance for train excursions. The loss of the skunk trail for rail transportation is a challenge for Fort Bragg, due to its relatively isolated location 45 miles from a major highway and the high cost of trucking.

Even with these economic challenges, Fort Bragg has worked hard to remake itself. We have fostered and encouraged small manufacturing and we are working with Georgia-Pacific to rezone the 400 acre Mill Site for a mix of industrial, manufacturing, retail and housing. The rehabilitation of the MR will assist with the redevelopment of this significant property.

DIRECT ECONOMIC IMPACTS

The MR, upon repair of the tunnel, will increase short line passenger services and resume cargo services between Fort Bragg and Willits, California, the economic impacts of both services are analyzed below.

Passenger Service. The Mendocino Railroad provides short tourist excursions through the mountains and the redwood forest. Figure 1 below, illustrates past (white) and future (blue) ridership if the proposed tunnel repair is completed. In 2017 total ridership was 56,559, and ridership is anticipated to steadily increase to 80,000 riders by 2021.



In 2016, Mendocino Railroad passengers spent an estimated $7.8 million in local expenditures, including $3.5 million on accommodations, $3 million on food, and $1.1 million on arts, entertainment and retail purchases in the Fort Bragg and Willits areas. These expenditures supported 286 jobs and $643,000 in state and local taxes. By 2021, with the repaired tunnel, the MR passengers will increase their contribution to the local economy by 39% to $10.9 million and tourist expenditures will support 403 area jobs and provide $905,000 in local taxes.

Sunk Train - Passenger Tourism Related Expenditures 2016 & 2021

	2016	2021	Assumptions
Tourist Expenditures			
Accommodations	$ 3,558,352	$ 5,005,892	Conservative estimate of 1.5 nights of stay/group @ $110/night
Food	$ 3,083,905	$ 4,338,439	Conservative estimate of $55 total for 4 meals per visitor for 1.5 days
Arts & Entertainment	$ 861,788	$ 1,212,364	Dean Runyan Associates multiplier
Retail	$ 305,796	$ 430,194	Dean Runyan Associates multiplier
Total	***$ 7,809,841***	***$ 10,986,889***	
Other Impacts			
Direct Employment	***286***	***403***	Jobs
State & Local Taxes	***$ 643,765***	***$ 905,649***	TOT and Retail Sales Taxes
Total Train Passengers	56,071	78,881	
Total Passenger Groups	21,566	30,339	

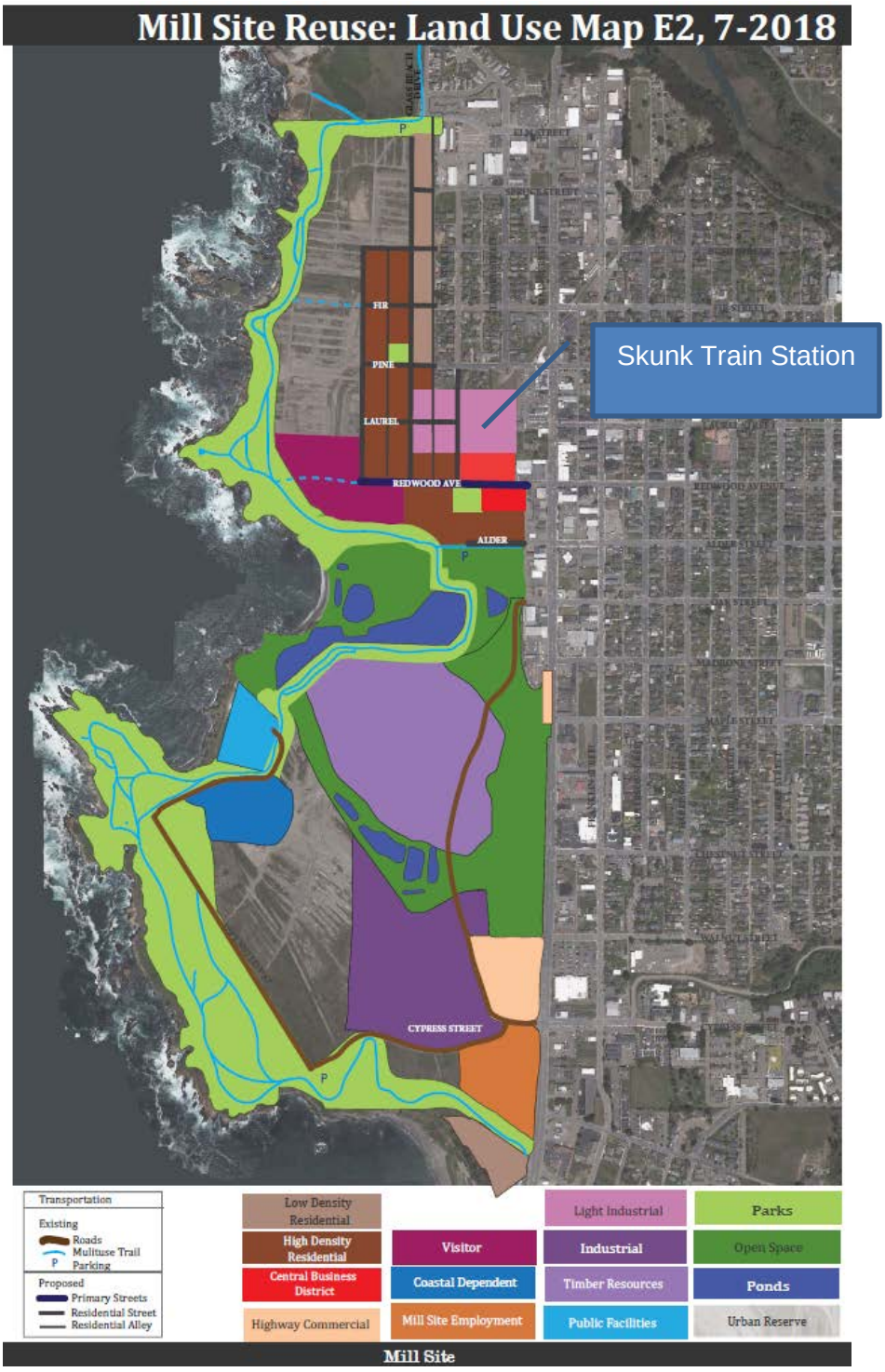
Freight Growth. With the repair of the tunnel and tracks the Mendocino Railroad will begin freight services between Willits and Fort Bragg. In the near term MR anticipates adding about 1,000 freight cars per year of locally manufactured beer from the North Coast Brewery and solid waste. Over the long term, as the redwood trees of the coast have significantly regrown, future logging operations may increase the demand for freight services.

Direct MR Employment. The Mendocino Railroad provides 22 full time and 29 part time direct jobs to run and manage the train. With the estimated 39% growth in MR revenues, total employment will also increase by an estimated 9 full time and 11 part time jobs.

IMPACT ON REDEVELOPMENT OF GEORGIA PACIFIC MILL SITE

The 400 acre GP Mill Site, owned by the Koch Brothers, once provided over 2,000 working class manufacturing jobs in Fort Bragg. The Mill closed in 2002 and the 400 acre site is currently undergoing a rezoning process that will result in new opportunities for working class manufacturing jobs especially if the Mendocino Railroad resumes freight services. The MR tracks terminate in the heart of a light industrial zoning district and the mixed use districts of the GP Mill Site. The railroad also terminates within track distance from an area zoned for a new lumber mill and a site rezoned for heavy industrial uses. Due to the high cost of transportation to the Coast the MR will be instrumental in the successful redevelopment of the site.

As noted in Figure 1 below the train station is geographically central to the redevelopment of the Mill Site. Proposed new zoning is illustrated with different colors and the various shades of purple denote various types of industrial zoning on the site.



The proposed rezoning will result in 1,100 new jobs, 1,286,000 square feet of development and 394 new housing units. The success of many of these ventures will be improved by a successfully and vibrant Mendocino Railroad.

Table 4: Most Likely Development Potential For Land Use Plan		
Total Parks and Open Space (acres)	246	Acres
Total Housing Units	394	Units
Total Housing (Square Feet)	467,200	SF
Total Square Feet of Commercial & Institutional	562,624	SF
Total Square Feet of Industrial Development	256,291	SF
Total Hotel Rooms	162	Rooms
Total Jobs	1,136	Jobs
Total Development	**1,286,116**	**SF**

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX C

VERIFIED STATEMENT OF MATT GEDNEY

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

VERIFIED STATEMENT OF MATT GEDNEY

My name is Matt Gedney and I am Founder and Principal of Iron Avenue LLC, which provides consulting, development, and marketing services to short lines, shippers, and developers who seek to utilize and/or expand rail services. I have worked in railroad business development for over 20 years – first at the Lancaster and Chester Railroad for 7 years, and then with Gulf & Ohio Railways for 13 years, prior to starting my own firm. Through my two decades of industrial development and commercial experience in the short line railroad industry, I have been fortunate enough to work with many outstanding industry partners, economic development allies, and Class I railroads. I have a particular focus on finding opportunities for the rail industry to recapture lost volume as well as add density to under-appreciated consumption markets and struggling branch lines. In that role, I have directly been involved in the following activities: community strategic planning, property ownership & acquisition, rezoning, environmental due diligence, conceptual site design, prospect site visits & presentations, contract negotiation, transload development, detailed design & engineering, and greenfield manufacturing startups.

Mendocino Railway requested that I review the Verified Statement of Marie Jones, and supporting Feasibility & Marketing Analysis, submitted in the above captioned proceeding. Many of the comments made, the facts relied upon, the methodology used, and conclusions

drawn by Ms. Jones in the verified statement and the Feasibility & Marketing Analysis do not comport with industry standards and do not accurately reflect the marketplace and the opportunity for recapturing rail business. The following report highlights a number of problematic statements and methodologies contained in the Jones Statement and Analysis, and my criticisms of and responses thereto, with the goal of providing insight and context from my many years of experience in the railroad industry. These include: (1) using nationwide per capita rail freight demand to estimate rail freight demand for Mendocino Railways; (2) using per capita GDP to estimate rail freight demand for Mendocino County and the surrounding region; (3) failing to conduct adequate interviews with potential rail users; (4) failing to include relevant sources of revenue in the break-even feasibility analysis; (5) demonstrating a failure to understand the role of rail service in the movement of forest products and of the transload market available to short line railroads; (6) making incorrect claims about the trucking market; and (7) demonstrating a lack of understanding of the overall freight railroad industry.

1. **Ms. Jones, in her Verified Statement and Feasibility & Market Analysis, uses nationwide per-capita rail freight demand to estimate rail freight demand for Mendocino Railways.**

Ms. Jones, in both her Verified Statement (at paragraph 3) and the Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 5), describes a portion of her analysis as follows:

> First the report analyzes potential rail freight demand based on population. The report estimates the maximum likely rail freight demand given the area's total population by utilizing per-capita (nationwide) rail freight demand for short haul trips. This approach overestimates demand because the population in this corridor is low density, making rail delivery less competitive.

There are several issues with the methodology described, as well as the application of this methodology to the issues in this proceeding.

Using national per-capita rail freight demand is not a recognized, or accurate, method to determine maximum rail freight demand for a short line railroad or geographic region. There are nearly 600 short line railroads in the United States,[1] operating on more than 47,000 route miles, with a large majority of route miles occurring in rural areas with low population density. Short lines handle roughly 1 in 5 of the nearly 12 million carloads shipped annually in the United States.[2]

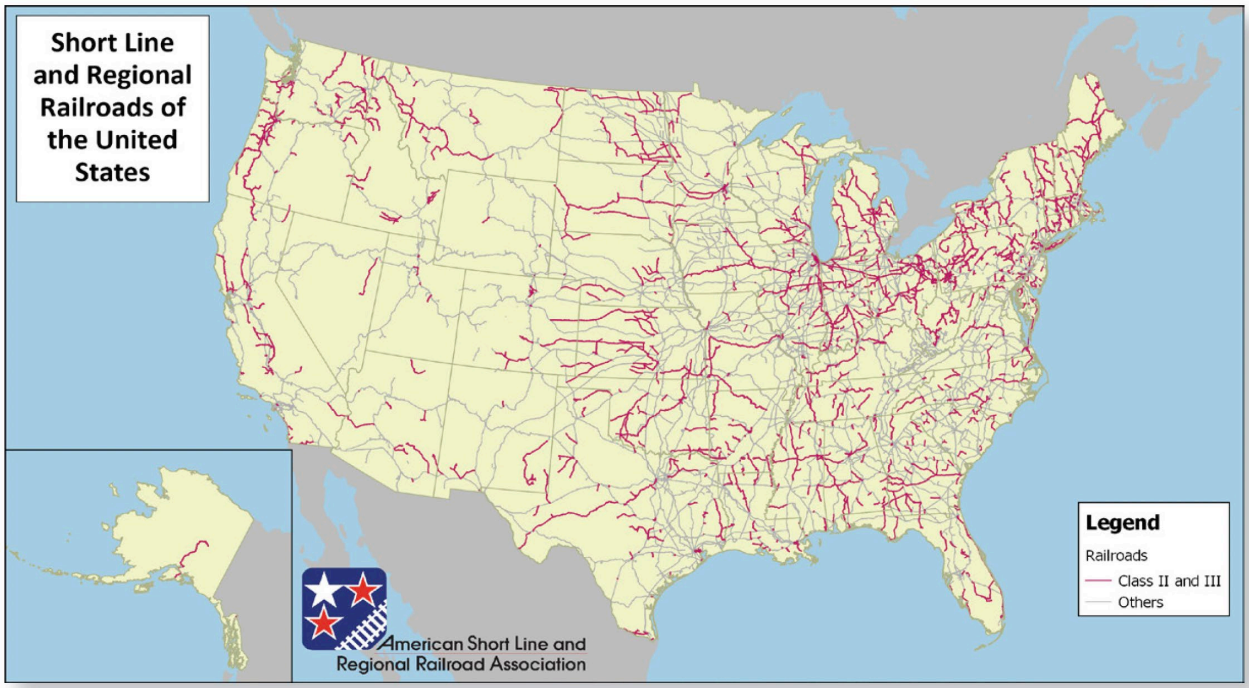
The U.S. Department of Transportation ("USDOT") estimates that 2/3rds of all rail freight originates in rural areas (low population density),[3] whereas 80% of the population in the United States lives in urban areas (high population density).[4] There is not a proportional increase in carload freight based on population density since most carload freight is not related to personal consumption, but rather industrial & agricultural uses, construction materials, and fossil fuel-based energy production, which often occurs as an origin and/or destination in rural areas. Therefore, it is not factually accurate to determine maximum rail freight demand for any given area based on national per capita averages.

[1] U.S. Department of Transportation, Federal Railroad Administration, The Freight Rail Network, https://railroads.dot.gov/rail-network-development/freight-rail-overview (noting 584 local/short line railroads in the United States), accessed on April 28, 2024.

[2] Short Line Overview, American Short Line and Regional Railroad Association, https://www.aslrra.org/advocacy/short-line-overview/

[3] The Critical Role of Rural Communities in the U.S. Transportation System, U.S. Dept of Transportation, https://www.transportation.gov/rural/grant-toolkit/critical-role-rural-communities

[4] Urban Area Facts, U.S. Census Bureau, https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/ua-facts.html



2. Ms. Jones, in her Verified Statement and Feasibility & Market Analysis, uses GDP per capita to estimate rail freight demand in Mendocino County.

Ms. Jones, both in her Verified Statement (at paragraph 3) and the Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 5), describes a second portion of her analysis as follows:

> Next the report analyzes potential freight demand based on area GDP/capita. This methodology accounts for any potential freight demand if Mendocino County had a particularly high GDP/capita, which it does not have.

There are several issues as well with this methodology and the application of this methodology to the issues in this proceeding.

Similar to the issue with using per-capita averages described above, determining rail freight demand based on GDP is also not an accepted, or accurate, method. A substantial amount of rail shipments originating or terminating on short lines occur in low-GDP per-capita regions, particularly areas that produce low-value raw materials such as minerals, forest products, and

agricultural commodities. Therefore, it is not factually accurate to determine maximum rail freight demand for any given area based on national GDP per-capita.

3. Ms. Jones, in her Verified Statement and Feasibility & Market Analysis, extrapolates freight rail demand based on limited interviews with only a few local manufacturers.

Ms. Jones, both in her Verified Statement (at paragraph 3) and the Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 5), describes a portion of her analysis as follows:

> Finally, the Demand Analysis also included the collection of primary demand data. MJC directly contacted major manufacturers in Mendocino County to determine how much freight demand they have if the rail line was refurbished and re-established.

The sample size for determining rail freight demand is too small when only a few local manufacturers are contacted. Transload sites are a proven asset to any rail operation to increase carload volume. These sites extend the reach of a rail carrier by connecting short haul truck routes (generally less than 150 miles) with connections to the national rail network.

An initial search of alternative transload sites connected to the national rail network shows alternatives that are a considerable distance from Willits, CA (3.5 hours to Anderson, CA and nearly 3 hours to San Francisco). With no rail service reactivation potential north of Willits, it would be prudent to survey for transload interest in neighboring counties, particularly Humbolt County. There are 4 counties east and north of Mendocino County to the California/Oregon border with no active freight rail access. Ms. Jones' analysis was too narrowly focused and did not account for these potential transload opportunities.

Many strategies go into a successful railroad marketing campaign to determine potential demand. This would include both long-term targets as well as spot opportunities. An experienced railroad marketing professional would ask a broader array of questions to determine commodities

transported within a given radius that could be served via transload site connected to the national network. At a minimum, this should include the following:

- Are there any planned California DOT projects in the region that would require non-local construction materials?
- How is bulk propane delivered to the area for sales and distribution for home heating?
- How is bulk road salt supplied for winter weather?
- What are the nearest transload centers, available capacity, and what commodities are handled?
- Are there agricultural commodities produced or consumed in the region in meaningful quantities, including such commodities as animal feed or fertilizer?
- Which timber harvesters do or could transport product to out-of-state mills?

This is but a sampling of additional insight needed to accurately gauge potential rail freight interest in a given area, particularly related to shipments originating in other areas of the national rail network. By limiting inquiries to only a few local manufacturers in Mendocino County, the analysis of potential rail freight demand is quite incomplete.



4. Ms. Jones, in her Verified Statement and Feasibility & Market Analysis "break even feasibility analysis," fails to include relevant sources of income that would materially alter her analysis and conclusions had they been included.

Ms. Jones, in her Verified Statement (at paragraph 3) and the Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 6), describes a portion of her analysis as follows:

> Break-Even Price Feasibility Analysis. Given the capitalization amount and operating costs, and estimated demand for rail traffic, the analysis calculates the breakeven point for cost/railcar and cost/ton to determine if the rail line can offer competitive pricing compared with truck transportation.

> Break-Even Volume Feasibility Analysis. Given the capitalization amount and operating costs, and existing trucking rates, this analysis calculates the breakeven demand required for the rail line to cover all of its costs and compete with existing truck rates.

As a result, Ms. Jones concludes that "there is not sufficient demand for short haul rail freight to defray operating costs, the costs of the capital improvements, or to attract the capital investment required to make this rail line operational"[5] Ms. Jones concludes, erroneously, that Mendocino Railways will "presumably go bankrupt, as California Western did before its assets were acquired by Mendocino Railway."[6] The analysis leading to this dire prediction, however, is fatally flawed.

The break-even feasibility analysis employed by Ms. Jones, based on both railcar pricing or volume, fails to account for alternative sources of revenue routinely available to railroad operators generally and in this case in particular.[7] Short line railroads, particularly those operating on light density branch lines, can and often do derive a significant percentage of gross income from passenger operations, accessorial charges, right-of-way occupations, property leases, mechanical services, car storage, and tourist train operations. There is no regulatory requirement outlining the percentage of income that a short line railroad must receive from rail freight service.

Numerous short lines in the United States survive today financed largely on non-freight revenue sources. Thus, to the extent the possibility of freight service, and indeed the corridor itself, can be preserved through non-freight revenue sources while holding out the ability to

[5] Feasibility & Marketing Analysis at 4

[6] Feasibility & Marketing Analysis at 24.

[7] See, e.g., Feasibility and Marketing Analysis at 14 (where Ms. Jones notes several alternative revenue-generating services). Ms. Jones also ignores rent, transload fees, storage fees and other revenue generators normally associated with short line rail markets.

perform common carrier service, this is a good thing even if there is no active freight service over a period of time. It is the holding out of that service that provides at least the opportunity for future rail service. As long as the railroad and rail corridor are being maintained and made available, even using non-freight revenues, there is always the possibility for freight service.

Recognizing the importance of maintaining the potential for freight rail service on lower density lines, the federal government and a multitude of states provide grants, tax credits, loans, and public/private partnerships aimed at the railroad industry, and short line railroads in particular. These funding sources help to address maintenance cost and related burdens, because public policy dictates that rail corridors should be preserved for continued use and/or future opportunities.

Ms. Jones does, in fact, mention grant funding, but only in the context of criticizing Mendocino Railways' past failed grant applications. What is not mentioned is that short lines who apply for CRISI grants, and similar opportunities like TIGER and RAISE grants, must go through a rigorous application process, competing with other freight, transit, and public safety projects across the country. Available funding for a given program in a given year is set by Congress and can fluctuate from year-to-year. Many short line railroads with successful grant applications – including a railroad I worked for in the past – go through a number of failed applications before finally receiving a funding award.

By excluding alternative revenue sources from the Feasibility Analysis, Ms. Jones ignores the reality that alternate revenue sources are often necessary and sometimes essential to preserving a short line railroad. Short line railroads should not be shut down or have their common carrier rights revoked simply because there is not enough freight revenue to sustain all

of their operations. Revenue from other sources should be considered in any analysis of whether a short line can continue to sustain itself to provide freight rail service.

5. Ms. Jones, in her Feasibility & Market Analysis, demonstrates a failure to understand the role of rail service in the movement of forest products and of the transload market available to short line railroads.

Ms. Jones, in her Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 9), describes forest product transportation issues in the following terms:

> Forestry is a difficult item to transport via rail because timber harvests are geographically dispersed and transport by rail would require a truck, rail and truck transfer scenario….

This commentary is also reproduced on page 39 of the Application for Adverse Abandonment.

Forest products shipped by rail are routinely transported by truck to a transload site, shipped long-haul by rail, and then transloaded again to trucks to a final destination. This is true from raw timber logs to finished lumber. An example of a regional success story, accessible through a simple Google search, is a 2023 BNSF timber transload that has moved several hundred carloads of Ponderosa Pine logs in the interstate rail market.[8] These logs are transloaded at a rail origin point in Kalmath Falls, OR from wildfire harvest activities in Northern California and Oregon. The destination is a sawmill in Wyoming that also requires a transload with final-mile truck delivery. That article proves to be rather illuminating. "'This relationship with BNSF has exceeded my expectations,' Dan Buehler resource forester, said. '…Transportation of logs from the West Coast was absolutely critical within the wildfire crisis strategy and would simply not be possible without the rail component.'"[9] BNSF, a Class I railroad, was able to use short line transloading ingenuity to develop a market.

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[8] Logging Success in the Northwest, *https://www.bnsf.com/news-media/railtalk/service/forestryfirst.html*, accessed on April 28, 2024.

[9] Id.

This very recent success story for BNSF speaks to the need for a broader reach on the rail freight demand analysis, especially related to shipments requiring a connection to the national rail network.

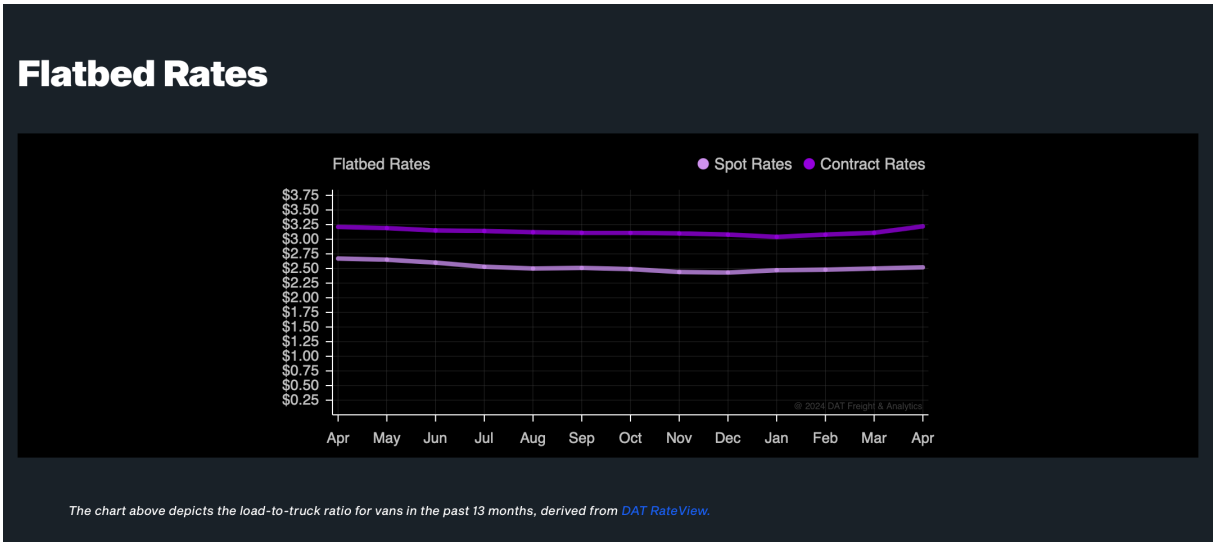


6. Ms. Jones, in her Feasibility & Market Analysis, incorrectly claims that trucking services in a given market area will provide service within a very narrow price band.

Ms. Jones, in her Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 11), makes the following economic claim, unsupported by data or the reality of the market:

> Trucking is truly a commodity transportation service with very little difference in rates between operators in a given market area.

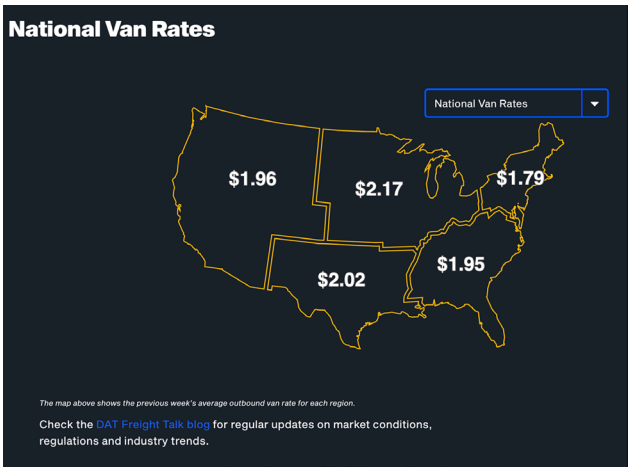
Truck rates, however, can certainly vary between operators in a given market area based on the type of trailer utilized, commodity handled, equipment availability, and Spot vs. Contract rates. For example, DAT Freight & Analytics lists the Western US Dry Van average rate (as of April 2024) at $1.94/mile and the average flatbed rate at $2.30/mile, an 18.5% difference.[10] DAT also tracks the relationship between Spot and Contract rates.[11] The National Flatbed Rate is calculated to be $3.22/mile for Contract and $2.52/mile for Spot, a 27.7% difference.[12] See graph below.

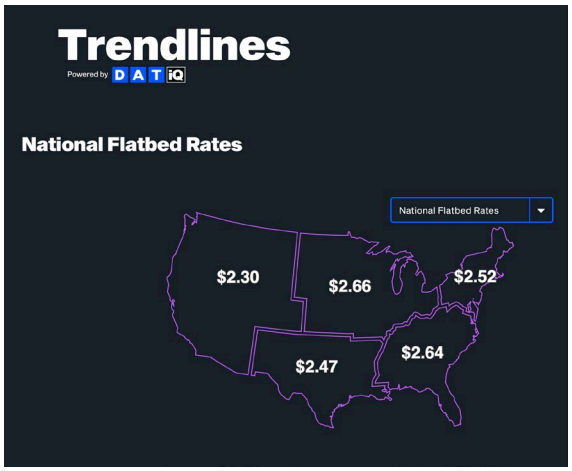


[10] National Van Rates, DAT Freight & Analytics, https://www.dat.com/trendlines/van/national-rates
National Flatbed Rates, DAT Freight & Analytics, https://www.dat.com/trendlines/flatbed/national-rates

[11] About Trendlines, DAT Freight & Analytics, https://www.dat.com/trendlines

[12] National Flatbed Rates, DAT Freight & Analytics, https://www.dat.com/trendlines/flatbed/national-rates





Much like railroad tariff documents, trucking companies also apply a host of accessorial charges that differ from operator to operator. These charges, on top of per-mile rates, can include:

- Truck Order Not Used
- Detention charges
- Layover charges
- Deadhead miles
- Inside delivery charge
- Tarp charges
- Limited access charges
- Reconsignment charges
- Hazmat charges
- Tanker endorsements
- Redelivery charges
- Lumper charges
- Driver assists
- Special Equipment charges
- Fuel Surcharges
- Toll Fees
- Demurrage
- Out of route miles

It is simply not accurate to assert that there is very little difference among trucking rates in any given market. The differences are significant depending upon the type of trucking service, accessorial charges imposed, driver availability, and fuel prices. It is important to note that Ms. Jones does not cite any source for the assertion, and instead only sets forth what she reports as average trucking costs (which themselves show a good deal of variation).[13]

[13] In the same section of the Feasibility & Marketing Report, Ms. Jones inserts Table 4: Trucking Costs/Ton, Cloverdale to Fort Bragg. The table determines the "Truck Haul Price per 80 Tons" which assertedly is a 1 railcar

7. Ms. Jones, in her Feasibility & Market Analysis, renders a dire assessment of the freight rail industry that questions the entire freight rail market.

Ms. Jones, in her Feasibility & Market Analysis attached as an exhibit to the Verified Statement (at page 22), draws the following dire conclusion as to the nationwide continued viability of freight rail transportation generally:

> Rail as a freight mode is in decline. Overall rail carloads declined from 1.5 million in 2000 to less than a million in 2022. Truck freight on the other hand increased 50% from 2002 to 2022.

It is not clear whether the intent of this section of the Feasibility & Marketing Analysis is submitted in order to support a finding that what has been an important Federal interest in maintaining freight rail service may no longer be considered reasonable or in the public interest, but in any event, the specific discussion is misleading and the conclusion therefrom is wrong.

First, the Association of American Railroads (AAR) reported that 2022 U.S. carloads totaled 11,976,283, not less than 1 million as stated by the author. The primary contributor to a large decline in carloads from 2002-2022 is the loss of more than 3.5 million annual carloads of coal, which has no relevance to the rail network along the northern California coast. The continual transition from 263,000 lb gross weight railcars to 286,000 lbs has also been a contributing factor by reducing the number of carloads, as rail shipments have become more efficient with higher carrying capacities. The corresponding reduction in carloads is not indicative of a reduction in demand, but rather, a product of more tonnage being moved per railcar. U.S. DOT actually estimates an expansion over time in the freight rail system in terms of

equivalent. No citation is provided for this asserted fact, even though many rail lines are fully equipped to handle loaded railcars with a net carrying capacity of 110 tons when utilizing 286,000 lbs capable railcars.

the value of the shipments (in constant 2017 dollars), the weight of shipments, and the ton miles of freight rail shipments.[14]

Secondly, a comparison of national truck vs. rail volumes should not be used to question investment in rail or the existence of certain rail corridors, especially with respect to short lines. Truck and rail freight are both essential components of the U.S. supply chain. The two modes directly compete against each other but also combine for complimentary service when handling intermodal and transload shipments.

There are numerous reasons why public interest and public policy favor preserving rail service as much as possible . According to the American Association of Railroads, "[f]reight railroads account for roughly 40% of U.S. long-distance freight volume (measured by ton-miles) — more than any other mode of transportation….[but] account for just 0.5% of total U.S. greenhouse gas emissions…and just 1.7% of transportation-related greenhouse gas emissions."[15]

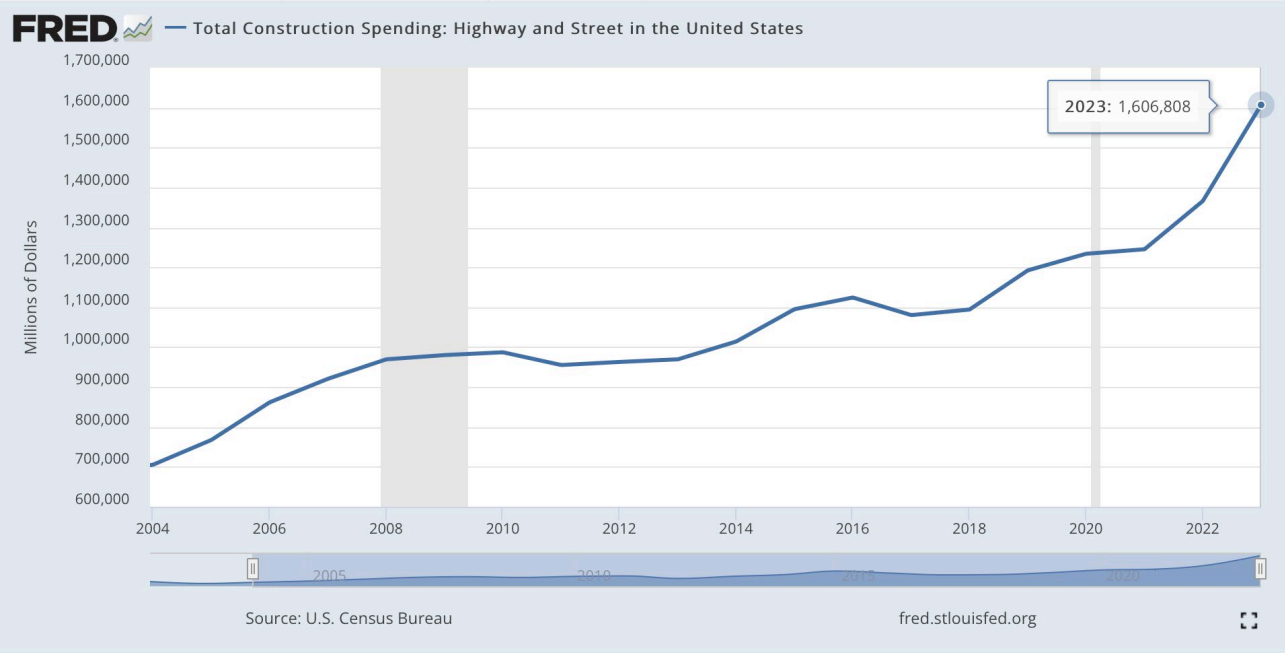
In addition to being more environmentally friend, railroads also reduce traffic congestion and damage to roads and highways. The 2018 "Economic Report of the President" stated: "…evidence suggests that heavy trucks in particular do not currently face taxes and charges that are aligned with the negative externalities they generate, which include pavement damage, traffic congestion, accident risk, and emissions."[16] Road maintenance and construction expenditures are an enormous line item in Federal, State, and Local budgets. In total, it is estimated that spending

[14] See, Pocket Guide to Transportation 2023, published by the U.S. Department of Transportation, Office of the Secretary of Transportation, https://rosap.ntl.bts.gov/view/dot/64803, at 19, accessed on April 2024.

[15] American Association of Railroads, "Railroad 101: Facts & Figures", https://www.aar.org/data-center/#data-facts, accessed May 1, 2024.

[16] Economic Report of the President, together with The Annual Report of the Council of Economic Advisors, February 2018, https://www.govinfo.gov/content/pkg/ERP-2018/pdf/ERP-2018.pdf, at page 180.

on public road infrastructure in the U.S. reached $1.6 trillion in 2023.[17] The graph below, compiled by the Federal Reserve Bank of St. Louis, clearly illustrates the increasing financial strain on federal, state, and local budgets.



By contrast, the U.S. Freight Rail system, which largely operates on privately funded infrastructure, spends an estimated $23 billion annually to maintain and modernize the network.[18] Long-term legislative efforts have helped guide USDOT, FRA, and State governments to create public funding and financing programs to assist railroads, short lines in particular, to help take the strain off public roads and enhance regional economic development opportunities.

[17] See, Total Construction Spending: Highway and Street in the United States (Annual), published the Federal Reserve Bank of St. Louis, Federal Reserve Economic Data (FRED), https://fred.stlouisfed.org/series/TLHWYCONS

[18] Freight Rail's Strategic Investments, Association of American Railroads, https://www.aar.org/issue/freight-rail-investments

CONCLUSION

The Marie Jones Consulting report paints a picture of an uneconomical, if not impossible, freight rail landscape in Mendocino County and communities along the northern California coast line. In addition to demonstrating an overall lack of understanding for, and experience in, railroad business development, the report uses dubious methods for estimating rail freight demand, fails to show that adequate research was conducted with regard to potential shippers, fails to consider alternative revenue streams regularly realized by short line railroads to finance the operation and preservation of their respective freight rail corridors, and makes incorrect claims about the trucking market, as well as the movement of forest products and related goods.

A more exhaustive, self-directed market analysis would be the proper route for Mendocino Railway, as is the standard practice when evaluating railroad reinvestment and/or expansion. There are approximately 10,000 square miles of northwest California along the coast line without access to the national freight rail network, and the Marie Jones Consulting report fails to address any conventional transload viability to support this market.

It is, unfortunately, not uncommon for the general public to be unaware of the benefits of freight rail access within a regional economy, and for local competing interests to push for rail access to be extinguished. It is therefore important to emphasize that freight railroads, and the shippers who utilize them, are very beneficial to the U.S. economy and to the states, counties and municipalities they operate in. Railroads create and maintain high paying jobs, promote economic development, combat climate change, reduce congestion and damage to highways, and greatly extend the sourcing reach for products consumed or produced in the area.

Rehabilitating the Mendocino Railway network – and in tandem, improving the connecting rail carrier's infrastructure that connects to the national network – would ensure that businesses, consumers, foresters, and government agencies would continue to have a regional freight rail connection (either direct or through centralized transload) along a more than 200 mile stretch of northwest California. Continuing the abandonment process for this rail corridor would, in turn, create one of the largest geographic areas lacking freight rail service along a United States coast line, thus depriving the regional economy of both current and future benefits and opportunities.

VERIFICATION

I, Matt Gedney, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. I further certify that I am qualified and authorized to file this Verified Statement.

Executed on this 17 day of June, 2024.

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX D

MARIE JONES DEPOSITION

BEFORE THE SURFACE TRANSPORTATION BOARD

GREAT REDWOOD TRAIL AGENCY,

Plaintiff,

v. Case No.

MENDOCINO RAILWAY IN MENDOCINO COUNTY, CALIFORNIA, AB-1305 (SUB-NO. 1)

Defendant.

VIDEOCONFERENCE DEPOSITION OF

MARIE JONES

DATE: Monday, May 20, 2024

TIME: 9:00 a.m. PDT/12:00 p.m. EDT

LOCATION: Remote Proceeding

Fort Bragg, CA 95437

REPORTED BY: Christopher Friebe

JOB NO.: 6709313

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF GREAT REDWOOD TRAIL AGENCY:

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(202) 663-7853

A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Robert Jason Pinoli, President of Mendocino Railway (by videoconference)

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(Exhibits retained by counsel.)

P R O C E E D I N G S

THE REPORTER: Good afternoon. My name is Christopher Friebe; I am the reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 12:00 p.m.

This is the deposition of Marie Jones taken in the matter of Great Redwood Trail Agency and Mendocino Railway on Monday, May 20, 2024, at Fort Bragg, California.

I am a notary authorized to take acknowledgments and administer oaths in Michigan. Parties agree that I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded

by stenographic means; and

- shall constitute written stipulation of such.

At this time will counsel please identify yourselves for the record, starting with deposing counsel.

MR. MULLINS: Yeah. My name is William Mullins. I go by Bill. I am a partner at Mullins Law Group. I represent Mendocino Railway, also known as the Skunk Train.

MR. EDWARDS: My name is John Edwards. I'm also with the Mullins Law Group. And I also represent Mendocino Railway.

MS. JONES: Should I -- oh.

MR. ELLIOTT: This is Dan Elliott. I'm here on behalf of GKG Law, representing the Great Redwood Trail Agency.

THE REPORTER: Thank you. Hearing no objections, I will now swear in the witness.

Please raise your right hand.

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WHEREUPON,

MARIE JONES,

called as a witness and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE REPORTER: Thank you. Counsel, you may now proceed.

MR. MULLINS: Okay. Just for the record, I think everybody knows Robert Pinoli, or know the name. He's with Mendocino Railway. He's attending the deposition, not as an attorney, but as just an observer. I hope there's no objections to that, Dan. Do you have any objections to that?

MR. ELLIOTT: No objection. But I just wanted to make the point, I don't know if we're going to be using any documents that have been labeled "Highly Confidential," but I would think that if he should not be on the call during that time.

MR. MULLINS: Yes. That's fair, and I don't believe we're using any highly confidential documents. And if we did, they would be Skunk Train Mendocino Railway's own documents anyway, so.

MR. ELLIOTT: Yeah. I don't have any problem with that, obviously.

MR. MULLINS: Okay.

EXAMINATION

BY MR. MULLINS:

Q So, Marie, just for the record, could you state your name and your current title?

A Sure. My name is Marie Jones. And I own and manage Marie Jones Consulting, which is a small economic development land use, planning, economic analysis consulting firm located in Fort Bragg, California.

Q And have you ever been deposed before?

A I don't know if you would call it deposed. I testified before a grand jury once, but I don't think it was like this. There wasn't, like, a reporter or anything.

Q Okay. And just for the record, just, this is kind of a standard question. There's nothing today that would impair any of your judgments or your answers? There's no medications, no sickness, nothing that would impair your answers at this time?

A Not at all.

Q All right. Thank you.

A Oh. You know what? I did just think of one other time I might've been deposed, where I did go to Fort Bragg, and it was for a lawsuit against the City of Fort Bragg. And I went to Ukiah, and there was an attorney, and they had a court reporter. But that was about an injury case. A kid on a skateboard went underneath a truck that was doing work for the City of Fort Bragg.

Q Okay. Thank you. So, I would like to introduce Exhibit 1 as your verified statement. Do you have a copy of your verified statement, Marie?

(Exhibit 1 was marked for identification.)

A I do. I can pull it up if you give me a minute.

Q Okay. We also have Mr. Edwards here that, we can share his screen when we go to refer to it. And then I am going to introduce as Exhibit 2 your actual Appendix A, which is your feasibility study.

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(Exhibit 2 was marked for identification.

A Sure.

Q So, those will be Exhibits 1 and 2. We will address those later, but I wanted to get those on the record and introduce upfront.

A Well, obviously, I wrote one. And Jan wrote the other one on my behalf, so I'm very familiar with what's in both of them.

Q Okay. And just for the record, when you say that, did he write the verified statement?

A Yes. Well, I mean, he excerpted a lot of information from my report to write the verified statement for me, which I then read, reviewed, and signed.

Q So, you agree to the statements in the verified statement, or obviously, you wouldn't have signed it?

A Yeah. I mean, it gets to the meat of the issue. I prefer my report, honestly. It's more exhaustive and has all the data in it. But, yeah. I think they're both reasonable.

Q Okay. So, in your verified statement, you claim that you've been a consultant for 35 years; is that correct?

A I've been working in this field for 35 years. I haven't been a consultant for 35 years. I've been a consultant for about 10 of those 35 years.

Q Okay. In what years have you been a consultant?

A Well, I guess it depends a little bit on if you talk about me as a consultant working for myself, or me as a consultant working for others. If you want to talk about me as a consultant working for others, I worked for Bay Area Economics for two years. I ran Marie Jones Consulting out of the Bay Area for five years.

And then, since leaving the City of Fort Bragg in 2019, I've also been running again as Marie Jones Consulting, so that's another 4 plus years, 4 1/2 years. So, maybe 11 years altogether, as a consultant.

Q Okay. And, currently -- when you were with Fort Bragg, were you an employee or a consultant?

A Both. So, right now, I am a consultant. I continue to consult with the City of Fort Bragg, and have been doing for the past 2 1/2 years. I was an employee for the City of Fort Bragg for 13 years.

And because of my extensive background doing consulting work, I did a lot of projects that the city would normally have consulted out to experts as a staff person. I was the community development director for the City of Fort Bragg.

Q Were you an employee during the 2018 period?

A Yes. And I assisted Mendocino Railway with their submittal.

Q And 2019, same?

A Yes.

Q As an employee, not as Marie Jones Consulting?

A Yes.

Q Okay.

A Yeah. I started working for the city in 2006, and left in 2019.

Q Okay. And when you left in 2019, why did you leave?

A There was a new city manager, and over the course of three years, she got rid of all city management staff. So, that was seven people in total. That included the Director of Human Resources, myself, the police chief, the Director of Public Works, one of the senior planners.

And the Director of Finance quit. So, I would call it -- she had an unusual vision. Her vision, I think, was to replace senior staff with junior staff for loyalty.

Q And is that person still in charge of the City?

A No. She was asked to leave two years ago, 2 1/2 years ago.

Q So, you just stated that you've been working back with the City for 2 1/2 years; is that correct?

A Yeah. As a consultant. They've asked me to come back as an employee, and I've declined.

Q But you are currently a consultant for the City?

A For many clients. The City of Fort Bragg, the City of Point Arena, the Great Redwood Trail

Association. I've done work for various counties and other nonprofits.

Q Okay. And the City has new management since 2019?

A Yeah. So, they hired Tabatha Miller. I think she was there for about 2 1/2 years; her contract was for three. She was replaced by an interim director whose name I'm forgetting. He was there for about six months or something. I'm not totally sure.

And then, that person was replaced by Petey [ph], who was there for about two years. She just left as of January 1st, and has been replaced by the then-finance director, Isaac Whippy, who is now the city manager. So, lots of turnover.

Q Okay. Yeah. Lots of turnover.

A The prior city manager was there for 13 years as a city manager. And prior to that, she had had my job as a community development director for nine years. There was basically a turnover of politics, I would say, at the City of Fort Bragg.

Q Okay. Thank you. On your website, Marie

Jones Consulting -- that is your website; correct?

A Yeah. I mean, I assume. There could be others. Who knows?

Q So, when you have been a consultant, have you -- do you recall working on something called the Middle Site Reuse Plan and Local Coastal Program Amendment for the City of Fort Bragg?

A I did work at that. I worked on that project as a staff person, not as a consultant.

Q And that was my question. Okay. And you also list a project called the Fort Bragg Coastal Trail Project; was that as a consultant or an employee?

A That was as an employee.

Q Okay. So, focusing on the Fort Bragg Coastal Trail Project, can you explain what that project was?

A Sure. It was a multi-year project. I started working on it in 2007, when I got to the city, and finished in 2016. So, it was a very long project. It consisted of acquisition of about 110 acres, from the then-property owner Georgia Pacific. That

acquisition occurred in five different pieces of property.

It included an environmental document, the preparation of an EIR, two subsequent EIRs, and an MND, to complete the various portions of the project, because the Coastal Project originally started as just the North Trail, and then we added the South Trail, and then the middle section, because the whole process just took a long time.

It was very big. It was a $12 million project I was the project manager for. I also hired the architect that did the initial architectural drawings for the project. Do you want me to tell you what I did or what the project is? I'm sorry.

Q No. No. That's fine. Just a general question, I guess.

A Okay. So, that project also included completion of all those environmental documents. The first EIR we outsourced for $350,000. The subsequent -- the two subsequent EIRs and the MND, I did myself in-house, because, obviously, I was a lot cheaper than the 350,000 we were paying for the EIR consultant.

The project also included management of all of the resource studies that were done, which included an archeological survey, biological survey, bluff top erosion analysis, tsunami run-up analysis, burring owl survey.

Q Let me ask you this --

A I think that's it. Let me just finish. I also wrote all the grants to fund the project, which included the acquisition grant and the grants to do the final design in the construction itself. And then I managed the construction project, along with the 64 different vendors for that project.

We broke it up into pieces to make it less expensive. And, yeah. So, it was about 25 percent of my job for probably about 10 years, and provided the largest increase in value to Robert Pinoli's property that he's received.

Q Well, let me ask, was the goal of that project for the City of Fort Bragg to buy the former mill site?

A Was the goal of the project to allow the City -- no. I would not say that. The goal of the

project was to provide public access to California residents, to the coast. You have to recognize, or maybe you don't know this, but the mill site covered the entire Western one-third of the City of Fort Bragg.

So, most Fort Bragg residents had never seen their own coast before. And the project literally started with walks with neighbors, and some people got teary-eyed 'cause they'd never seen their own coast. So, that was the reason that the state gave the City the funds to acquire that property.

Q Did the state -- did the City want to acquire the property?

A Acquire the entire mill site or acquire just the coast trail?

Q Acquire all or any portion of that mill site and property.

A Oh. I think that evolved over time because the City's leadership changed.

THE WITNESS: So -- and, I have a question for Dan. I know some information about a previous confidential case, and I don't know if I can

relay it here or not. It was a case between Georgia Pacific and the City of Fort Bragg regarding -- which is very germane to your question, Bill -- regarding the City's interest in acquiring the property.

MR. ELLIOTT: I think we can just answer -- just answer the question on whether or not the City was interested in acquiring the point, yes or no.

THE WITNESS: The City was not interested in acquiring the property until, probably, 2010, when there was a triparty lawsuit between the City of Fort Bragg, OfficeMax, and Mendocino Redwood Company regarding the cleanup of the mill site.

And as part of that settlement, there were some conversations that were started about the City possibly acquiring portions of the property that were not on the coastal trail. Just to be clear, the City purchased the coastal trail property from GP for $4.1 million, that 110 acres.

MR. MULLINS: The 110 acres. Okay.

THE WITNESS: So, that was purchased with money.

BY MR. MULLINS:

Q What year was that purchased?

A Oh. Jeez. I'm not exactly sure. It might've been 2007 or 2008. That's long enough ago, I couldn't tell you the exact date.

Q Okay. Was that all of the entire former site that the City purchased?

A No. The City purchased the coastal trail part, which is 110 acres. 104 of those acres it purchased from Georgia Pacific, who was then the owner. 6 of the acres, they purchased from the Johnson Family, which were the original owners of the entire mill property.

The remainder of the mill site, some 400 or 323 acres, remained in Georgia Pacific's property, as far as I know, until Mendocino Railroad negotiated a purchase of, I believe it was 70 acres, on the north side. And that was probably around 2018-ish. I'm not totally sure of the date of that.

Q And when Mendocino purchased the 70 acres, was that the 70 acres that the City had included as part of your plan?

A That's not a good enough or distinct enough question that you've asked me, when you say part of my plan, part of the City's plan --

Q Was that part of the Coastal Trail Plan, or -- either the mill site reuse plan or the Coastal Trail Project, did that include the 70 acres? Either one of those projects.

A Okay. So, it was completely separate from the Coastal Trail Project, because, by then, the Coastal Trail was constructed and under ownership by the City of Fort Bragg, because that happened prior to -- that happened in the late 2000s, like 2008 or 2009. I can't remember exactly. And Robert and his crew bought the 70 acres, I think, around 2018 or 2019, from GP.

So, obviously, they were separate parcels and not part of the same thing. Concurrent with this whole project of me doing the Coastal Trail for the City of Fort Bragg, I was also engaged with the city manager and Georgia Pacific on the mill site reuse plan, which was initiated by GP in about 2003, prior to my coming to the City of Fort Bragg, and was

stopped in 2009 due to the three-party lawsuit over remediation of the mill fund.

And, can I ask a question? How is this in any way germane to my --

Q You know, Marie, your job is just to answer my questions; okay?

A Okay. It just seems, like, so off --

Q And if your counsel feels like the question is not relevant or whatever --

A Okay.

Q He can make an objection; okay?

A Fair.

Q So, I'm just curious as to whether or not the 70 acres -- did the City have a plan or a goal or a vision for the use of the 70 acres?

A Yeah. So, the City had what was called the mill site reuse plan, which was developed -- and this is going to take a little while to explain.

Q Just answer the question. Just answer the question. Did the City -- yes or no -- did the City have a plan or a vision for the use of the 70 acres that was eventually purchased by Mendocino Rail, yes

or no?

A Sorry. I can't answer it as a "Yes" or "No."

Q And why is that?

A Because it's "Yes" and "No," and it needs explanation. So, the Georgia Pacific Plan was a plan that was submitted by Georgia Pacific to the City of Fort Bragg. That plan went through various reiterations that involved the Coastal Commission, the City, and Georgia Pacific. That plan was never presented to City Council.

So, I cannot say that it was, quote, unquote, the City's plan, unless the City adopts something. Otherwise, it's really Georgia Pacific's plan, in negotiation with City staff, with some consultation by the Coastal Commission. When Georgia Pacific withdrew their plan, I applied for funding from the Coastal Commission, which was granted, to continue the process. At that point, Georgia Pacific was no longer part of the picture. And it became a community process where I was engaging the community, which included the Skunk Train and other business

members, in the development of a reuse plan for the mill site. Again, that plan never went through the adoption process, so it got as far as getting some recommendations and edits from Planning Commission and City Council, but I cannot tell you that we came to a final conclusion about what the reuse plan should be. So, when you say it's the City's vision or their plan, I can say "sort of." It's not a "Yes" or "No" question.

Q All right. Let me ask you this question. Was it a surprise when the Mendocino Railway bought the 70 acres?

A I was no longer with the City anymore at that point, so I can only ask from a hearsay perspective. I heard from various people that the then-City manager Tabatha Miller was in negotiations with GP to purchase the property, and that that purchase process fell through, and Mendocino Railways then acquired the property.

So, I don't know if it was a surprise or not, 'cause I wasn't really involved. But that's just what I heard of what happened.

Q Okay. Let's move on. With respect to your consulting jobs over these many years, have you ever studied the concept of rails with trails?

A No. I mean, I know of it, but I've never done a feasibility study around that specific topic.

Q Okay. And are you aware of efforts -- do you know who SMART is, the SMART that owns the tracks down south of Cloverdale?

A Yes.

Q Are you aware of SMART's efforts to develop rails with trails?

A I am not.

Q Would it surprise you if they were trying to develop a project that had rails with trails?

A Not particularly. Ukiah has a similar situation. They have a trail that runs adjacent to the railway.

Q So, you agree that it is feasible for rails and trails to coexist in a railroad corridor?

A I think it's feasible, but I think it's very -- when you say something is feasible, it's very particular to the situation. I think it makes sense

in an urbanized situation where there's already a lot of traffic, noise, et cetera, and might not necessarily be a viable option in a more rural setting.

And, specifically, with regard to the mill site, one of the challenges that I see there is the proposed rail corridor is -- would be located on top of a Native American cultural deposit that covers about half the site that is deemed eligible for the National Historic Landmark -- I forget the exact --

Q Where is the location? When you say, "that location," where is that location that you're referring to?

A It's most of the north part of the GP mill site has archeological --

Q Okay. Are you aware of any such archeological sites on the GRTA line between Willits and Cloverdale?

A I am not aware of any, 'cause I have not studied that line in the same level of detail. That doesn't mean they don't exist. And, you know, part of the thing about the line that's proposed by Skunk

Train along the Fort Bragg Coastal Trail is there was never a rail line there before.

So, it would be a new disturbance. And as part of the project of developing that trail, I had to call consultation with a Native American tribe for over a year and a half. And they are very touchy about disturbing their resources.

Q Okay.

A And we actually had to redesign the trail to avoid their resources.

Q And in your years as a consultant, how many projects would you say that you have consulted on that involved the railroads?

A Oh. None. Just these two. Just these two for Great Redwood Trail. I don't consider myself a railroad expert, per se, although I have learned a little bit by going through this process. I would say my expertise is more in the analytical work and the market analysis, which I'm very familiar with from other projects.

Q So, you've never worked for a railway as a consultant?

A No.
Q Never worked for a railway as an employee?
A No.
Q Have you ever worked for a company that ships on railroads, as either a consultant or an employee?
A Not to my knowledge.
Q Okay. Have you ever studied or analyzed a transload operation?
A No.
Q Do you know what I mean when I say, "transload"?
A Yes. You mean moving materials from one mode of transport to another, so a trail to truck or trail to ship -- I mean, train to truck.
Q Okay. Yeah. I know what you meant.
A Yeah. Sorry.
Q I know what you mean. I think we all knew what you meant.
A Okay.
Q Would you say that almost all of your consulting has been done for governments or community

organizations?

A No.

Q No. Have you had private clients?

A Yes.

Q And you are currently a consultant to GRTA; is that correct?

A Yes.

Q Okay. So, with respect to your verified statement and your feasibility study --

A Sure.

Q You were retained by GRTA to do those studies?

A I was first retained by -- well, the initial study, I was retained by an attorney. I think his last name was Montainge. And then, the second study, I was retained by GRTA.

Q When you say, "the first study," what do you mean?

A In 2022, Mendocino Railway Company was looking to acquire some rail line from Willits to Grist Creek. I could give you the rail number if you gave me a minute to look it up.

Q So, that was not in the context of this proceeding; is that correct?

A No. It was not. But it helped inform this a bit, because I did a fair amount of research on demand for rail line from Fort Bragg to Willits, and to Grist Creek and back.

Q Okay. And with respect to this feasibility study, it was a new one, is that correct, that you did for GRTA for this case?

A Some of the material was the same, so I moved it over. A lot of the appendix material in the study was from the 2022 study. But, yes. I did a new study for that. Updated all the information, and it was obviously a different rail line with different economic situations, in terms of the cities served and the cost of fixing the line and operating the line.

Q So, when GRTA contacted you to do a study, what did they ask you?

A Oh. I mean, it's in my scope of work, which is what we agreed to, which I think is in your packet.

Q Is that what they asked you to do? Just --

A Yeah. They asked me to look at the two rail

segments of, basically, Fort Bragg to Willits, and then Willits to Cloverdale.

Look at the market support for them, so that involved, kind of, a three-track approach, contacting business owners on that ship, looking at competing truck rates, and then doing, sort of, macro level potential demand analysis. And then, included in that is a feasibility study.

So, given the cost of repair and the cost of operation that were prepared by a different consultant, what's the feasibility of the project actually being able to produce enough cash to pay off the loan, or to pay an investor? And I did both versions of that.

Q And did GRTA pay you for your work?

A They did. Initially, I told them that it would be around $5,000, so that was our contract. And then Mendocino Railway applied for a loan, which, I then added additional work, and that was on an hourly basis.

Q When they gave you the assignment, did they tell you what they were hoping you would find?

A No.

Q No. Was it just, "Go and study and come back to us"?

A Yeah. That's what you always do if you're an economist.

Q Okay. Thank you. So, do you -- I'd like to introduce Exhibit 3. And if we -- we'll probably refer to this when it comes on the screen. Exhibit 3 is the economic impact analysis of the Mendocino Railway Skunk Train that was prepared for a 2018 bill grant. Do you recall this study?

(Exhibit 3 was marked for identification.)

A Yes. So, for this bill grant, the applicant, Mendocino Railways, produced this study -- I mean, produced the grant. And they asked me to do this quick study for them. Literally, it was, like, less than a week to produce because their timeline was so short. I relied on them providing information about demand. I did not produce that information.

Q And you didn't go do your own study. You're just -- when you're saying you relied on them?

A Yeah. So, they had information in their grant about how much freight volume would be produced by their business, so how much freight volume they expected to be able to transform, essentially, and sell to local people. I use that as a given. I did not independently contact those potential shippers and ask them if they really did want to ship their stuff by train.

Q Was this report done as an employee or as a consultant?

A This was done as an employee. Hence, it says, "Marie Jones, City of Fort Bragg." And it was 2018 when I worked for the City. When I worked for the City, I was not doing consulting, 'cause it was a very full-time job.

Q So, when you produced this, it was for the City of Fort Bragg; correct?

A Yeah. That's what you asked, and I just answered.

Q Okay. And the City of Fort Bragg endorsed this?

A When you say, "The City of Fort Bragg

endorsing it," that's a very complicated answer.

Q Well, let me -- you find it; correct?

A I didn't sign it. I wrote it.

Q And you wrote it on behalf of the City of Fort Bragg; is that correct?

A I wrote it because my city manager asked me to help them get their grant submitted. So, they needed this --

Q But the title says, "The City of Fort Bragg." So, did you not write this for the City of Fort Bragg?

A I am telling you the purpose for which I wrote it, which was to submit a grant application for the Mendocino Railway. So, it was really written on behalf of the Mendocino Railway for a grant application that the City submitted on behalf of Mendocino Railway.

Q And did the City -- okay. So, you spoke for the City, though, on behalf of when you submitted this study?

A I'm sorry. I'm really uncomfortable with that language. I can't say that I spoke for the City.

The City is the City Council with five people. You never say you speak for the City Council unless they vote on something and adopt it.

Q Despite that, the City of Fort Bragg, in your name or on this study, is saying that the City of Fort Bragg endorses this concept. You're --

A I disagree with your statement.

Q So, this means nothing for the City of Fort Bragg or not? I mean, why would you be doing it on behalf of the City of Fort Bragg if it didn't mean anything?

A Look, I did lots of things when I worked for the City to help the economic development of the community. The Skunk Train had had two tunnel collapses, and City Council was cognizant of the fact that they needed that tunnel fixed in order to have effective service for their tourist train, which is essentially what they operate.

I mean, 90, some odd percent of their revenue, if not all of it, is from tourist operations, either on the Fort Bragg side or the Willits side. So --

Q So, okay. Let's talk about that. So, you looked at the passenger service. You're familiar with the Skunk Train; is that correct?

A Yeah. So, again, I want to clarify what happened with this study. So, I did not --

Q You're not here to just -- you're here to answer my questions, Marie; okay? I am not going to let you sit here and just testify when I don't ask a question. So, your job is to answer my questions --

A Okay. Ask your question again.

Q And I will ask a question, and you can answer it. And if your counsel feels like it needs clarification, your counsel will -- and I'll redirect when this deposition is over, allow you to redirect or clarify your remarks.

Did this report consider the passenger services provided by the Skunk Train?

A The passenger numbers were provided by the Skunk Train. And, yes. It considered that.

Q And did you see the passenger services as a positive impact for the community?

A I believe they are a positive impact to the

community.

Q And the Skunk Train generates revenues; correct?

A Yeah. Obviously, they're able to operate.

Q And the Skunk Train provides jobs?

A Yes.

Q Pays taxes?

A I don't know about that.

Q Okay. And when you conducted your feasibility and marketing analysis, which is marked as Exhibit 2, did you include the Skunk Train revenues in that analysis?

A No, because I did not have that information.

Q Okay. Thank you. All right. On page 2 -- I'm just trying to understand, you know, what was going on.

A I'm sorry. My eyesight's a little bit bad. Can you zoom it in a little bit?

Q I think -- I think you can also do that on your own. But --

A Really?

Q But that's fine. Can you see that?

A Yes. Thank you.

Q Okay. And before we talk about the yellow highlights, can you just kind of give me a little bit -- you talk about Fort Bragg being isolated because it is 45 miles from a major highway. Is that -- what is the major highway that Fort Bragg is 45 miles from?

A Highway 101.

Q What connects the Highway 101 highway?

A I don't understand the question. Sorry. A lot of things connect the 101.

Q Okay. Is there a main -- okay. What road connects Fort Bragg to Highway 101?

A Highway 20.

Q And is Highway 20 a two-lane highway or a four-lane highway?

A It's a two-lane, winding highway.

Q Two-lane winding highway. Okay. Does it go up and down? Is this sort of, like, S-curve on a mountain? I'm just trying to understand the geography.

A It's about a 45-minute drive to drive about

35 miles.

Q Lots of curves?

A There are straightaways and curves. Yes. But there's lots of curves.

Q Okay. So, let's go to the yellow -- well, before we go there, not directly related to this page, but I just -- are you currently a member of the Mendocino County Planning Commission?

A I am.

Q I meant to ask that earlier. All right. Now let's go back to your report on page 2 here. The statement that the rehabilitation of the MR will assist with the redevelopment of this significant property, that yellow highlight there, do you support that statement?

A I would still support that statement. I mean, it probably can't hurt. I guess I have some qualifications now insofar as MR seems intent on not working with the City on the rezoning of the mill site. And --

Q Okay. I just -- okay. That's good. You supported the statement in 2018, when you filed this.

And you said you pretty much would support that statement now, with some qualifications; is that accurate?

A Yeah. I'd say it's accurate. I mean, it really depends -- I mean, it's funny to read this after --

Q And what you don't like, if I can repeat -- if I'm saying this wrong, please correct me. But what you don't like, you said, is you don't like Mendocino not supporting the City in their redevelopment; isn't that -- did you just say something like that?

A No. That's not what I said.

Q I may have misunderstood what you said.

A So, redevelopment of the significant property as a standalone phrase, I am perfectly comfortable with saying that the rehabilitation of MR could assist with the redevelopment of the property. But redevelopment how and to what degree is very dependent on what the final land uses are.

So, for example, if the redevelopment of the property is primarily residential, then whether the train is there or not is going to have no impact on

the reuse of that property. If it includes industrial uses that could benefit from freight rail, then maybe it could have an impact on that. But, again, the challenge for me, now having done much more research, right, I didn't know at the time how much -- how expensive it would be to recount the lines.

For example, I did not know at the time what trucking costs really were relative to what the train would have to charge. Now, given what I know today, compared to what I knew then, I would say, probably, it would have no material effect on the redevelopment of the property because the train is not competitive with trucks in terms of the transportation mode.

Q Okay. Well, that's your conclusion now. But we're talking about in 2018.

A I thought you just asked me if I thought --

Q Okay. But we're talking about 2018 now. And --

A I thought I was answering your question.

Q You did. Thank you. Thank you. You have explained that you qualify this statement now because of further research that you have done; would that be

an accurate way to paraphrase what you --

A Yeah. I mean, when I did this project, I really knew nothing about the Skunk Train or their operations, or even the expenses required to repair their track.

Q Okay. So, let's go down to page 3.

A Let me put it a different way, Bill, if you don't mind. So, there's a difference between writing something for a grant that is -- and writing a true market and economic analysis.

I mean, I literally had less than a week to write this. So, I'm trying to help a local company get funding to fix their tunnel, without very much time. It's not like -- it's not the same level of analysis.

Q Should we move to page 3?

A Sure.

Q Do you see that part that says, "Freight growth"?

A Yeah.

Q Does that refresh your -- take a little time. Read it.

A Yup.

Q Okay. Did you believe at the time -- we're talking about 2018 -- that the rehabilitation project could add 1,000 freight cars per year of beer, at the time, in 2018?

A That is not what I believed. That is what MR, which is what the sentence says, Mendocino Railway, anticipates adding about 1,000 freight cars per year.

Q Okay. And what about the next sentence? "Over the long-term, as Redwood trees' future may increase the demand for freight services." Is that your words?

A I think that's possible.

Q We can scroll down. Were these your words here, when you said at the yellow highlight at the bottom, "Due to the high cost of transportation to the coast, the MR will be instrumental in the successful redevelopment of the site"? Were those your words?

A Those are my words, but please recall that nowhere has MR relayed to me what their cost of transport per ton would be, and this does not include

any tonnage characterization.

Q Marie, you signed this report. You stated it --

A I did not sign the report.

Q Okay. Let me ask it this way. You endorsed the report; is that correct?

A I wrote a report in support of a grant for a local business at the behest of my manager, the city manager.

Q So, do you just write things whether or not you believe it or not?

A No. I do not do that. This was a difficult project for me --

Q So, do you agree that due to the high cost of transportation on the coast, the MR will be instrumental in the successful redevelopment of the site in 2018? Did you agree with that?

A At the time, I did. But I had no idea what their cost of transportation would be.

Q Okay. Thank you. We can move on.

A Because they did not share that information with me.

Q Thank you. If we can to page 10.
A There isn't a 10.
Q Yeah. Sorry. This is on the feasibility study. So, we can go back to -- can we go to the feasibility study?
A Exhibit 2.
Q Yeah. Exhibit 2.
A He's on Exhibit 1. Can you make it bigger again? Sorry. And I would like to take a break at 10.
Q Sure. I meant to say that earlier, Marie. Any time you want to take a break, you can just please let me know. So, when would you like to take a break?
A Can we take a break now?
MR. MULLINS: We absolutely can. How long a break do you need?
THE WITNESS: I'd like ten minutes, so we can come back at 10, if that's all right.
MR. MULLINS: Absolutely. No problem.
THE WITNESS: Cool. Thanks.
THE REPORTER: All right. Just a moment. The time is 12:49 p.m. We are now off the

record.

(Off the record.)

THE REPORTER: The time is 1:09 p.m. We are now back on the record.

MR. MULLINS: Chris, can you read the last question?

THE REPORTER: Yes. Just a moment.

(The reporter repeated the record as requested.)

MR. MULLINS: I'm going to withdraw that question.

THE REPORTER: Okay.

MR. MULLINS: Can we go to Exhibit 3, John? And Exhibit 3, Marie and Dan, is going to be the Fort Bragg 2018 resolution. If you can pull that up on the screen, John.

(Exhibit 4 was marked for identification.)

MR. ELLIOTT: Are we on Exhibit 3?

MR. MULLINS: Exhibit 3.

THE REPORTER: No. That would've been Exhibit 4.

MR. ELLIOTT: I thought you introduced one.

MR. MULLINS: Exhibit 4, because we added that extra exhibit. Right. Okay. Thank you, Chris. I'm going to have my numbers messed up now.

BY MR. MULLINS:

Q Marie, are you familiar with this resolution?

A Oh. I mean, I did millions of resolutions. 2018 was a long time ago, and I haven't looked at it since then. So, I wouldn't say I'm familiar.

Q Did you help draft this resolution?

A I don't know. You'd have to scroll down, and I could look at it more closely.

Q Okay. Please take your time.

A Yeah. Probably, I did do it.

Q We can keep scrolling if you want.

A Yes. Thank you.

MR. MULLINS: Okay. John, if you wouldn't mind please going back to the top.

BY MR. MULLINS:

Q Do you recall what the -- so, just to

confirm, you are familiar with this resolution?

A I mean, as familiar as I've been in a minute. Yes.

Q Okay. You believe you drafted it back then?

A I may have. Most resolutions go through an internal process that includes review by the city manager prior to being incorporated into the packet. So, I can't guarantee that every word in here was mine. She could've easily added something or revised it.

Q Okay. And would you characterize this resolution as the City of Fort Bragg's endorsement for the 2018 build application?

A I would characterize it as submitting a grant application.

Q In support? Would you consider it as in support of the grant application?

A Yes.

Q The first yellow highlight, "The tunnel collapse has severely constrained, effectively cutting off all freight and passenger services," was that an accurate statement at the time?

A As per Mendocino Railway's statements to me about their passenger and freight services.

Q Okay. But, Marie, this is not a Mendocino Railway document. This is a resolution of the City Council of Fort Bragg. This is not Mendocino Railway. Would you agree that this is Fort Bragg speaking for Fort Bragg?

A No.

Q No?

A Can I explain why?

Q No. No. You can't.

A This is Fort Bragg speaking for Mendocino Railway.

Q This is Fort Bragg -- Marie, can I ask -- this is Fort Bragg passing a city resolution, and Fort Bragg speaking for themselves. That's what a resolution does; does it not?

A The "Whereas" statements of a resolution are intended to provide the context and history of the action that's about to be undertaken.

Q Great.

A The context, as provided here, is based on

information that Mendocino Railway provided to me.

Q And the resolution endorsed that information?

A That Mendocino Railway provided to me that I did not confirm.

Q So, are you in the habit of submitting things to the federal government that you do not confirm?

A I think everybody's in the habit of relying on others when they think they're honest.

Q Okay. So, at the time, did you think this Mendocino Railway was honest?

A Yes.

Q And you don't think they're honest now?

A No. I don't.

Q Okay. The language, it says they're going to replace ties installed by a prior owner with new strong and environmentally safe railroad ties. Do you believe that the project that they were proposing in the 2018 grant was environmentally -- an environmental improvement?

A That information, again, was provided by

Mendocino Railway, and I did not independently judge it. At this point, I do not have the expertise. I do not have the resources. I have not done the analysis to judge it.

Q Did the City of Fort Bragg submit this resolution?

A Yes. They also submitted the grant application.

MR. MULLINS: Okay. John, can we scroll down to this finding?

BY MR. MULLINS:

Q So, in Paragraph 3, which is the resolution be resolved, its finding is critical, and the ultimate success of the Skunk Train in our local, rural, and regional economy. Did the City of Fort Bragg believe in 2018 that the repair of the tunnel and upgrade was critical to the local, rural, and regional economy?

A I can't tell you whether or not different council members believed something or not.

Q Did these council members pass this resolution?

A They did. Contact for resolution is that

it's a consent calendar item. They generally don't discuss consent calendar items, so there's no way to know whether they believe something or not.

Q So, this was passed unanimously?

A I don't -- yeah. It looks like it was.

MR. MULLINS: Okay. Actually, can we pull up the first page -- it's a new exhibit -- of the 2018 bill grant, please? I don't know what exhibit number this was, Chris. You'll have to keep me straight on that.

THE REPORTER: This will be Exhibit 5.

MR. MULLINS: Thank you.

(Exhibit 5 was marked for identification.)

BY MR. MULLINS:

Q Marie, can you see that?

A I can see it. Yes.

Q Yes. Who was the applicant for the 2018 build grant?

A So, always, municipalities apply on behalf of a railway to apply for build grant funding. The person who prepared the application was a consultant

to the Skunk Train.

Q Did you submit this as the applicant?

A Because I represented the City of Fort Bragg, but I did not prepare the application. The Skunk Train's consultant prepared it.

Q So, did you endorse this application at the time?

A It's not my position as a staff person to endorse an application.

Q Did the City of Fort Bragg endorse this application?

A They submitted the application.

Q Would that mean they supported the repair project at the time?

A Yes. I believe they did.

MR. MULLINS: Can you scroll down a little bit, John, please? All right. I think we're fine right there. We will move on and introduce the next exhibit. Chris, is this 6 now?

THE REPORTER: Yes.

(Exhibit 6 was marked for identification.)

MR. MULLINS: Thank you. John, if you can go to 6, which is an email chain, which, we would have 5, and maybe start at the bottom.

THE WITNESS: Sorry. Can you make it bigger again? I really can't read that.

BY MR. MULLINS:

Q So, do you see this email, Marie?

A Yup.

Q That was an email from you to Robert and Mike; is that correct?

A Yup.

Q And that is an email that, using your words, asking them if they'd be interested in resubmitting the application?

A Yup.

Q And why did you send that email?

A Because I'm trying to be a good community development director. The role of the community development director is to help businesses improve in the City of Fort Bragg. And I did this kind of outreach to all kinds of businesses when I worked there.

Q So, you believed that in submitting an application, that you were helping the community and helping the businesses; is that correct?

A That's correct.

Q Okay.

A Can you hang on one second? I need to turn my heater down. Just one second.

Q Absolutely.

A Sorry about that. It's getting hot in here.

Q Northern California, I guess, is a little cool, huh?

A Yeah. It's about 60 outside. It may be 58.

MR. MULLINS: All right. Scroll up a little bit, John, will you, please? Just -- okay.

BY MR. MULLINS:

Q On this yellow, these are your words, Marie. "I am happy to help in any way that I can."

A Yeah. That's me. I was always happy to help everybody.

Q And you were happy to help prepare a new application for 2019?

A Yup. And I did.

Q And you submitted that 2019 application on behalf of Marie Jones, City of Fort Bragg; correct?

A It was actually the -- yeah, the 2019 application.

Q 2019.

A Yup.

Q So, both for the 2018 and the 2019 applications, they were submitted as "Marie Jones, Applicant, City of Fort Bragg"; is that correct? Simple "Yes" or "No."

A Yes. I don't understand what the point is. I would be the applicant on any grant application that the City permits. That is not abnormal.

Q And did you support the merits of the 2018 grant?

A Given the information that I had at the time, yes. I did.

Q Did you support the 2019 grant, merits of the 2019 grant?

A That one was a little more problematic.

Q Did you submit it?

A Yes. As a staff employee, I did.

Q And did you support it?
A As I said already, it was more problematic.
Q Okay.
A You want me to say why I thought it was problematic?
Q No. No.
A All right. Just checking.
Q In August -- do you recall in August of 2019, the City of Fort Bragg filing for a grant from the California Coastal Commission for funding for the redevelopment of the Fort Bragg location of Georgia Pacific?
A That grant, I recall writing. I was not part of the submittal.
Q And can you tell us what that grant was to do?
A That was a follow-on grant to a previous grant that we got in, I don't know, maybe 2016 or 2017, to continue the rezoning process for the mill site.
Q Okay. Let's move to the next exhibit, which is 7, shipper support letters. Marie, were you

involved in -- do you recall submitting, as part of your application in 2019, these various support letters?

(Exhibit 7 was marked for identification.)

A I recall getting those letters. Yes. Again, very normal for any grant application.

Q Were you involved in gathering these letters?

A I know I got some of them. I don't know that I got them all. It's so long ago.

Q Okay. At the time, did you disagree with any of the contents of these letters?

A It's not my role to disagree with contents of letters from senators or members of Congress.

Q Did you believe that the senators and Congressmen and support letters were truthful?

A I don't have them in front of me. I don't know what I believed. I mean, honestly, I'll give you the answer. When you do a grant like this, you send out. You ask for letters. They send them in. You're compiling it very quickly. Do I sit there and think,

and read the letter, "Do I believe in this letter or not?" No. That's not part of the calculation.

Q So, even though you submit an application and you sign it, you say that you're submitting it on behalf of Marie Jones, Applicant, City of Fort Bragg, you disavow the contents of these letters? Or do you endorse these letters?

A Neither.

Q Neither.

A I have no opinion on them.

Q No opinion on them. Well, let's just take a look at one of the letters. Let's just take the first letter, Dianne Feinstein, Senator's letter, even though I don't have that --

MR. MULLINS: I think it's -- scroll down, John. I think if you just scroll down, it should be there.

BY MR. MULLINS:

Q You see where Senator Feinstein said at the second paragraph, last sentence, "Funding would allow Fort Bragg to facilitate efficient and safe freight and passenger, reduce truck traffic, and further all

aspects of the public interest"? Do you see that sentence?

A Yes.

Q Do you think she was lying when she said that?

A I mean, it's a ridiculous question.

Q Just answer "Yes" or "No."

A I doubt Dianne Feinstein ever read the letter or signed it. She probably had a staff person prepare the letter. That staff person probably lied on a description of the project that I sent them --

Q Marie -- thank you. When the senator signs a letter, do you think the senator supports what they sign?

A I have no idea, Bill. That's not my job.

Q So, would you take it on face value that Senator Feinstein, at the time, believed that funding would allow Fort Bragg to facilitate efficient and safe freight and passenger, reduce truck traffic, and further all aspects of the public interest?

A I would take it on faith that Dianne Feinstein never read this letter, that an aide signed

it, and neither of them had any knowledge about what's in that paragraph, and that that paragraph was pulled from the grant application, or from a letter that was sent to them, asking for a letter of support.

Q So, they were acting kind of like you do when you sign an application, and you say you don't actually believe it or read it or study it. You just sign it. So, are you just saying that's what they did too? They just signed it?

A That's not what I said.

Q That is what you said.

A No. It's not what I said. That's what you said.

Q Let's go back and --

A What I said was, I doubt that Dianne Feinstein actually read this letter at all. Probably, an aide signed for her.

Q Well, Marie --

A I mean, I have no way of knowing; right?

Q The 2018 grant application that you submitted, did you read it?

A Did I read the entire application? Probably

not.

Q The 2019 application, did you read it?

A I probably did not read the entire application.

Q Are you in the habit of submitting things to the federal government without reading them?

A I am not in the habit of doing that. That was an unusual situation because the Skunk Train was getting the completed application to us with, like, less than an hour before it needed to be submitted, so I could not take time to read it before submitting it.

Q Were you involved in the drafting of the application?

A No. I was not involved in the drafting of the application.

Q Were you ever given drafts of the application?

A I don't believe so. I did participate in a conversation with the granting agency after the first grant failed. And at that time, the grant reviewer gave them feedback, that they were essentially asking for too much money for not enough of a project.

And the Skunk Train essentially doubled down in the 2019 application and asked for more money for less of a project, which is why I felt that it was very problematic and unlikely to be funded.

Q But you sent an email when the 2019 funding available came out saying, "Hey, let's resubmit. Let me help you resubmit." Did you not previously testify that you sent an email that said that?

A Yeah. That's not counter to what I just said.

Q You wanted them to resubmit the 2019 -- the 2018 --

A I wanted to be helpful to the business community. Did I want them specifically to resubmit or some other project that I'm working on, help them? Yes. I was helpful to everybody.

Q So, you supported the application in 2018, and you supported the application in 2019?

A I submitted --

Q You just said you wanted to be helpful.

A Yeah. I wanted to be helpful. So --

Q The use --

A So, I'm complicated by this, because now I know information that I didn't know then that I feel like the whole thing was a sham and a scam. So, it's very hard for me to say, "Yes. I submitted it then. I supported it then," because I did, because I didn't understand what scammers those guys are. I mean, all the numbers in their application were false. All their numbers about how many --

Q Marie, this is your opinion that you're giving --

A No. It's not. I called the people after the fact and asked them --

Q We'll discuss -- Marie --

A If they would be willing to chip, and they all said no.

Q Marie, are you in the habit of submitting things that you don't study?

A I submit things on the behalf of the city manager and City Council. As an employee, I did what they asked. That's what you have to do if you work with somebody.

Q Are you in the habit of submitting

applications that you don't read?

A No. It was very frustrating to me to get that application so late.

Q Okay. Let's move to the next letter highlighted, which is the Senator McGuire letter. Marie, do you know who Senator McGuire is?

A Yes.

Q Have you spoken to him many times?

A No. I've spoken to him once at the grand opening for the Coastal Trail. He congratulated me on the project.

Q And when he submits letters of support, do you think he is supporting the projects that he is submitting a letter on behalf of?

A I suppose, in concept, yes. He should be.

MR. MULLINS: Okay. And if we can go down, scroll down to the highlighted part.

BY MR. MULLINS:

Q Do you recall if that highlighted part was in the 2019 application?

A It looks like it was probably in the 2019 application.

Q And that is the application that you submitted?

A That the City of Fort Bragg submitted.

Q That Marie Jones, City of Fort Bragg, submitted?

A Marie Jones, as an employee of the City of Fort Bragg. Yes. I submitted it.

Q Okay. I just wanted to -- and do you think Senator McGuire, when he said that this would be positive for the economy and promote economic development, do you think he was lying?

MR. ELLIOTT: Objection. Can you point to the spot where --

MR. MULLINS: Sure. He said, "The project" -- it's the next sentence down, Dan. Thank you. That's a valid objection. "The project will not only promote economic development, but improve the quality of a life, result in environmental benefits, improve the safety, take trucks off the road, great jobs, help save lives."

BY MR. MULLINS:

Q Do you think he believed that at the time?

A I have no idea.
Q At the time, did you believe that?
A I probably would agree with most of those statements at that time, again, prior to knowing that they are liars.
Q That is an opinion you hold; is that correct, Marie?
A No. It's facts substantiated by research I've done.
Q Really? Has that been tested in court?
A Has this been tested in court?
Q Marie, you keep saying that my client is liars. Have they been held to be liars in any sort of court?
A They have lost cases based on lack of evidence or inaccurate evidence. Yes.
Q And it is your opinion that they are liars. Would --
A Well, let me clarify for you, 'cause it's not an opinion. When someone says that a company is going to use their services for freight, and then I call the CEO of that company up and ask them, "Are

they going to use those services for freight," and they say, "No. Absolutely not. Never," then the first person lied about the second person, and I can therefore call them a liar.

Q Well, would it be fair for somebody who would read the 2018 application submitted by Marie Jones and the City of Fort Bragg, to then call you in 2024, to say, "Well, Marie Jones, you were a liar back then." Is that fair? Would that be a fair thing?

A So, to be clear, I was not lying. I was representing information that someone told me that was a lie. So, as far as I knew, it was accurate. So, the culpability is actually with Mendocino Railway, not with me.

Q Because you don't study or do independent analysis of things that you put your name to?

A That is incorrect.

Q Oh. So, you do do studies and analysis of things that you put your name to?

A Yes. I do. But, occasionally --

Q But you did not -- Marie, stop. Answer "Yes" or "No." But you did not do a study or analysis

of the 2018 application, your own independent --

A Because I relied on them to be honest.

Q And you did not do an independent study or analysis of the 2019 application?

A 'Cause, again, I relied on them to be honest.

Q So, you testified that, on the one hand, you do do studies and independent analysis when you put your name on things, but you did not do it when you did 2018 and 2019?

A Correct, because the grant was submitted to me with barely any notice, literally the same day. And I did not have the opportunity to proof it before submitting it.

Q Let's move to the next exhibit.

A Which, if you think about it, is pretty rude.

Q Are you familiar at all with this document?

(Exhibit 8 was marked for identification.)

A Yeah. I haven't looked at it since July 2019.

MR. MULLINS: Okay. Can we scroll down?

BY MR. MULLINS:

Q To the best of your recollection, what was this document for?

A It was for the 2019 grant, and it was prepared by a consultant that was hired by Mendocino Railway and was submitted as part of the application at the last minute.

THE REPORTER: And just for the record, this exhibit, do you want to introduce it as Build to Grant 2019? Or how do you want to introduce?

MR. MULLINS: Benefit cost analysis, build to grant 2019.

THE REPORTER: Thank you.

MR. MULLINS: John, I believe the next -- there's a yellow highlight that we can scroll down to, red or yellow highlight.

BY MR. MULLINS:

Q Do you have familiarity with Mr. Rodriguez that submitted this?

A I don't know him at all.

Q Do you have any reason to question his opinions?

A Not specifically, although I'm sure he probably relied on the same false information Mendocino Railway gave them.

Q Do you have any reason to question his methodology?

A You know, I haven't looked at this in a long enough time to be able to answer that.

Q As an independent consultant preparing an independent analysis, not submitting it on behalf of the City of Fort Bragg, but submitting it on his behalf as an independent analysis, did his analysis conclude that the project will have a significant regional impact by benefitting local industry, facilitating efficient freight service, and ensuring freight transportation, while stimulating economic growth? Was that his conclusion?

A That is in his report.

Q Yes. And then the next paragraph, I will -- he talks about having net present value benefits of $157.2 million for a 20-year operation; is that his

conclusion as well?

A It did, and at the time, it raised my eyebrows. I didn't think it was realistic.

Q But you submitted it with the application?

A Yeah. Big whoop.

Q All right. So, you submitted something that you didn't believe in?

A I submitted something that raised questions in my mind. Yes.

Q Did you ever raise those questions --

A That I did not prepare.

Q Did you ever raise those questions with Mr. Rodriguez?

A Oh. No. I never even talked to him. Again, you know, this came pretty late in the process, so it's not like I have lots of time to follow up with people.

Q Do you have any reason to question his methodology?

A As I said already, I can't remember what his methodology is, so I can't respond to that.

MR. MULLINS: And, John, can you scroll

down?
//
BY MR. MULLINS:
Q Do you have any reason to question his capital costs or his O&M costs?
A Well, his 7 percent real discount rate is likely incorrect.
THE REPORTER: Sorry. Could you repeat that? You cut out for a second.
THE WITNESS: I said the 7 percent real discount rate is likely incorrect.
BY MR. MULLINS:
Q But you didn't raise that at the time?
A I didn't know that at the time. I'm looking at it now --
Q Okay. Marie, my question is, do you have any reason to question at the time, or even now, those costs, the capital costs or the O&M costs?
A Well, the capital costs seem very low compared to today.
Q In 2018.
A Right. They seem very low.

Q Did you use these costs in your analysis?
A No. I did not.
Q I think before we --
A I'll just point out that the grant that they got is worth -- is almost twice this amount for the same work.
MR. MULLINS: What are you -- we will get into that. I think this is -- Dan, if it's okay with you, and Marie, we take a lunch break here? Maybe, probably a -- I don't know. How long do you need for lunch?
MR. ELLIOTT: It's up to you, Marie. I've already eaten, so I'm fine.
THE WITNESS: It's eleven o'clock here, so I'm not even hungry. But if you guys are hungry, we can take a break.
MR. MULLINS: Well, okay. It's 1:45 for us. If you don't mind, we could take a little lunch.
THE WITNESS: That's fine.
MR. MULLINS: Probably, I would say -- I'm going to have to go down and get a sandwich. Dan,

I don't know if you're hungry. Maybe you're Mr. Light Eater. But I would say let's get maybe 30 minutes?

MR. ELLIOTT: Works for us.

THE WITNESS: Sure.

THE REPORTER: All right. Sounds good. The time is 1:45 p.m. We are now off the record.

(Off the record.)

THE REPORTER: The time is 2:22 p.m. We are now back on the record.

BY MR. MULLINS:

Q Well, thank you for allowing those of us on the East Coast to have a little lunch break. Appreciate that. And if you need one as we go on, Marie, please let me know, because it's a little bit different time zone.

A I already ate lunch. Thanks.

Q Okay. Can we go back to a little bit of your history? I think you said that prior to joining the City, you were also a consultant in the Bay Area; is that -- is my memory correct on that?

A Yeah.

Q And when you were a consultant, was the City

of Fort Bragg a client back then, during that period?

A I was a sub to someone who was their client. That's how I got to know the city manager, so she was one of many clients of mine. But I was actually a sub, so the planning firm was their direct client, and then I was the market analysis sub.

Q Okay. Was Georgia Pacific a client at that time?

A No.

Q So, we talked about --

A Oh. You know what? Let me clarify that.

Q Yeah. Sure.

A I guess very indirectly, because the work that was being performed by the prime contractor was paid for through a develop or a deposit account that Georgia Pacific funded. So, Georgia Pacific funded a dba that the City managed that hired a consultant that subbed to me.

Q Okay. Thank you. We talked a little bit about the 70 acres that Mendocino Railway eventually purchased. Do you remember that conversation?

A Yes.

Q I'm a little unclear. I'd like to ask some follow-up questions on that. Was there ever any intent by the City to acquire those 70 acres?

A Not that I know of.

Q Was there ever an intent by the City to control the development of those 70 acres?

A Through statutory land use regulations, that is the obligation of the City.

Q Okay. And those 70 acres were part of the planning that you were doing, the two different plans that you did?

A Yes. The entire -- I never just did any land use planning for those 70 acres. It was for the entire parcel, multiple parcels. The entire property.

Q Okay. Do you know whether those 70 acres were part of this triparty lawsuit that you brought up?

A I believe the -- this is my understanding of what happened, through the city manager. She told me -- I was not part of those negotiations. So, Georgia Pacific sued OfficeMax to get some funding to clean up the mill site because OfficeMax owned a

subsidiary that, prior to Georgia Pacific, had owned the property. And then OfficeMax sued the City of Fort Bragg. As part of the discovery process, the City of Fort Bragg determined that Georgia Pacific had been untruthful about contamination on the site. There was a large quantity of dioxin that was on the site.

And Georgia Pacific had been untruthful about that. And so, that resulted in a negotiated settlement that absolved the City of any responsibility for remediation of the site. And my understanding is that during those conversations, at one point, it was floated that Georgia Pacific would give the City the property in exchange for the City taking over the remediation of the site. But that was never acted upon.

Q Never acted upon. Okay. Now, so where the --

A And that's a little hearsay, just to clarify. That's a little hearsay, 'cause that's what the city manager told me about the process. I wasn't involved in any of it.

Q But the 70 acres, were they part of that?
A Yes.
Q Would they have been part of that?
A They would've been part of that.
MR. MULLINS: All right. Let me move on. John, if we can go back to the 2018 build grant exhibit, the actual application? Assuming John's here, hopefully. Uh-oh.
THE WITNESS: It looks like he's not here.
MR. MULLINS: John, are you here? There he is. There he is. All right. I was getting a little worried there for a minute. If we can go to page 17, please. All right. Maybe scroll up a little bit. Okay.
BY MR. MULLINS:
Q Marie, would you take a minute, please, and read that first paragraph on that page?
A Yeah. I see it.
Q And you see the reference to -- again, did you actually draft this language? Again, I'm just a little confused as to who drafted this.

A No. I did not. Mendocino Railway hired a consulting firm that prepared the grant application.

Q And you see where there's a reference there to an economic impacts of $47.9 million? Do you see that reference?

A I do.

Q And do you see it's a footnote at 29?

MR. MULLINS: John, can you please scroll down?

BY MR. MULLINS:

Q That references a Stone Consulting study? You see that; right? That's a reference to the Stone Consulting study.

A Yes.

Q Did you review the Stone Consulting contract or analysis?

A As I said previously, this grant application packet was literally sent to me the day the grant application was due. So, not only did I not read that, I did not read most of the grant application.

Q Okay. Do you have any reason to believe that Stone Consulting was not doing an independent

analysis when they said they were?

A I have no idea of knowing one way or the other.

Q Did you ever read that Stone Consulting report?

A No. I have not.

Q Do you think they were wrong when they said there was $47.2 million of economic impact?

A I have no way of judging what they said.

Q But you -- so, we have Stone -- I just want to -- Stone Consulting, they made a study that you said you didn't read. But you don't have any recollection of -- or you cannot confirm whether they -- what their conclusions were. I think that's what you just said; is that correct?

A Yeah. I can't confirm conclusions if I didn't read them, and if the grant application was literally submitted to me the same day that it was due at the federal site, so --

Q And you --

A To understand the process, they email me a bunch of documents, and then I literally just attach

them and put them into the build application spreadsheet, or submittal system, because, literally, there was no time to do any review. And, like, what can I do at that point? "I don't agree with Footnote 29. I can't submit your application." I mean, that's silly.

Q Well, the Rodriguez cost benefit analysis that we discussed previously, did you have any reason to question that in 2018?

A Again, as I said before, it seemed surprising to me. But, again, because the grant application was due so quickly and the City was doing it as a favor to Mendocino Railway, applying for this grant application on their behalf, I did not fact-check things, to my chagrin.

Q And of all the shipper support letters and community support letters that were submitted for the 2019 grant that we talked about, you have questioned whether or not they themselves believe what they put in their letters; would that be accurate?

A I cannot even guess what someone believes.

Q I mean, you said that it was your opinion

that Senator Feinstein probably did not read that and did not believe that information.

A It's my opinion that most legislators are way too busy to read every letter that's submitted to them to support every project that's in their district, which is what they do.

Q You think a politician like that would submit a letter if they didn't support what they're submitting?

A It's my opinion, like I just said, that most politicians are too busy doing all the things that they have to do to read every letter that's submitted in their name for a grant application in their district, of which there are hundreds.

Q Have you ever experienced a politician refusing to submit a letter?

A Never in my life.

Q Okay. But you don't have any basis at this point to say that what they stated in their letters was incorrect?

A I do have a basis of stating that it's incorrect now.

Q So, I just want to be clear that now, 2024, you question Stone Consulting's conclusions; is that correct?

A We're talking about apples and oranges.

Q Would you say that your 2024 analysis --

A Let me clarify what I mean by "apples and oranges."

Q Sure.

A So, there's a very different process and analysis between a feasibility study and an economic impact study. An economic impact study takes as a given what the applicant says about what their business is and then tries to determine what the economic impact of that is. A feasibility study instead looks at the feasibility of a business, given the market in which it's located.

So, these two studies look at something that's very different than what my study did. And they could even be considered not in contradiction with each other. So, in other words, if a business is strong and doing what Mendocino Railway claimed it was doing in terms of jobs and freight delivered, yada,

yada, calculating the economic impact or benefit of that is a relatively routine exercise.

However, if their business is not capable of what doing what they're saying because the market doesn't support them, that's not a question that gets asked in an economic impact analysis, or it's not a question that was asked by either of these consultants.

Q Does an economic impact analysis look both at present and future?

A It looks at present and future. But, again, it presumes that the data on which -- or the information on which the analysis is completed is accurate, which is information that's self-reported by Mendocino Railway about their potential freight business.

Q You think these consultants just relied on that and didn't do any independent analysis? That's what you think?

A Well, I haven't read the Stone Consulting one. The other one, I did read, and it looked, from the numbers that that person was using, they are the

same numbers that were in the build application, which came from the applicant, which was not me. It was Mendocino Railway.

Q And could those numbers that Mendocino was using that were relied upon at the time be good faith estimates at the time?

A I don't really know the answer to that, because I'd have to be Mendocino Railway, in their brain, and I can't put myself there.

Q Do you question the motivation of Mendocino Railway in seeking a build grant in 2018 and 2019 and 2020? Do you question their motivation?

A Okay. So, I'm going to assume, the way you asked that question, that's a present tense question. Do I question their motivation today, not then; is that correct?

Q Sure. Answer that. Absolutely.

A Okay. Yes. I question their motivation. But mostly, I think that they didn't do their own market analysis to determine if they would actually have the freight to be able to pay back alone, or a grant.

I mean, if they got a grant, they obviously wouldn't be able to pay -- they wouldn't have to pay it back, so that would be a huge benefit. But both of these, I believe, were low interest loans. And I think, unfortunately, they probably viewed this project as a way to do needed repairs without really thinking about whether or not they would be able to pay back those funds.

And, unfortunately, because truck is so competitive in terms of pricing and there are so many providers of truck transportation, and it's so much more flexible in terms of delivery, location, and time, Mendocino Railway would either have to have an incredibly large volume of freight traffic in order to meet those rates, or, frankly, they would just never be able to meet those rates. So, you know, sadly, I think if they got these loans and then were required to pay them back, it might've put them into bankruptcy.

Q Do you think at the time, in 2018 and 2019 and 2020, at the time, do you think they were good faith estimates?

A Again, I don't really know what's in their minds at that time. What I can tell you is that subsequent to that, in conversations with those CEOs, the answers that I got were very, very different than what they had in their submittals.

Q Did you, at the time, believe those were good faith estimates?

A Yeah. I did.

Q Did the City of Fort Bragg, at the time, believe they were good faith estimates?

A I don't -- I'm uncomfortable talking about the City of Fort Bragg as an entity because it's, you know, five City Council members. And I have no idea what they were thinking, or even if they thought about this at all.

Q Well, the resolution -- you recall the resolution they passed? You recall that; right?

A Uh-huh.

Q Do you think that was based upon good faith belief at the time?

A Again, I can't guess what someone else thinks; right? It's a little hard for me to do that.

I think what's more likely is they didn't think about it, because those kinds of grant applications are almost always in the consent calendar. And in the consent calendar, we might have five or ten items that are never discussed, and they're just adopted en masse. So, it's, you know, very hard for me to know if they drilled down enough into the grant application to have any idea about what the estimates were.

Q All right. Well, let's turn to Exhibit 2, which is -- we don't need to pull it up yet, but that's the actual Appendix A to your verified statement, your feasibility study. You might want to pull it up, but I just want to turn to that.

A Yup. I got it.

Q So, you did not do your own analysis in 2018; correct?

A Let's clarify --

Q Go ahead. You did this study in 2018; right?

A Right. But I relied on data provided by the Skunk Train in terms of number of jobs, freight loads, et cetera.

Q Okay. And would you say that the methodology that you used in 2018 was different than the methodology you used here in 2024?

A Yes. Because, again, it's apples and oranges. This is economic impact, which is a very different analysis than feasibility and market.

Q And the analysis you did in 2024 is different than the methodology used by Mr. Rodriguez?

A Yes, because they are, again, apples and oranges. It's like going to the doctor, is that the same as going to the dentist? Well, they're both healthcare, but it's not the same.

So, the study that I did is looking at a very different thing than any of these other studies, because they're for a different purpose. These other studies are economic impact, which is what the granting agency was interested in knowing about. They did not care, apparently, about feasibility or market.

Q So, turning to your methodology --

MR. MULLINS: Exhibit 2, John.

BY MR. MULLINS:

Q Just be prepared to discuss that. Can you

explain your methodology with respect -- your per capita methodology used in your Exhibit 2?

A Sure. So, I know everybody thinks that all data should be available in our world of a million databases. But a lot of data simply doesn't exist. There's an echo.

Q Yeah. I think it went away.

A Okay. And so, you have a couple of options. One is to do direct contact with potential shippers to find out if they're interested in shipping, which I did for this study, as part of the project. Another is to do a comparative. So, take Mendocino as a small bite of the entire nation, where there is a lot of data.

So, there's a lot of data at the nationwide level in terms of tons transported by train, tons transported by truck, freight value transported by train, freight value transported by truck, distance traveled, et cetera, et cetera. So, looking at that data set, you get a sense of how big each sector of this economy is in the nation. And then, narrowing down to Mendocino County, which is where this proposed

rail expansion is, you do a proportional sort of application of that, which I believe, from Mendocino County, is generous. So, what I did is I took short trip train transport, which is 100 miles or less, which is what this line would offer, as a percentage of people living in Mendocino County compared to people living in the country as a whole. So, essentially, you have total truck and train transport in the nation and total people in the nation.

You divide the total by the ratio of the number of people in Mendocino over the nation to get the anticipated amount of truck and train transportation in Mendocino County, given its population. Why is that an overestimate of train travel? Well, for a couple of reasons.

One is, obviously, there's no train system functional in Mendocino County right now that does freight. Secondarily, most of the freight transportation that happens by train comes from West Coast shipping ports, Seattle, Oakland, Los Angeles, and Long Beach, and goes to the Midwest and the West. So, essentially, you're offloading from major

importing boats that are typically coming from China or other countries, onto trains for very long distances. Obviously, Mendocino County doesn't participate in that.

So, Mendocino County is missing out on, just from a purely where it is perspective, most of the train transport that happens in the country. But I still felt like it was a fair argument to try to give Mendocino County the benefit of the doubt and say, "What is its proportion relative to the population? What would be the expected train" --

Q So, I'm just trying to understand. It's a proportion based upon a per capita analysis; right? You're basically saying --

A Yes.

Q You're saying Mendocino County has this per capita amount of people. If you looked at the erst of the country as a whole and did a proportion, that's how we determine rail demand based upon this per capita analysis; am I correct?

A Yes. And we do this all the time with all kinds of statistics. So, you have retail sales per

capita, income per capita. It's a very normal way of comparing different economic metrics across regions. And then I did the same analysis with gross domestic product, thinking that if Mendocino County, for example, had more business, then you would expect, given its per capita, and, particularly, more business that could benefit from freight, that that would be another important metric to look at. So, I looked at both of those. And there was not an appreciable difference between the two.

Q Do you know whether this per capita approach that you used has ever been used by the Association of American Railroads?

A I do not.

Q Do you know whether it's ever been used by the American Short Line Regional Railroad Association?

A No. But I do know that it's used all the time by all kinds of economists in all kinds of situations.

Q Has it ever been used by the STB's Office of Economic Analysis?

A I don't know if it has or not.

Q Can you just point to any study or analysis by a railroad economist that uses this methodology?

A I have not read a lot of studies by railroad economists. So, no. I cannot point to a specific one.

Q In fact, you --

A It's a very typical way of determining market demand for all sorts of commodities.

Q But you've never done a railroad analysis before until now; is that correct?

A Yup. But I've done lots of --

Q Never worked for a railroad?

A Nope.

Q Never did analysis of transloads before?

A Big deal.

Q Never did a railroad market analysis before?

A Well, I guess you could say I might have with the 2018 build grant, which Mendocino Railroad seemed very happy with.

Q So, are you now endorsing the contents of that previous study that you've disavowed?

A I don't think there's anything really

problematic about the context, except for the data that I relied on was not accurate, which was provided by Mendocino Railway.

Q So, again, just trying to get a better understanding of your per capita approach. How would that apply in a situation of, let's say, a county in North Dakota that has a lot of grain, tons of grain. Very few people, though. Very few people. And that county produces lots of grain. How would you apply the per capita in that county?

A That's why I did GDP as well.

Q Okay. But we're talking now about your per capita approach. Would it be fair to say that a per capita approach in that situation would not give an accurate reflection of how many carloads of grain would be transported?

A It's fair to say that the approach might not be applicable in many specific instances. So, for example, you could also make the argument that a per capita approach in Long Beach would not be relevant because you have the Long Beach, you know, port, which is the largest port in the United States. So, as an

economist, you have to be careful about doing that approach, which is why I used three approaches. And all of them showed very little demand for rail along the corridor. I used that approach, the GDP approach, and then reaching out to potential shippers.

Q Well, staying on your per capita approach, similarly with very rural counties, very little per capita, that have lots and lots of timber, lots and lots of sawmills that produced loads of rail loads -- as well as trucks, but we're talking railroads -- would your per capita approach accurately reflect how much carloads would be produced in that situation?

A Which is, again, why I used GDP and also reached out directly to potential companies. And between the three of them, they show very little market support for rail freight because, again, truck transport is so much more affordable, one.

And, two, in the case of timber harvests, they are geographically distributed in an extremely wide area throughout Mendocino County. There's a map in the report that shows timber harvests over the last 20 years. And so, what that means is that all of that

timber would need to go onto a truck first, get hauled out of the woods, which might take 10 or 15 minutes, land on Highway 20 somewhere, and then either go west or go east.

If it goes east, it can go straight to a mill. If it goes west, it could maybe go to Fort Bragg and get offloaded, potentially to a rail that would then take at least ten hours to get it to its destination. To me, the economics of that simply don't make sense.

Q Would it -- did you study finish lumber as well, or just timber?

A Well, finish lumber doesn't go the correct way, in terms of this rail line. I mean, the finish operations are in Ukiah, Cloverdale, and Willits. They don't come back to Fort Bragg. And those are also finish lumber is getting distributed via truck to Home Depot or Lowe's or Friedman's or whatever supply company, which is usually not going to be on a rail line.

I have no doubt that there would be some business for finish lumber, probably from Ukiah South.

Willits is not a very big saw firm. It's pretty small. Doesn't have a lot of quantity. But MRC and the one down in Cloverdale -- I can't remember the name of it right now -- they have a lot of product. But the rail line is discontinuous to the south. So, how does that product go anywhere on rail?

Q Would you say --

A Sorry I answered with a question, but.

Q Going back to your per capita analysis and looking at that, would you say that, really, what matters the most -- and I know you said you've done GDP and specific shippers. But would you say that the operative factor is the type of commodity and the -- as to whether or not it'll go by rail?

A Yeah. So, in my report, for example, Mendocino Railway has said on multiple occasions that solid waste could be transported by rail as an example. So, Fort Bragg -- I'm sorry -- Redwood Waste Solutions is the solid waste provider for the entire Mendocino Coast.

And they produce, typically two loads, two truckloads of solid waste a year -- I mean, a day.

And in the holiday season -- they told me at Christmas, they might get as many as three. So, that's essentially a railcar of solid waste. Solid waste has to be removed from the facility within 24 hours --

THE REPORTER: Sorry. You cut out there.

THE WITNESS: I'm sorry. So, solid waste, per state law, has to be removed from the solid waste facility within 24 hours, or they get really badly fined. They're not allowed to let it sit around in trucks. So, essentially what that means is if Mendocino Railway provided shipping services for the solid waste provider for Fort Bragg, they would have to do one train a day, over the hill every day, including weekends because they pick up trash, you know, on Friday, or Friday and Saturday.

So, what's the likelihood of that occurring? Not very good. And then, when you actually talk to the solid waste provider, they already have their own trucks, which they've invested in. They own their own trucks themselves, so they're

not actually -- they're paying labor costs on their own capitalization rate on their trucks that they've already purchased.

And their facility is a good two miles or a mile and a half up the road from where Mendocino Railway could even begin to possibly load that trash 'cause the railway isn't continuous -- contiguous to the solid waste transfer station. So, solid waste, when it comes in, it has to come in on little trucks. It gets transferred at the train station into big trucks, and they go over the hill in 45 minutes and get to their facility for processing all that trash in Ukiah.

So, I just don't see that -- that's just an example of a -- of a shipping sector that Mendocino Railway has said on multiple occasions that they would be able to use that just doesn't pan out in reality.

BY MR. MULLINS:

Q Well, with the -- you're aware that United States Department of Transportation has granted a RIFF loan, railroad transportation low interest loan;

right? You're aware of that; correct?

A I am.

Q And the purpose of that loan is to repair the line, rehabilitate it and repair the tunnel; is that correct?

A I'm sorry. Say that last part? I didn't hear it.

Q To rehabilitate and repair the line from Fort Bragg to Willits. Is that one of the purposes of that loan?

A Yes. And you said repair something. I didn't catch that.

Q I said repair the tunnel. Yeah.

A Oh. Repair the tunnel. Yeah.

Q And with that, with those repairs, and with those, we would have a potential for a railroad move from Fort Bragg to Willits; correct?

A Right.

Q Now we are getting an echo. All right. Just wanted to clarify that before we -- and we might come back to solid waste. But let's go back to sawmills and finish lumber.

A Sure. I

Q And timber.

A Yep.

Q Did you focus just on Mendocino County?

A Yeah, because that's essentially where the rail line is. I don't know how I could focus anywhere else.

Q Just in theory, there could be some sawmills that north of Willits. Are there sawmills north of Willits?

A But how do those sawmills get their materials? I mean, I guess they could come down and put it on the train for 40 miles and then get another truck to take it off the train and take it where it needs to go. But, like, from an economics perspective, that's kind of silly.

Q In theory, could they not bring a truck have finish timber -- well, let me ask you, let me ask you this -- to -- yes. Could they not bring a finished lumber down to Willits, for example, put it on the train, take it to Fort Bragg? In theory, could they do that? You might question economics, but in theory,

is that possible?

A Sure.

Q Are there --

A And then you'd need a truck on the other side to unload the lumber and get it to the lumberyard.

Q Sure. Sure.

A We have one small lumber yard in Fort Bragg.

Q Do you have any do you have any docks in Fort Bragg? Just curious.

A No. We have fishing docks, but it's only -- they're only rated for small boats.

Q Okay. So, you didn't really consider any potential, what we would call transload traffic from other counties such as Humboldt or Del Norte; would that be accurate?

A No. That's not accurate. I did consider it. I discarded it because the extra cost to transload and wait time when you've already paid a trucker to drive an hour and a half or two hours or whatever, for them to drive the extra 45 minutes over the hill and deliver their load directly to that

customer, I can't imagine how Mendocino Railway could provide that service, essentially hours of a person's drive time, competitively. That's the fundamental problem.

Q And on page seven of your feasibility report

A Hang on a second. Let me get there.

MR. MULLINS: Yep. John, can you pull that up please?

BY MR. MULLINS:

Q All right. Do you see where it says in that first paragraph of the freight that is hauled less than 100 miles, only 4.3 is hauled by rail?

A Right.

Q Okay. Do you know whether that Table 13, Appendix B, do you know whether that 4.3 percent included transload traffic or just pure rail traffic?

A That includes just pure rail traffic.

Q Okay.

A But again, transload in this case is nonsensical, because the short distance by the time you offloaded a truck, got it onto the train, reloaded it, offloaded on the other side and reloaded and got

it to its destination, you could have driven that whole distance. I mean, much more quickly. It'd be, like, 12 hours to do it by train and 45 minutes by truck.

Q Would it surprise you that in the four North Coast counties of Del Norte, Humboldt, Mendocino and Sonoma, that they produced 400 million board feet of lumber in 2020? Would that surprise you?

A No. It wouldn't surprise me at all.

Q And, again, you did not consider that as being potential market to put on the route?

A I did not. I considered it. I do not consider it a potential market. So, I did consider it; I do not consider a potential market, because either way, you use the potential rail line, whether you're going down the 101 corridor, or you're going over to Fort Bragg.

Fort Bragg, for one thing, has very low housing construction starts. Housing grows less than 1 percent a year here. It's a fraction of 1 percent. So, it's not really a market for lumber, or certainly not a very big market for lumber. And going south,

because there's no real continuity, there are going to be very few finish lumber shipments that would benefit from -- in fact, I don't think there would be any finish lumber shipments that would benefit from a process where they are on a truck from Del Norte County to, let's say, Willits.

They transload, get on a train that's going to take four hours to get to Cloverdale. Transload back onto a truck to get to their final destination, when if they had just stayed on that truck, they would have gotten through that whole area in less than an hour. The economics of that is very hard to compete with. That hour for that trucking trucker is, you know, maybe a cost of 60 bucks.

Q Let's focus on the municipal solid waste that you brought up.

A Sure.

Q You said there was potential of, what, two carloads a day or something like that. Is that what you said?

A No. Two truckloads.

Q Truckload.

A A truckload is 27 tons at the max. So, it's basically a little more than 50 tons, which is half a carload.

Q So, I'm just curious. How many truckloads can you get in a rail car?

A It depends on if you have 100-ton rail car or an 80 car -- 80-ton rail car.

Q Yeah.

A So, my understanding from the engineer is that the Fort Bragg to Willits line can only support an 80 ton rail car because of the narrow curves and the tight, I guess, the tight curves, and then the steepness of the line. But the potential rail line from Willits to Cloverdale can support 100-ton railcar.

Q Which is, what, three truck loads?

A Three plus some change.

Q Okay.

A Three point something. I could do the math for you if you want.

Q We'll call it 2 to 4.

A It would be 3.7 truckloads, if those

truckloads were held to their maximum capacity.

Q Yes.

A And if the train could likewise be filled to its maximum trip. You know, obviously, like, fluffy stuff weighs less, like latex.

Q When they put that municipal solid waste on their trucks -- and they go up Highway 20; is that correct?

A Yes.

Q And then what do they do with that?

A At Willits, they turn south on 101 and they go to Ukiah, where they have a processing center.

Q I know you've questioned the economics. But is it feasible or theoretically possible that they could transload that waste to a railcar, the railcar would take it down to Willits, and then transload it from there and then take it to Ukiah? In theory, is that a possible move?

A I don't really -- I don't really deal in possible. I deal in feasible. So anything is possible if you're willing to work at a loss of income, or if you have, you know, a rich daddy, to

give you lots of money; right? If money is no object, anything is possible. So, I don't really work in the realm of possible. I work in the realm of what's economically feasible. And, no, for a solid waste company, I do not believe that it is feasible for them to do that.

And as I've explained -- I'll do it one more time. So, the solid waste transfer station is about a mile and some change north of where the rail line starts, over a bridge where you couldn't put a rail line extension. And they transfer from small collection trucks into their bigger trucks. They do two transfers a day, so basically, half a railcar, 50 tons, more or less.

They own all their trucks. They've already invested their money in those trucks. So, it's sunk capital for them. And they have an obligation by the State of California to move that trash within one day, which means that for them to rely on Mendocino Railway, Mendocino Railway would have to have service every day of the week. You could not see a situation where if Mendocino Railway had service on Mondays and

Wednesdays, that that would work for them.

Additionally, when it got to City of Ukiah, that same trash would have to be transferred off of the train onto trucks and travel to their processing center. So, you are adding a lot of complexity to a situation that for that company is not complex, and to a situation where they have control over cost. I just don't see that they would consider it feasible or beneficial for them to use Mendocino Railway.

Q How often does the Skunk Train operate?

A The Skunk Train as a passenger service?

Q Uh-huh.

A I don't -- I don't actually know that, the answer that question. I don't track their operations as a passenger service. I believe they have passenger service once or twice a day from Willits and Fort Bragg. And the passenger service, the way that I understand it, goes from the train depot 7 miles up, stops at the collapsed tunnel. They do some -- people do some walking around, and they get back on and they come back.

Q But with the rehabilitation project, with

the loan, the passenger train is to go all the way from Fort Bragg to Willits; is that correct?

A I'm sure it's possibly correct. I'm not sure anybody would want to take that trip. Just because something's possible doesn't mean that it would make sense from a market or feasibility perspective.

So, the train trip that, when it went halfway, used to take four hours roundtrip. And actually, Mendocino Railway has found that their much shorter excursion, their 7 miles up the road excursion is much more possible, much more popular.

And so, they're actually making more money off of their short excursion than they were off of their longer excursion that they used to have before the tunnel collapsed.

Q Have you ever heard of freight being mixed with a passenger train?

A Again, I think it's possible. I just don't see why anybody would want to take an eight-hour trip to Willits on a train.

Q Is it possible to combine freight with

passenger in a train? You'd answer that yes, I presume?

A Well, I just don't like the word "possible." You keep asking me if something's possible.

Q Okay. Is it feasible? Is it feasible to combine freight and passenger on one train? I'm not talking about in this situation, just in general.

A Okay. So, is it feasible if both are going to the same destination and have the similar expectation about travel time? I think it might be feasible. In this particular case, because the travel time is so long, I don't think any passengers, whether they're, you know, in their grant, they talk about commuters.

Do you know any commuter that would do an eight-hour trip on a train where they could drive for 45 minutes and end up at the same location? I don't know of anybody who would do that.

Q Would it surprise you to note or to know that Amtrak, on their passenger trains, has actually hauled freight with their passenger trains?

A Again, no relevance to this situation.

Q It's possible, though. It's theoretical. It's feasible. Are you aware of that?

A Yeah. I'm also aware that people landed on the moon.

Q Okay. And going back to your municipal solid waste, I believe in 2018 and 2019, both of those applications relied on the fact that you could put municipal solid waste -- one of the benefits was that you could put municipal solid waste on the train and take it to Willits. Do you recall that being a part of those applications?

A I recall them having solid waste in one of them. I don't think they had solid waste in both.

Q Do you recall which one you're thinking of?

A I think the solid waste one was in the second one, 2019.

Q And the city of Fort Bragg, under your -- submitted that 2019 build grant, just; correct.

A Hang on a second. Let me just -- I probably have that data and I could actually probably answer it.

Q Sure.

A Yeah. So, in 2018, they did not include solid waste. In 2019, they had 5,000 truckloads of solid waste, which on the face of it is just a little bit laughable since less than half a truckload is produced in Fort Bragg every day. And as far as I know, there's only 364 days in the year, unless they changed the calendar on us. So, if you do 364 divided by 2, you get 182 truck railcars of solid waste a year, not 2,500.

Q But you didn't question that figure at the time?

A Again, that's information that was provided to me by the Skunk Train. And no. I didn't question it.

Q But you're questioning it now?

A Yeah, because I was paid to look into this in more detail. And I did that. Remember, there's a big difference between doing -- submitting a grant on behalf of a business in the community as a staff person and really being asked to get to the bottom of whether this market is there or not. And so, I made the effort to get to the bottom of whether the market

was there or not.

Q But nothing actually has changed in terms of the market with respect to municipal solid waste between 2018 and 2024; correct?

A That's correct. So, the information in the 2019 build grant was actually incorrect. The information that was provided to me by Mendocino Railway was not true.

Q And here, you said you were you were paid to do this analysis. And there, you were acting as an employee, and you're making a distinction?

A That's not so much the distinction that I'm making. I'm making a context distinction. So, the context was to submit a grant application for a company in Fort Bragg where that information was provided to me. My job at that point is not to question, and I didn't even think of questioning it.

I just thought, "Okay, wow, that's a lot of train traffic. Cool." I mean, I was submitting a grant application, very different process than doing a detailed analytical study of a particular industrial sector.

Q So, you would say back then you were just doing your job doing what I was told to do?

A I would not characterize myself in that way, Bill. That's pretty demeaning.

Q Okay. How would you characterize yourself?

A So, as a community development director, I had responsibilities for any, many aspects of community development in Fort Bragg. I managed a five-person team, managed the Fort Bragg coastal trail project, was engaged in lots of current planning projects, signed permit reviews, business license reviews, answering questions at the county, going to Planning Commission every other Wednesday at night, going to City Council every other Monday at night.

In other words, it was a very complicated, very complex, very full-time job. This is an extra thing that's been added to that load with a pretty short turnaround. So, I did the best that I could with it.

Q And here, you were paid to produce a study, a feasibility study?

A Here, I had three months to work on a very

specific project that involves going with much greater depth into some of the claims that Mendocino Redwood made in those grant applications.

Q All right. Let's let's look a little bit about the --

A Before you go too much more --

Q Yeah. Sure.

A I'm getting a little tired. And I'd like to just put a note in at 12:30 to take another break.

Q Sure. Absolutely. On the feasibility cost -- let's turn to back to your feasibility study.

MR. MULLINS: I believe this might be on page 11, John, of the feasibility study. Yeah. Right here.

BY MR. MULLINS:

Q You talked about a tariff that you read somewhere -- I believe it's on this page, or it might be on a different page, you discussed a tariff. Is it the next page -- do you recall -- let me ask --

A I think if you search --

MR. MULLINS: Yeah. Just search the word "tariff."

BY MR. MULLINS:

Q I know you came up with a tariff rate.

A It's on page 13.

Q That's okay. I have page 13, but I also have page 11. Thank you.

A So, to be clear, I did not come up with this. I got this from Mendocino Railway's website.

Q What is your understanding of what is a tariff?

A Well, they're charging the cost per car for -- basically it's the price.

Q Can a railroad charge be less than a tariff rate?

A It says, "Charges in dollars and cents per car, except as otherwise noticed."

Q Can a railroad charge -- to your knowledge, can a railroad charge be less than a tariff rate?

A You know, it's a free country. I guess we can also charge what we want. Question is, can you make enough money to pay your debts?

Q To your knowledge, can a railroad enter into a contract with a shipper that would be a negotiated

price that would be different than the tariff rate? To your knowledge, can that happen?

A Certainly. I don't see why not.

Q Would you happen to know that in just, in general, how much traffic moves via contract versus tariff?

A I do not know. I do know that no traffic moves on Mendocino Railway right now. Whether it's contract or tariff.

MR. MULLINS: Can we, John, now go to page 11, Table 4? And scroll up, please.

BY MR. MULLINS:

Q You -- your table says that it would cost $3,067 to move 80 tons of freight by truck; correct?

A Correct.

Q Okay. And that's based upon your assumption of what the costs are; is that correct?

A No. It's not. This is based on a market analysis that consists of doing a subcontract with truckstop.com to get market data about truck freight costs. So, truckstop.com is a freight consolidator. And so, anybody who's shipping freight by truck

anywhere in the United States can list their thing that they want to ship.

And anybody who wants to move that freight can bid on that listing. So, these one-way haul costs are based on actual shipping costs by -- shipping prices, I should say, because they're not costs -- shipping prices that were paid to truckers to move freight of the various types over the various distances.

Q So -- yes. Okay. So the average one -- let's just take the column that's Willits to Fort Bragg. The average was $843.67.

A Great.

Q For one truck. Is that --

A Yep.

Q And you've already testified that 3.7 trucks can go into a railcar.

A Right.

Q But would it be accurate to calculate 843.67 times 3.7 to come up with what the equivalent rate would be?

A I mean, you could do it that way. Or you

could do it the more accurate way, which is per ton.

Q Well, let's just do it that way. What does that come to, Marie? Did you do that calculation? 3.7 times 843.

A Sorry. Excuse me. My calculator is not working. I am getting tired. This a lot of talking.

Q Would you like to take a break? Would you like to take a break now?

A Hang on a second.

Q Okay.

A Yeah. I'm confident with my prices there. I understand why the Willits to Fort Bragg might be confusing you, and I can explain that if you want.

Q Well, I just want to know what 3.7 times 843.67 is.

A No. We did 38.35, which is the price per ton to haul a truck, times 80 tons, which is the railcar equivalent for that distance, Fort Bragg to Willits, 'cause --

Q But if a railcar can hold 3.7 trucks, and the average one-way truck is 843, isn't it accurate to say -- you just said that you can do it that way, to

do 3.7 times 843.

A Right. So, we're talking about different sized railcars. When I came up with the 3.7, that's for a hundred-ton railcar. This is an 80-ton railcar.

Q Okay. Can you - all right. Let's do --

THE REPORTER: Sorry. If you guys could talk one at a time, to preserve the record.

MR. MULLINS: Sure.

BY MR. MULLINS:

Q So, your 3.7 was based on 100 cars -- 100 tons?

A Correct. It's just more accurate to do it price per ton, because truckloads could be any kind of tonnage.

Q Just an average. Let's just call it 3 times the 8, because instead of 3.7, it's now 3 times 843. But it's somewhere going to be at 3,067, or if we do 3, it's going to be somewhere around maybe, you know, 2500, somewhere. Would that be accurate?

A I'm confident that my methodology is accurate. So, what I did is I did price per ton, which is $38 price per ton, and multiply it by 80,

which comes down to $3,067 per railcar.

Q Can we go to page 13?

A It's 12:30. Can we take a break?

Q Oh. Absolutely.

A I'm sorry. I just need a minute.

MR. MULLINS: Marie, that's fine. How long of a break do you need?

THE WITNESS: I need 15 minutes. I need to go feed my horses and just chill for a minute.

MR. MULLINS: Sure. No problem. 15 minutes.

THE WITNESS: Okay. Thanks.

THE REPORTER: All right. The time is 3:28 p.m. We're now off the record.

(Off the record.)

THE REPORTER: All right. The time is 3:44 p.m. We are now back on the record.

MR. MULLINS: John, can you go back to page 11, please, of the feasibility report? Assuming he's there. John? Oh, boy. Here we go again.

MR. EDWARDS: No. I'm here. I'm just, I'm working the computer here.

MR. MULLINS: Working the double monitor.

MR. EDWARDS: You want page 11. So, share screen. Share.

MR. MULLINS: All right. Thank you. Page 11. There we go.

BY MR. MULLINS:

Q This last sentence, Marie, I just want to make sure, is this -- this is your statement, and I just want to read it. "A railcar of 80 tons must charge less than 3,067 railcar to be price competitive with truck." Is that correct?

A I would say that's correct given the current market.

MR. MULLINS: Okay. Can we move to page --

BY MR. MULLINS:

Q And that's just from Cloverdale to Fort Bragg; is that correct?

A You'd have to scoot down for me to be able to answer that. I'm assuming that's just from Fort Bragg to Willits.

Q That's what I'm trying to get at. Yeah. Thank you.

MR. MULLINS: John, can you scroll down, please?

THE WITNESS: So, Cloverdale to Willits is less. But Willits to Fort Bragg and Cloverdale to Fort Bragg is the same, because all the trucks basically come from Cloverdale and south.

BY MR. MULLINS:

Q Okay. So, from Willits to Fort Bragg, a railroad would have to charge less than 3,067.88 to be competitive?

A From Willits to Fort Bragg. Yeah.

MR. MULLINS: Okay. Can we move to page 13? Top of the page, please. Could you -- all right.

BY MR. MULLINS:

Q Marie, I want to read this sentence and ask you a question about it.

A Yep.

Q This hypothetical rate structure amounts to 2,640 a railcar, which is less than existing trucking

rates. So, that 2,640 is less than the 3,067 that we just talked about; is that correct?

A Yes.

Q Okay. And you calculated the 2,640 how? Can you explain that again to me?

A It's explained in the paragraph above.

Q Okay. Could you just explain it for the record?

A "This means that the advertised rate price is hypothetical. It is advertised as 1440 per car for a one-way trip from Willits to Fort Bragg. Additionally, Mendocino Railway charges $400 per railcar per day and an $800 labor fee. Together, this hypothetical rate structure is $2,640 per railcar."

Q So, this assumes that the freight rate is 1440; is that correct?

A That's what they have advertised.

Q But they can charge less than that? You agreed with that?

A I assume they can. That's up to them. I don't think they can make money either way, though.

Q And even with your using the tariff rate and

their rates, the 2,640 is still less than the trucking rates; correct?

A Yes. But it's a hypothetical rate because they don't actually use this to transfer freight.

Q Okay. Let's move on. You testified that you are aware of the RIFF loan that they got; correct?

A Yeah. In my report, it said that.

Q Yeah. And you stated that these were approximately the same funds that you saw in the 2018 and 2019 grant?

A They're a different funding source, and I honestly don't remember what the rate was for those older grants.

Q No. But it's roughly the same amount of money to do roughly the same amount of --

A No. It's not the same amount of money.

Q Okay. How is it different, in your knowledge? Do you remember?

A Yeah. Hang on a second.

Q I'm talking about the grant money versus the RIFF loan.

A I understand.

Q Okay.

A Okay. So, the '18 build grant was for $16,000. The 2019 build grant was for $25,000.

Q Are we talking about million? I'm just talking about the grant --

A I'm sorry. Million. Yeah. Sorry. $16 million in 2018 and there was a 2019 grant for 24 million and then an FY 20 grant for 18 million. And then the RIFF loan is for 31 million together.

Q So, we presume there's more -- yeah. So, they got a loan for 31 million, presume --

A I understand their loan for 31 million covers some work they wanted to do in another -- on another train system that they have in the Sierras.

Q Okay. Would it be safe to assume that the DOT would not have granted this unless they thought they could pay it back?

A I don't know the answer to that.

Q Is the federal government in the business of granting loans that they know are going to go bankrupt?

A I don't know the answer to that either. I

mean, I do know that this is part of the infrastructure bill that was passed. And so, it's very fat with cash, and there's a big push to get it spent.

Q Do you know if there were any RIFF loans that have ever gone bankrupt?

A I don't know the answer to that.

Q Now, you've testified or stated that there's no current freight on the Fort Bragg to Willits line. You've stated that; is that correct?

A They have hauled some things for their own repair projects and for a repair of a culvert by the Mendocino Land Trust. But, normally, that is not very much.

Q Do you know whether there is any current freight being transported?

A There is no continuity on the line, so I don't know how they could possibly haul freight on it, since it's not rated for freight, there's an embargo against it, and it has tunnels --

Q I'm talking about the Fort Bragg to Willits section, not the Cloverdale section. Fort Bragg --

A I'm talking about the Fort Bragg to Willits section as well.

Q You'd say that over the past three, four years, there's been no freight moved on that?

A I think in your attachments, there's a list that Mendocino Railway puts together that is, quote, unquote, their freight. But their freight is to do repairs on their own line, and to repair a culvert, is my understanding, for the Mendocino Land Trust. And the freight was hauling a little bit of gravel for that project.

Q Were they paid to move those projects?

A I don't know if they were paid or not.

Q Going back to the government loan, do you know whether or not the government analysis depended only on the Skunk Train revenues, or did it include on Skunk Train and freight revenues?

A I'm going to assume it included both, because, probably, their other line actually has freight rail and has freight revenues that they could show, which is probably why they combined them into one grant application.

Q To your knowledge, does the Skunk Train actually make a profit today?

A I assume they do, because they're still in business. Most people don't keep going without making a profit. I know that their tourist railway can be quite busy in the summertime.

Q And did you consider the revenues from the Skunk Train in your feasibility financial analysis?

A I did not have Skunk Train revenues to be able to incorporate that. And I was looking at these projects from a standalone perspective.

I will say that, you know, my analysis gives them the benefit of the doubt, because it allows them to apply all $31 million to this project, because the actual costs to redoing the line from Cloverdale -- I'm sorry -- from Fort Bragg to Willits is $30 million.

Q Yeah. And where do you get that figure, Marie?

A That figure came from a report that was done by Dave Anderson called "Railroad Rehabilitation Assessment."

Q Did you look into his analysis or methodology?

A I did read both of his reports. In this case, I actually had the time to do that. You know, he's a railroad engineer, and he's done this many times, all over the place. He did a lot of detailed photo'ing of various deficient conditions.

Q And do you know if his analysis was based upon what type of freight service they would be providing? Is that -- I mean, when you say the 30 million, was that to bring the line to a certain standard? Do you know?

A It's been a while since I've looked at that. I would have to take a look at that, to answer that.

Q That's okay. That's all right.

A Do you want me to take the time?

Q No. No. We don't need to. But the Skunk Train operates out there today; correct?

A The Skunk Train operates out there today as a tourist service. Yes.

Q And do you know if they've ever had any accidents or derailments?

A I do not. I did, in my report, include a few other derailments that have happened over the years.

Q Would it surprise you to say that most government agencies would hold people that perform passenger operations to a higher standard than what is required of freight?

A It wouldn't surprise me, although I think there's an issue of weight. With the freight, you have quite a bit more weight on the rail line, and so you need to have -- I mean, I guess it depends on what you're measuring in terms of higher standards.

Q So, when you were doing your feasibility analysis, you did not consider the Skunk Train revenues? You just focused only on freight?

A That is correct, because I did not think that their current revenue would significantly increase over what they have right now, because their current revenue is for a more popular line that is shorter than what they used to have.

Q And, correspondingly, you didn't consider the Skunk Train costs in your analysis?

A I did include the Skunk Train costs in the analysis.

Q But you did not include the revenue?

A Well, let me finish.

Q Sure.

A I included the Skunk Train costs and revenues insofar as they related to freight, not insofar as they related to tourist services.

Q Do you know if they get other revenues from their line?

A Besides tourist services and freight?

Q Yeah. Do they get revenues from rail bikes?

A Yeah. I consider that part of their tourist services.

Q Do they get revenues from fiber optic easements, other types of easements?

A I mean, yeah. So, my job is not to look at the entire Skunk Train business organization, but to answer the question, does this project pay for itself?

Q And --

A I mean, they also run a trash burning company. Like, that's also not relevant.

Q Do you know how many locomotive engineers and conductors are required to run a passenger train?

A I do not.

Q Do you know what the cost is to run a passenger train, one passenger train?

A I think we've already been clear that I do not know their current cost structure, so you could -- I mean, I'll just say no, if you want to keep asking those questions.

Q How many locomotive engineers and conductors are required for a freight train? Do you know that?

A That is in the study that was done by Mr. Anderson, and I did -- so, that was included in the cost analysis.

Q So, would you -- if the federal government believes that the loan can be paid back through the revenues of the Sierra Railroad, and/or the Skunk Train, then the federal government is not relying on the revenues from frame to be paid back; would that be a safe assumption?

A I have no idea what assumption they used.

Q Well, you did say that the model was based

upon revenues from another railroad and revenues from the Skunk Train; correct?

A I said I surmised that they were. I mean, I have not seen this loan document, so how can I speak to it in an authoritative way; correct? I mean, all I can say is that I saw a summary of -- like, it was less than a paragraph -- that was briefly on the website for the loan program. And it mentioned two legs of railroad.

Q Well, if -- excuse me. The government loan is paying for the repairs and the rehabilitation; correct? Government loan pays for that?

A Assumingly, it's paying for two different rail projects. So, if it's paying for both of those separate rail projects, it's likely not covering the entire cost of the Willits to Fort Bragg rail project, which is $30 million. It's probably covering two-thirds of it.

Q Let's just assume that -- you said earlier that you were being generous and that it was paid for the repair costs. I mean, why would they get the loan if they didn't think they could repair the track?

I mean, the purpose of the loan is to repair the tunnel. You've already testified that; correct? And to repair the tracks the frame levels; correct? That was the purpose of the loan? And to rehab the track and put in the ties; that was the purpose of the loan? You agreed with all that --

A You're asking me to guess about what a loan would be used for that I have not seen or reviewed.

Q You just testified previously that the amount of the grants who was basically the same thing that you were requesting in the loan, and that, in effect, the loan was paying the same things requested in the grants. So, is it -- isn't that what you said?

A No. That's not what I said. I did not write the loan. I have not seen the loan. All I've seen is a little paragraph that describes the loan as improvements to two rail lines. So, how are those dollars separate between those two, I don't really know. I mean, that's going to be up to Robert and the hearts. It's not really up to me.

Q Well, let's just assume --

A So, what I assumed, to be generous in the

feasibility analysis, is that all of that would be spent on the Fort Bragg-Cloverdale line because our consultant engineer costs that out at $30 million dollars.

Q Right. Okay. So --

A Now, is that assumption correct? It's generous. Probably not, but I don't know.

Q Okay. Let's take that assumption as correct. At that point, to run a freight train, what would the freight train have to generate in revenues to cover its costs? Do you know?

A Yes.

Q Are you basing this on Dave Anderson's report or your own knowledge?

A I am basing this on a variety of things.

Q Okay. So, let's take assumption that the loan paid for all entire rehabilitation costs. The other assumption, let's assume, is that the loan is paid for by revenues from the Skunk Train and Sierra. Are those two safe assumptions for this? Are you okay with those assumptions here, just for my question purposes?

A Say the second one again?

Q That the loan has been paid back by the Skunk Train revenues and the Sierra revenues.

A I don't -- I can't say whether that's correct or not, Bill. I don't run the Skunk Train.

Q Let's just assume. Okay. Let's assume that the loan paid for the rehab costs. Let's assume that the revenues from Sierra and the Skunk Train pay back the loan. At that point, to run a freight train, would they not just have to pay for the variable costs of running a locomotive and its crews and its fuel? Do you understand what I mean by variable costs?

A Uh-huh.

Q Okay. So, would that not be what they would have to do to cover their costs is to just cover their variable costs?

A They would have to cover their variable costs, and the loan --

Q I'm sorry to interrupt, Marie. But we just said that the assumption was that the loan is being paid back for by the Skunk Train and the Sierra revenues. Under that assumption, the only thing that

they have to pay back is their variable costs; is that not correct?

A Well, that's not the way you do a feasibility analysis. I mean, the way you do a feasibility analysis is to determine if a project can pay for operating costs, acquisition costs, and debt service. That's how you do a feasibility analysis.

Q How does the STB do a cost analysis? Do you know, Marie?

A Yes. They take the cost of the rail rehabilitation and they divided by their SPT -- hang on a second -- number, which is like 10 percent right now. I need to find that in my study.

Q Marie, I'm asking in your knowledge as from an STB -- from a railroad economics standpoint.

A You multiply the capitalization costs for the project by the cost of capital, as published by STB, their rate.

Q Well, we're not going to debate STB cost of capital, because no rail -- very few railroads make their cost of capital. Would that surprise you, Marie?

A Their cost of capital is 10.58 percent.
Q That's a regulatory standard. But I'm talking now, under the assumption -- let's go back.
A Let me just say what the cost of capital says in --
Q The cost of capital -- Marie, the cost of capital has nothing to do with my question. My question is, assuming that the loan pays for the repairs, and that the loan is paid back through Skunk Train revenues and Sierra revenues, that at that point to run a freight train, the only costs they have to cover are their variable costs. Is that a correct statement?
A The cost of capital finding may also be used in other regulatory proceedings, including but not limited to those involving --
Q Can you answer the question "Yes" or "No," Marie?
A Of maximum a reasonable rate levels, the proposed abandonment of rail lines and the setting of compensation --
Q Marie, are you an STB attorney?

A Of another carrier's lines.
Q Marie, Answer my question "Yes" or "No," please.
A Can you rephrase it?
Q Yes. If all the fixed costs are paid for through other revenues, then a railroad would only have to pay their -- recover their barrel costs to move a freight train; is that accurate?
A I can agree with that.
Q Okay. Thank you. Do you know what Mendocino Railway's bearable costs would be to run on freight train?
A Yes.
Q Variable costs; okay? And what is that? What are they?
A Annual operating and maintenance costs from Willits to Fort Bragg is 2.4 million. And from Cloverdale to Willits is 5.1 million.
Q So, the 2.4 million is based upon -- you're reading from Mr. Anderson's report; is that correct?
A That's coming from DSA enterprises. Yeah.
Q He doesn't really -- that's his estimate of

what the operating maintenance costs are; correct?

A Well, I think that's his calculation of what it should be. Yeah.

Q Yes. And is he considering, since you're liking -- since you're adopting his analysis, is he considering in those operating maintenance costs at the Skunk Train pays for those costs?

A Well, let's put it this way. The Skunk Train currently pays for those costs to drive 7 miles up a route.

Q Exactly. Thank you. You're exactly right. So, the fixed costs, and the variable costs of the Skunk Train are paid for by the Skunk Train; correct?

A The costs are really different to run a Skunk Train 7 miles up a track versus running a train 44 miles from one end over two high mountain passes.

Q What are you --

A Are they not different?

Q You've already agreed with me, Marie, that to compete with trucks, they would have to charge a rate less than $3,067; correct?

A Correct. Over that segment of the road.

But, you know, again, that's only competing on price. There are, of course, many metrics on which you compete, which also include delivery time.

Q You've already shared that even with their tariff rate and their labor costs and their labor fees, that that is less than the 3,067.

A I did, but that's a hypothetical rate that they don't actually charge anybody.

Q Okay. Thank you. Let's move on to page 9 of the feasibility report, or back, I should say. You see MJM Brakes?

A I do.

Q Okay. Are they only in California?

A No.

Q They have, pretty much, offices in a lot of places; correct?

A That's correct.

Q Do they use rail? Or do you know?

A I imagine they do, but they do not at this location.

Q And what do they produce? Do you know what they produce?

A They produce electronic brake systems for trucks and buses.

Q Okay. And you believe that they use railroads to move those products?

A I don't know if they do or not. Honestly, I just asked this one location if they were interested.

Q Do you know if they have plants in Charlotte or other places to actually ship products overseas?

A I don't know everything about every company. Sorry.

Q So, you don't know where they get their supplies from?

A Look, I know, and they know, that they're discontinuous from the rail system at this location.

Q Do you know where these other manufacturers get their supplies?

A The other manufacturers, you mean --

Q The other manufacturers' locations, MJM Brakes.

A I'm sorry. I don't understand the question. Just the other manufacturers for MJM Brakes?

Q Yes.

A That was --

Q There are other plants. Do you know where the other plants are located?

A I'm sorry. That was way outside the scope of this work.

MR. MULLINS: Okay. All right. Go back to page 13. Will you scroll down a little bit, please, John? The version that John is using in this case did not -- there is a page 13 you mentioned has tracks unrated for freight. Can you maybe search that phrase, John, please? Or is that on the next page?

I had it on page 13, but maybe it's a different page. Maybe just search. Can you just do a search? "Tracks unrated for freight." There we are. What page is that? 13. We just didn't see it.

BY MR. MULLINS:

Q What do you mean by that, Marie?

A That is per the engineer. The tracks are currently not rated for freight. In other words, it's not -- they are not engineered for the heavy weight of freight, which is part of the reason why they're getting the loan.

Q Do you know what -- Better Railroad Administration, are you familiar with that agency?

A Sort of. Not much. No.

Q Do you know what FRA classification would require for these tracks to be rated for freight?

A So, this is not in my area of expertise. This is information that I got from -- what's his name -- the guy who did the --

Q Okay. Well, we can move on.

A The cost recovery -- the cost study for the railcars.

Q Okay.

A Dave Anderson. So, that's from Dave Anderson. You'd have to ask him.

Q Yeah. Okay. When you talk about -- let's see. You make a statement that trains often run late on page 5; do you recall making that statement?

A Yes.

Q What's the basis for that statement?

A Again, Mr. Anderson.

Q And what is considered late? Do you know that?

A Again, Mr. Anderson.
Q Okay. Well, let's just go back to some general questions. Who pays the bill to maintain the Mendocino line from Fort Bragg to Willits?
A Mendocino Railway.
Q Who pays the bill to maintain Highway 20?
A CALTRANS -- the people who drive on it, through our gas taxes, fund CALTRANS.
Q Okay. Did you specifically do a study of how long a train would take to go between Fort Bragg and Willits?
A That was Mr. Anderson who did that study.
Q Let's go back to your employment. You've been reemployed by the City of Fort Bragg; is that correct?
A I am working as a consultant with the City of Fort Bragg. I'm no longer their employee. I've been doing that for about 2 1/2 years.
Q And what is your role as a consultant?
A Right now, I mostly just do current planning and some ordinance preparation.
Q Do you have any role in permitting?

A That's what I just said, current planning. That's what permitting is.

Q Is that planning or is that actually issuing the permit?

A Good question. I will answer that for you. So, there's two different kinds of permits in the world. Actually, there are many. But the main ones are a building permit and planning permits. Planning permits include coastal development permit, use permit, design permit, a wide range of permits, and doing CEQA for same. Anything that just needs a building permit does not require CEQA.

My responsibility includes analyzing projects vis a vie the City's zoning ordinance and general plan and preparing any CEQA documents that are required for the Planning Commission to either approve or deny use permit, design review, or coastal development permits, or subdivisions. There's various other types of permits. I can run them all to you if you really want that.

Q No. I believe it. And so, if a shipper who was supporting Mendocino Rail came to you for a

permit, or came to the City for a permit, how would you feel?

A It wouldn't matter how I feel. I don't do permitting from the perspective of how I feel. It's a very simple application of zoning law.

Q Have you ever dealt with a gentleman named Brian Hurt?

A Yes.

Q To your knowledge, does he own Geo Aggregates?

A Yes. Yes. He does.

Q Has he been supportive of Mendocino Rail in the past, to your knowledge?

A I don't know.

Q Is he seeking a permit from the City, to your knowledge?

A He is in the process right now of possibly getting a permit for -- he hasn't actually submitted an application yet. He's talked with the City about upgrading his asphalt plant, moving his concrete plant. I think that's what he's looking to do.

Q Okay. And in your role, can we go back to

2019, if you can? And did you talk to the California Coastal Commission several times back then? Is that --

A So, California Coastal Commission is the lead agency and the major regulatory body over all development within the coastal zone. It was a regular part of my job to talk with them about all development projects in the coastal zone.

So, in other words, when you're analyzing a project that's going to happen in the coastal zone, you do an automatic referral to them that describes what the project is, includes a plan set, to get input and feedback from them.

Q Did you --

A And let me explain why that is.

Q Sure.

A So, anything that's in the coastal zone is appealable to the Coastal Commission. And so, part of the reason that you ask for their input is that if they have issues with the project, they bring them up to you early in the process so that you can address them in your own staff report and analysis, so that

the Commission doesn't necessarily have to appeal projects in order to get their concerns addressed.

Q Do federally regulated railroads have to comply with that local or state permitting process, or do you know?

A That's a good question. And I think that's being adjudicated right now. I do not know what the answer's going to be.

Q Are you aware that Mendocino Railway has invoked what we call preemption to say that they are not subject to those requirements?

A I am aware that they and the City of Fort Bragg are in a legal battle over this. I don't really know much more than that, 'cause I'm not involved in that in any way.

Q And in 2019, do you recall if you expressed concern over Mendocino Railroad's federal preemption arguments?

A I sent them an email requesting their input regarding the potential establishment or use of the build funds to establish a rail line over archeological deposits in the coastal zone, which are

one of the coastal resources that are simply protected by the Coastal Act.

Q So, you were -- I just want to make sure. You were expressing concerns in 2019 over what you just stated; correct?

A Yeah. I mean, that's a normal thing that I would do in any project. I have a car wash project, for example, right now that has cultural resources on it. Just a normal thing that you do.

Q And this was happening at the same time you were submitting an application in support of the project; is that correct?

A Yeah. I don't see them as mutually exclusive.

Q Okay. That's fine. What's your feelings about federal preemption? Do you have an opinion about federal preemption?

A I could see a case for federal preemption if a railroad really is interstate, because there's a federal, you know, commerce clause that says that you're, you know, interfere with interstate commerce.

And I'm actually not sure if that's part of

the Constitution, or an amendment, or just a law. Sorry. That's something like that. I'm sure you know the answer to that. So, I think that is, you know, reasonable. I'm sure it's a legacy from the 1800s when the railway was expanding west.

MR. MULLINS: Counselor, I don't have any further questions. But I would reserve any right for recross if you have any redirect.

THE REPORTER: You're muted.

THE WITNESS: Oh. You're muted.

MR. ELLIOTT: No redirect here.

MR. MULLINS: Okay. I don't have any recross. I thank you for your time, Marie.

MR. EDWARDS: Thanks, Marie.

MR. MULLINS: And, Chris, thank you.

MR. EDWARDS: Thanks, Chris.

MR. MULLINS: Appreciate it.

THE REPORTER: Yep. Before we go off the record, I'd like to go over transcript orders.

MR. MULLINS: We will take one.

MR. ELLIOTT: I'll take one.

THE WITNESS: I don't want one.

Listening to myself is bad enough.

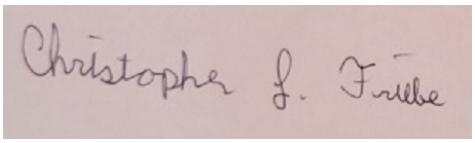
THE REPORTER: All right. The time is 4:26 p.m. We are now off the record.

(Signature waived.)

(Whereupon, at 1:26 p.m. PDT/4:26 p.m. EDT, the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, CHRISTOPHER FRIEBE, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTOPHER FRIEBE
Notary Public in and for the
State of Michigan

CERTIFICATE OF TRANSCRIBER

I, BRENNA SHEA, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



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California Code of Civil Procedure

Article 5. Transcript or Recording

Section 2025.520

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the Original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or

refuse to approve the transcript by not signing it.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

(e) The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), on a seasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the deposition officer. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the deposition officer and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX E

LETTERS TO THE STB ON AB-1305 (Sub- No. 1)

DOUG LaMALFA
1st District, California
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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
COMMITTEE ON NATURAL RESOURCES

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May 2nd, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

RE: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing to express my strong support for Mendocino Railway (MR) and its related Skunk Train tourist operation. MR, a Class III short-line railroad, and its predecessor California Western Railroad (CWR) have proven a vitally important method of freight and passenger transportation for Northern California.

MR has played a critically important role in supporting the economy, jobs, and communities within this rural region since assuming ownership of the former assets of CWR and its freight and passenger services. MR runs what is commonly known as the Skunk Train, the top commercial tourist attraction in Mendocino County. It carries about 60,000 passengers per year, employs upwards of 200 men and women, and provides important tax revenue to support our various public services. MR also offers freight rail services that facilitate the safe, efficient, and cost-effective multi-modal movement of various commodities.

Moving freight over MR is far more efficient and environmentally sound than trucking these materials over the region's mountainous and fragile roads. MR thus provides a competitive rail transportation option to users throughout the rural region. Railroad transloading and freight services over the MR line are needed to connect to the larger interstate movements, bringing commodities to and from their facility.

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Keeping the MR line active is important in supporting resilient supply chains and economic growth in this rural region. It is my understanding that certain parties have asked the Surface Transportation Board's (STB) to remove MR's ability to provide freight service. If such an effort is successful, it could have many unintended negative consequences for the region. I respectfully request the STB carefully weigh the many benefits that MR provides to Northern California, the Golden State, and our nation in considering this matter.

Very truly yours,

Hon. Doug LaMalfa
Member, House Committee on Transportation & Infrastructure
Member, House Subcommittee on Rail

dl:ms

Tom Allman
2501 Hearst Road
Willits, CA 95490
707-272-4924 cell

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application for adverse abandonment of 40 miles of railroad (the "Line") that Mendocino Railway (MR) owns and operates ("GRTA's Application"). As a former, four-term Sheriff of Mendocino County and resident of this region for more than forty years, I have a deep understanding and appreciation for the railroad and the significant positive impact it has had on our local economy, jobs, the environment and public safety for our residents and visitors for generations,

I strenuously oppose the adverse abandonment of the railroad because preserving MR's Line will protect and drive economic growth in the region, which includes California's rural regions of Fort Bragg and greater Mendocino County.

MR, a Class III short-line railroad, and its predecessor California Western Railroad have served the communities and customers of Northern California, by providing freight and passenger transportation, since 1885. Since taking over ownership of Line in 2004, MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County, carrying about 60,000 passengers per year. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight over the Line, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have witnessed MR make significant repairs to the Line and have been told by MR that it has received a government loan to complete those repairs and to fully rehabilitate the Line, including repairing Tunnel #1 with the goal of complete restoration of the Line. A fully functioning Line would preserve MR's role in fostering economic development by drawing additional tourists and providing competitive rail transportation options to users throughout the rural region, who are limited by roadway restrictions, including the prohibition on using trucks longer than 45 feet in length. In my opinion, there is a strong need to for railroad transloading and freight services over the MR Line so

as to connect with the larger interstate movement that brings commodities to/for their facility.

Denying GRTA's Application is simply a good economic, as well as environmental, choice for the economically challenged region. If the Surface Transportation Board ("Board") grants GRTA's Application, then this would guarantee a diversion from rail to truck, causing society at a large to suffer, both with respect to the quality of life (increased emissions), and roadway costs related to adding trucks to the region's roadways.

As an engaged member and longtime elected leader of the community, I understand first-hand the value that MR brings to the region and that MR's freight and passenger services are linked to the prosperity of the communities along the Line. Keeping the Line active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region.

Given the Line's importance, I join MR in firmly opposing GRTA's Application, and we urge the Board not to ignore the future economic growth and infrastructure needs in Mendocino County by preserving both a freight and passenger option via the historic Mendocino Railway.

With my best regards, and appreciation for reading my letter,

Tom Allman
Sheriff (ret).
County of Mendocino

Ross H. Liberty
President, Factory Pipe, llc
1307 Masonite Rd, Ukiah CA 95482 | (707) 489-1369 | Ross.Liberty@factorypipe.com

5/20/2024

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings, Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Dear Ms. Brown

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application for adverse abandonment of 40 miles of railroad (the "Line") that Mendocino Railway owns and operates ("GRTA's Application").

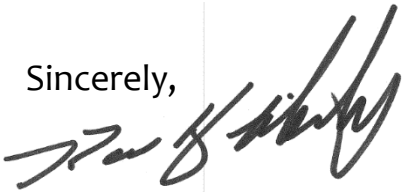
My property borders a half mile of the Great Redwood Trail which has become, despite herculean efforts by the GRTA, our local version of low-income housing.

The frictionless transfer of goods and services is important to commerce, more so than a little used and difficult to manage walking trail. Current State of California policies has relegated Mendocino County to being Appalachia of the west, but we

needn't help them on that score by further isolating us from markets and ensuring poor commuting opportunities.

As our beloved county struggles to reinvent our moribund economy, suffering from postpartum after decades of cannabis induced financial euphoria we need less impediments to commerce, not more, and the GRTA's plan is an impediment to commerce.

Sincerely,



Ross H. Liberty, President Factory Pipe, llc

CATHERINE JULIE GOLDEN
14251 Old River Road, P.O. Box 340, Hopland, CA 95449
May 31, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

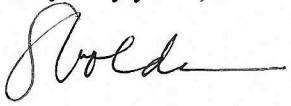
MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,



Catherine Julie Golden

AMY FROST
15000 MNT. HOUSE ROAD, HOPLAND CA 95449

June 4, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,



Amy Frost

DAVID R. BAKER
Post Office Box 567
Weed, CA 96094
May 27, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,

David R. Baker

P.O. Box 750031
Petaluma, CA 94975

May 19, 2024

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. **I enjoyed riding the "Skunk" with my children and also hope to ride with my grandchildren.** MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,

Duane M. Bellinger

LAW OFFICES OF JASON A. BEZIS
3661-B MOSSWOOD DRIVE
LAFAYETTE, CA 94549-3509

May 17, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. The "Skunk Train" personally is dear to me. In 1983, when I was ten years old, my family visited Mendocino County to take the "Skunk Train." It was the first time that I had ever ridden on a conventional railroad. Even at that young age, I appreciated how important this train line has been to the past, present and future of a relatively isolated area. This helped to develop my interest in railroads and the greater transportation industry. I attended the STB's UP/SP merger (1996) and Conrail dissolution (1998) proceedings in Washington, D.C. I am opposed to STB cutting off of the MR from the national rail grid through these "adverse abandonment" proceedings.

Abandonment likely would be forever; that would be unfair to future generations. MR facilitates safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would preserve rail access to many towns. It would be irrational for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads (especially on U.S. 101). It would remove Mendocino County from the national rail grid.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County and California's North Coast.

Very truly yours,

/s/ *Jason A. Bezis*
JASON A. BEZIS

MARK BIRNBAUM
10 Meadowbrook Ct. Novato, CA 94947
May 24, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,

Mark Birnbaum

Mark Birnbaum

Lyrik Vineyards

SANTA ROSA, CA 95401

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application (AB1305 -1) to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in the Fort Bragg and greater Mendocino County areas.

MR has, through its freight and passenger services, become an economic engine for the rural region of Mendocino County. Significantly, MR's Line, which is known in the State and even the greater USA as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to commence repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government (DOT) to support repairing and rehabilitating rail infrastructure only then to have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for the economic growth of Mendocino County, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a permanent diversion of heavy shipments from rail onto trucks. These heavy vehicles not only harm the quality of life through increased truck engine emissions, but also increase roadway maintenance costs and traffic congestion.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options of the historic Mendocino Railway and not ignore as well the future economic growth and infrastructure needs within Mendocino County.

Respectfully, Richard C. Brand;

Richard C. Brand

GM. Lyrik Vineyards LLC

BENJAMIN ETGEN
3600 Whitney Ave
Sacramento, CA 95821
June 7, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

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Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Sincerely,

Benjamin Etgen

STEPHEN A. FERRARI
2328 Westmoreland Drive San Jose, CA 95124
May 23, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's (MR) federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County. Everyone potentially benefits through no abandonment for both rail use and recreation uses. Recreational trail uses can still occur with rail also use happening for the benefit of all.

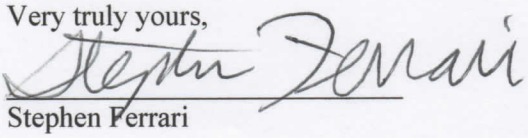
MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,



Stephen Ferrari

Paul Glassner

35 Neva Ct.

Oakland, CA 94611

May 24, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

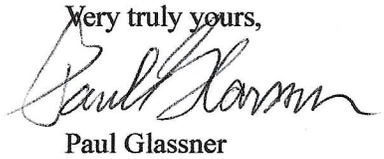
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I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,



Paul Glassner

JIM AND MARGARET HALL
3937 W. Sunnyside
Visalia, California 93277

May 25, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

MR has, through its freight and passenger services, become an economic engine for the rural region. Significantly, MR's Line, which is commonly known in the community as the "Skunk Train," is the top commercial tourist attraction in Mendocino County. MR also facilitates the safe, efficient, and cost-effective multi-modal movement of various commodities moving freight by rail, which is far more efficient (and safer) than trucking these materials over the region's mountainous and fragile roads.

I have been told by MR that it has received a federal government loan to complete repairs to its line and to fully rehabilitate MR's 40 miles of railroad, including repairing Tunnel #1. This will protect MR's ability to draw tourists and provide freight rail services in this already economically challenged area. It would be tragic for one arm of the government to support repairing and rehabilitating rail infrastructure to then only have another arm of the government grant an adverse abandonment application that could result in the loss of that very same infrastructure.

Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs and reduce safety due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,

Jim Hall

William E, Hurrell
3 Oakview Terrace, Orinda, CA 94563
May 23, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

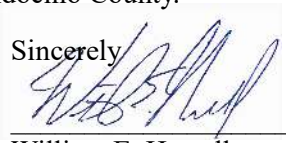
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Denying GRTA's Application is simply good economic policy, as well as good for the environment. Keeping MR active is imperative for economic growth, the reduction of the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. Granting GRTA's Application would guarantee a diversion from rail to truck, harm the quality of life through increased truck emissions, and increase roadway maintenance costs due to the additional trucks on the roads.

I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Sincerely,



William E. Hurrell

EILEEN A. MALOY
2568 Westberry Drive, Santa Rosa CA 95403
May 22, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

I am writing in opposition to the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Preserving MR's rights will protect and drive economic growth in California's rural regions of Fort Bragg and greater Mendocino County.

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Very truly yours,

Eileen A. Maloy

Eileen A. Maloy

WOODY MOSGERS
2510 Hidden Valley Drive
Santa Rosa, CA. 95404
May 20, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,

Woody Mosgers

A. G. PETERS
2350 Dominic Drive, Novato, CA 94947
May 23, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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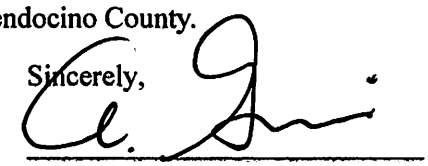
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I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Sincerely,



MICHAEL R. POLK
130 Tamal Vista Drive
San Rafael, California 94901

May 21, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

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Sincerely,

Michael R. Polk

KIRK D. SCHNEIDER
P.O. Box 5373, Fullerton CA 92838
May 24, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

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I join MR in strenuously opposing GRTA's Application. I urge the Surface Transportation Board to preserve both the freight and passenger options via the historic Mendocino Railway and not ignore the future economic growth and infrastructure needs in Mendocino County.

Very truly yours,

Kirk D. Schneider

DANI SHEEHAN-MEYER
7790 Weter Lane Sebastopol, CA 95472
May 20, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,

Dani Sheehan-Meyer

SUSAN SHIELDS
3033 CALLE ROSALES, SANTA BARBARA, CA 93105
5.23.2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,

Susan Shields

MICHAEL R. STRIDER
2410 Hidden Valley Drive, Santa Rosa, CA 95404
May 20, 2024

VIA US MAIL
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,



Michael R. Strider

Jack C. Swearengen
5555 Montgomery Drive, Apt. L209
Santa Rosa, CA 95409

May 26, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,

Jack Swearengen

Jack Swearengen

VALERIE TAYLOR
110 Garden Ave.
San Rafael, CA 94903
June 6, 2025

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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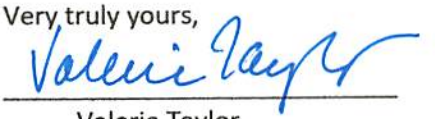
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Very truly yours,



Valerie Taylor

RICHARD F. TOLMACH
1730 13TH STREET
SACRAMENTO, CA 95811
MAY 22, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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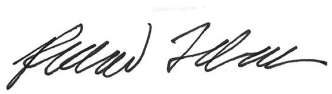
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Very truly yours,



Richard Tolmach

GAVIN WATERS
7423 Hayden Ave, Sebastopol, CA, 95472
5-20-2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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Very truly yours,

Gavin Waters

Alan K Weeks
5242 Mt. Helen Ave.
Los Angeles, CA 90041
May 24, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street. SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency - Adverse Abandonment - Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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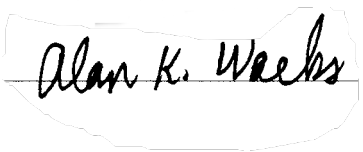
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Very truly yours,



Richard Wheeler
701 W Keystone Ave
Woodland CA 95695-2838

5/23/2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

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Very truly yours,

Richard Wheeler

67wheeler@gmail.com

CRAIG WILLIAMS
1107 Nimitz Ln, Foster City, CA 94404
MAY 23, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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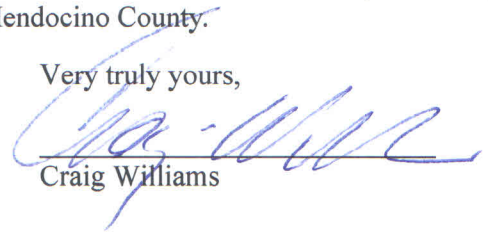
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Very truly yours,



Craig Williams

Train Riders Association of California (TRAC)
1017 L St Suite 765
Sacramento, CA. 95814
Https://calrailnews.org
President@calrailnews.org

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

The Train Riders Association of California (TRAC) has advocated for improving passenger rail in California for four decades. Our organization is currently involved in several efforts around the state to restore rail lines to service. We are eager to see a public-private partnership return the out-of-service rails of the GRTA Line back into productive freight and passenger service. The first step for us in that process is to oppose the Great Redwood Trail Agency's ("GRTA") application for adverse abandonment of Mendocino Railway ("MR").

As the new President of TRAC, I rely on my Masters in Urban Planning and 40 years of experience as a transit planner to offer the following comments:

Faulty Rail Freight Analysis Commissioned by GRTA
In its application for adverse abandonment of Mendocino Railway's federal freight rights, GRTA commissioned a dubious railroad freight study for the Willits-Ukiah-Cloverdale route.

The firm that completed the analysis for GRTA stated on the MarieJonesConsulting.com website that Ms. Jones has 30 years of experience in planning, economic development, coastal development, market analysis and grant writing. While Ms. Jones appears to have impeccable credentials and experience regarding various urban planning, zoning, housing, economic development/feasibility, mixed use, and related planning projects, the only transportation project listed was the Fort Bragg Coastal Trail.

TRAC sees no evidence that the firm is qualified to perform freight rail market analysis and similar logistics analysis. The study's conclusions should not be relied on, especially as they were limited to only Willits to Cloverdale, when that section would never be restored without connecting it to the national network. The too-local scope of analysis guaranteed that MR would be seen to have no future hauling freight. This "study" was a hit piece.

The methodology used for calculating potential freight demands is unlike freight demand studies done in the railroad consulting industry. It is invalid to rely on total area population factored by per-capita factors such as total demand for short-haul freight rail trips.

This approach captures only the demand side of logistics, while ignoring production. For an area with substantial timber processing and finished lumber production like Mendocino, the operative factor would be total production, then applying the likely share of products that ship by rail.

Traditionally, finished lumber has had a large percentage shipped by rail due to its bulk and weight.

A national average per capita demand for freight factored by population is not a substitute for a detailed evaluation of the market for specific shippers in the area, not only for finished lumber but also for other commodities such as wood chips, aggregates, etc.

In a further unprofessional effort to cast aspersions, the consultant concluded that Mendocino Railway was deceptive about the potential for short-haul freight rail in obsolete documents, rather than the relevant one:

"…MR consistently overestimated interest in short haul rail shipments in their DOT Build Applications (see Appendix A), such that the over-estimates can fairly be characterized as deceptions." (page 8).

Here, the consultant is referring to the 2020 grant applications that were incorrectly made to the Federal Transit Administration (FTA) rather than the Federal Railroad Administration (FRA). Because Mendocino Railway has now obtained an RRIF loan, a legitimate analysis would have reviewed that loan application, not a denied grant.

Choice of Potential Shippers to Interview

A small local beer distillery, a small chemical company, and a small finished lumber producer are not representative of much larger potential shippers, such as the remaining sawmills, and potential reload traffic from Humboldt and Del Norte Counties. This alone makes the study's conclusions invalid.

While the study is correct that hauling of raw logs to the mill by rail went out of common use when logging railroads were replaced by trucks, the study completely ignores the shipping of finished lumber. For Mendocino County, with its long history of logging, this is not merely preposterous--it must be considered an intent to mislead the Board.

MR Evidence of Established If Modest, Freight Volumes

That is, about 400 carloads of raw logs for one of its logging customers for many decades; a second customer has expressed interest in moving 400-500 carloads of aggregate (gravel). The consultant failed to consider Mendocino Railway's plans for a transloading facility (not a campground as alleged by some) to carry traffic such as timber and aggregate. A restoration of the GRTA Line would enable a transload facility to capture a portion of lumber and other bulk commodity traffic originating in Del Norte and Humboldt Counties.

For the record, the four North Coast counties (Del Norte, Humboldt, Mendocino, and Sonoma focused on Cloverdale) produced almost 400 million board feet of lumber in 2020, according to https://gis.data.ca.gov/datasets/CDTFA::ca-timber-production-statistics/explore.

This is an annual volume of 5,000+/- equivalent lumber carloads assuming 80,000 board feet per car; presumably a large share of these shipments could be captured, including Del Norte/Humboldt loads via a potential reload facility in Willits, particularly for shipments to Southern California (at the 500-mile threshold) and out-of-state. There is also potential for other commodities, such as aggregate for the Bay Area construction and roadway market. The method of national averages applied to Mendocino County ignores MR's potential for longer distance intra-California (e.g., to the Los Angeles and San Diego regions) and interstate freight traffic.

TRAC chose to not closely investigate the numbers in the feasibility analysis, as the conclusion was so preposterous that the analysis had to be severely flawed: "Even with the award of a $31

million low interest federal loan, rail freight is still not competitive at a price of $57,450/railcar or $900/ton, which is 2,346% more expensive than trucking." (page 21.)

Feasibility Analysis–Breakeven Analysis

While only a side note in the STB proceedings, it is important for the Board to notice that Mendocino Railway is successfully rebuilding its tourist excursion business after Covid. For example, the Skunk Train served 70,000 passengers in 2022 and 100,000 in 2023 (e.g., about 70,000 in 2023 from Willits, which is not the most “touristy” part of Mendocino County). There is a potential for 5%–7% of annual Mendocino County visitors to arrive by train. This could be 90,000-135,000 tourist arrivals by train, respectively.

Keeping in mind the very high prices that the Napa Valley Wine Train and Skunk Train are able to obtain from visitors ($250-$800 for a 32-mile round trip, and $50 for 7-mile and $65 for 14-mile round trips, respectively) it appears that tourist trains to/from the Bay Area (with a SMART connection) might be more important than carload freight traffic in the long run. There is no reason why a breakeven analysis should be restricted to only the freight side of the operation.

Exaggerated Benefits Claimed for Trail

GRTA’s claims of trail usage in the range of six to nine million annually (Draft Great Redwood Trail Plan, Appendix A, pages 6-7: https://greatredwoodtrailplan.org/) are observably exaggerated, compared to actual usage on existing recreation trails in California. For example, the 28 miles of rail-trail segments completed so far along the Sonoma-Marin Area Rail Transit (SMART) route collectively serve about 800,000–900,000 annual users (with roughly 650,000 residents living in the SMART corridor, e.g. excluding the Sonoma Valley, Russian River area, and West Marin County. Trail usage is reported monthly to the SMART Board - https://sonomamarintrain.org/bod).

In the Sacramento urban area with about 2 million residents, the American River Parkway hosts about 5 million annual users. Relative usage in established tourist areas is significantly higher. The Napa Valley Vine Trail attracts about 1.5 million annual users, an estimated 20%-30% being visitors (300,000–400,000 visitor users, 8%-10% of 3.8 million annually).

On the Monterey Peninsula, the Monterey Bay Recreation Trail in the Cities of Monterey and Pacific Grove attracts about 1.5 million users, of which approximately two-thirds are visitors. Based on this, about 20% of visitors use the trail, located in the prime tourism areas of downtown Monterey, Cannery Row, and adjacent to the Monterey Bay Aquarium (in contrast, the Napa Valley Vine Trail is not yet completed to the prime tourism area extending north from Yountville to Oakville, St. Helena, Calistoga, and rural destinations in-between including wineries.

Economic Benefits of Auto-Free Visitor and Other Transportation

With its purported emphasis on creating economic activity, GRTA has surprisingly failed to consider the potential impact of adverse abandonment on MR's freight and passenger services, which are an auto-free economic engine for Mendocino County. Significantly, MR’s existing line between Willits and Fort Bragg, commonly known as the “Skunk Train,” is the top commercial tourist attraction in Mendocino County. If GRTA agreed to have MR restore the tracks between Willits and Cloverdale, perhaps in exchange for freight rights and the construction of a pathway, the economic impact would greatly exceed that of a trail alone.

A recent study, the Vallejo Passenger Rail Study, found that connecting the Napa Valley to Vallejo Ferry Service operating from San Francisco could attract more than 1,000 visitor trips daily in summer (https://sta.ca.gov/wp-content/uploads/2023/10/Vallejo-PRS-Final-Report-FINAL-2024-05-10-PDF.pdf, p.63). In an earlier public presentation, the study consultants

estimated there could be 1,000–1,500 visitor trips daily, as an annual average. That is, 365,000–548,000 annual visitor trips via the ferry to the Napa Valley. Assuming one-way trips results in a potential of 182,500–274,000 annual rail trips by visitors. This is 5%–7% of all Napa Valley visitors.

Applied to the 1.8 million estimated annual Mendocino County visitors, this figure suggests 90,000-135,000 trips to Mendocino County might be attracted. This is in the same ballpark as the 100,000 annual riders currently attracted by the Skunk Train. These figures are also consistent with a weekend rail service that operated between Healdsburg and Willits prior to FRA's closure of the line circa 2000.The latter service reportedly attracted 500-600 passengers per trip.

Conclusion

TRAC strenuously opposes GRTA's Application. We urge the Surface Transportation Board to encourage freight hauling by rail in Mendocino County via the historic Mendocino Railway by denying adverse abandonment.

Very truly yours,



President, Train Riders Association of California (TRAC)

Hiking & Biking Trails – Water Activities – Nature Tours – Environmental Preservation



Promoting Ecotourism and Green Travel
P.O. Box 195, Cazadero, CA 95446
www.ecoring.org

May 18, 2024

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Chief Brown:

EcoRing is a nonprofit organization that promotes ecotourism and green travel in the North Bay. Our Partners are businesses in the tourism industry in Mendocino, Sonoma, Marin and San Francisco counties. We also advocate for the infrastructure that would allow tourists to travel safely without their automobiles using rail transit and bicycle paths.

EcoRing opposes the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). Instead, EcoRing supports both rail and the Great Redwood Trail running alongside the rails. Mendocino Railway which runs the Skunk Train from Willits to Ft. Bragg is an important tourism asset and an economic driver fro Mendocino County. It also is an important freight line. Abandoning or rail banking the line from Willits to the Mendocino County line would orphan this railway and preclude both future freight and passenger service via rail to Willits and Ft Bragg. Presently much freight from Mendocino County must be hauled via Highway 101. This is inefficient and contributes to climate change.

Mendocino Railway has received a federal government loan to complete repairs to its line and to rehabilitate their 40 miles of railroad, including repairing Tunnel #1. This would protect their ability to draw tourists and assure the potential for renewed passenger service to Willits.

Please oppose abandonment.

Sincerely,

Rick Coates

Executive Director
rcoates@sonic.net or 707-632-6070

ecoring@sonic.net

Friends of SMART
Web friendsofsmart.com
Email friendsofsmart@sbcglobal.net

May 19, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

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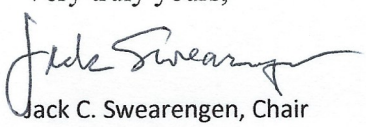
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Very truly yours,



Jack C. Swearengen, Chair
Friends of SMART
Web friendsofsmart.com
Email friendsofsmart@sbcglobal.net

SCTLC

SONOMA COUNTY TRANSPORTATION & LAND-USE COALITION

May 24, 2024

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

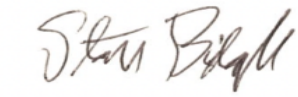
The Sonoma County Transportation and Land-Use Coalition opposes the Great Redwood Trail Agency's ("GRTA") application to remove Mendocino Railway's federal freight rights ("adverse abandonment"). The restoration of this railroad's passenger and freight services are important to support tourism, economic growth, and environmental goals for the North Coast of California

Mendocino Railway, known nationally as the "Skunk Train," has been a major tourist attraction for decades, and it offers an environmentally beneficial alternative to highways for goods movement. We understand that the railway is receiving a loan to complete repairs to its line and restore its 40 miles of tracks. This effort will improve the railroad's ability to attract visitors while offering an environmentally sound alternative to trucking on mountainous roads. It would be unfortunate for the STB to grant an adverse abandonment application that could result in the loss of this infrastructure.

A denial of the GRTA application will favor the economy and the environment. Keeping the railroad active supports economic growth, the effort to reduce the effects of climate change, meeting anticipated demand, job creation, and supporting resilient supply chains in the region. A Grant of GRTA's Application would prevent the diversion of goods movement from truck to rail, harm the quality of life as truck emissions increase, while increasing roadway maintenance costs as additional trucks use the roads.

We urge the Surface Transportation Board to preserve both the freight and passenger benefits presented by restoration of rail services by the Mendocino Railway.

Cordially,



Chair

684 Benicia Drive, #63, Santa Rosa, CA 95409 707-576-6632 scbaffirm@gmail.com

Transportation Solutions Defense and Education Fund
P.O. Box 151439 San Rafael, CA 94915 415-370-7250
June 9, 2024

VIA E-FILING
Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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Very truly yours,

David Schonbrunn

David Schonbrunn, President