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CALIFORNIANS FOR ALTERNATIVES TO TOXICS REPLY TO NORTHWESTERN PACIFC RAILROAD COMPANY'S PETITION FOR DECLARATORY ORDER

Sharon E. Duggan
335 Adeline Street
Oakland, CA 94607
foxsduggan@aol.com
Telephone: (510) 271-0825
Fax: By Request

Helen H. Kang (SBN 124730)
ENVIRONMENTAL LAW AND JUSTICE CLINIC
Golden Gate University School of Law
536 Mission Street
San Francisco, CA 94105
hkang@ggu.edu
Telephone: (415) 442-6647
Fax: (415) 896-2450

Deborah A. Sivas (SBN 135446)
ENVIRONMENTAL LAW CLINIC
MILLS LEGAL CLINIC AT STANFORD LAW SCHOOL
559 Nathan Abbot Way
Stanford, CA 94305
dsivas@stanford.edu
Telephone: (650) 723-0325
Fax: (650) 723-4426

William Verick (SBN 140972)
KLAMATH ENVIRONMENTAL LAW CENTER
424 First Street
Eureka, CA 95501
wverick@igc.org
Telephone: (707) 268-8900
Fax: (707) 268-8901

Attorneys for Californians for Alternatives to Toxics

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INTRODUCTION

The Northwestern Pacific Railroad Company ("NWPCo.") has filed a Petition requesting that the Surface Transportation Board ("Board" or "STB") issue a "Declaratory Order that the Interstate Commerce Commission Termination Act (ICCTA) preempts application of the California Environmental Quality Act ("CEQA") to NWPCo.'s ongoing rail operations." NWPCo. Petition at p. 1 ("NWPCo:1"). The Association of American Railroads ("AAR") and the California High Speed Rail Authority (HSRA") filed replies to NWPCo.'s petition. Californians for Alternatives to Toxics ("CATs") submits this reply to NWPCo.'s the Petition pursuant to 49 C.F.R. § 1104.13.

The thrust of NWPCo.'s petition and AAR's reply is that, in CATs' case pending in the California Supreme Court, CEQA may be applied to NWPCo.'s purported operation of a rail line owned by the North Coast Railroad Authority ("NCRA") and Sonoma-Marin Area Rail Transit District. NWPCo.'s brief implies that CEQA environmental review and mitigation of adverse environmental effects may be used to regulate how NWPCo. runs trains on the rail line. This claim is false and misleading.

CEQA does not apply to NWPCo. in the CEQA enforcement action CATs brought in California court. The case may affect NWPCo.'s interests, which is why CATs named NWPCo. as a real party in interest. But CEQA does not affect NWPCo.'s status as a company authorized by the Board to be an operator, qualified to run a rail line. That status is not at issue in the CEQA enforcement action. CEQA affects NWPCo. because NCRA's CEQA compliance was a condition precedent for consummation of the Lease (which NWPCo. calls the Operations Agreement) between NCRA, the owner of the line, and its contractor, NWPCo. The Lease, when consummated, was to be the legal instrument by which NCRA – a California public agency

– granted NWPCo. a present possessory interest in the rail line; only after authorization by NCRA, was NWPCo. to run trains and carry freight. The Lease was the vehicle by which NCRA transferred to NWPCo. its status as the operator of the line. Without CEQA compliance by NCRA – as specified in the Lease – the Lease may not authorize operation because an essential condition of the Lease has not been fulfilled. The legal effect of CEQA compliance on the validity of the Lease is a pure question of California contract law. As relevant here, that question is not within the purview of the Board and is also not at issue in the California CEQA case, which ought to determine NCRA's CEQA compliance, not NWPCo.'s compliance.

At stake in the California case is the validity of the decision NCRA made to approve a project by which NCRA would obtain up to $60 million from the State of California to be spent conducting environmental review and repairing and rehabilitating the rail line – a line that the Federal Railroad Administration Emergency Order 21 ("EO21") shuttered in 1998 due to unsafe conditions on the decrepit line.

That is, the California case will determine whether NCRA's decision to approve the repair and rehabilitation project was valid under California law. CEQA – which applies when a project may have adverse environmental effects – is part of the decision making process California requires of its own subdivisions for their decision to approve their own discretionary projects to be legally valid. The repair and rehabilitation project is such a discretionary project, which NCRA proposed and approved.

The Board should exercise its discretion and decline to consider NWPCo.'s petition. This California case has been in litigation for over four years, after several delays that NCRA and NWPCo. themselves have caused (first a removal to the federal court, then a writ to the appellate court after the trial court refused a venue transfer, and another writ to the appellate

court after the trial court overruled a demurrer). The defense of federal preemption is squarely at issue in the state court. After both the trial court and the California Court of Appeal have ruled on preemption, the issue is fully briefed before the California Supreme Court. A Board decision on NWPCo.'s petition may have to be appealed to the federal Court of Appeals for the District of Columbia or Ninth Circuit. Allowing this dispute to proceed along parallel (but differently staged) state and federal tracks would be counter to the principles embodied in federal abstention doctrines. Different tribunals will consider the same issue, possibly reaching different results, duplicating efforts and causing the issues to be litigated in piecemeal fashion. California courts have had jurisdiction over this dispute for more than four years, and California law provides the substantive rule of decision, both as to the legal effects of CEQA compliance and the decision making process NCRA utilized in approving the repair and rehabilitation project. California courts are fully competent to rule on federal questions such as preemption and they are better qualified to rule on the substantive issues of California contract and government law.

Moreover, the Board has no jurisdiction over NCRA's the rehabilitation and reopening project that is at issue in the California case. The single action that the Board took (and had authority to take) was to certify NWPCo. as qualified to become the line operator should the Lease between NCRA and NWPCo. be consummated and the rail line reopened. The Board did not approve day-to-day "operations" on the line, as NWPCo. implies, when it granted NWPCo.'s operator status notice of exemption. Nor does the Board have authority to pass judgment on the wisdom of California's investment decision to repair and reopen the line. The Board merely granted new operator status if and when the line returned to service – and as the Board itself noted, "[i]n the Notice, NWPCO invoked the Board's authority to acquire the common carrier obligation and, *after repairs,* to conduct rail operations on the line." *Northwestern Pacific*

Railroad Company – Change in Operators Exemption – Northcoast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC, STB Finance Docket No. 35073, 2008 WL 275698, at *1 (served Feb. 1, 2008) (emphasis added). It would be prudent for the Board to exercise its discretion to decline to issue a declaratory order.

Should the Board be inclined to address the substance of NWPCo.'s preemption arguments, it should determine that the ICCTA does not preempt CEQA. The express language in the ICCTA does not preempt how a railroad decides whether to rehabilitate a line and bring it back into service, such as through the environmental review process NCRA used here. As is undisputed, CEQA is a law of general application, intended to inform California public agency decision making. It requires disclosure of potential adverse environmental impacts from public agency project approvals and mitigation of those impacts where feasible. Moreover, state law remedies for NCRA's failure to comply with CEQA in connection with its repair and reopening project do not conflict with any Board-approved activities or ICCTA remedies.

CEQA is California's tool to hold politically accountable subsidiary public agencies and the officials who fund and administer agency assets and decisions. Under the *Nixon-Gregory* doctrine, absent a clear statement from Congress, federal law may not "trench on" how a state chooses to constitute itself as a sovereign political entity. Without an on-point, unambiguous and explicit statement that Congress specifically intended the ICCTA to preempt how states govern the decision making process of their subsidiary public rail authorities, neither courts, nor the STB, may interpret the ICCTA to preempt how California determines the legitimacy of the process by which a public agency makes decisions and, thus, the legal enforceability of those decisions.

Moreover, as market participants, both public and private entities are free to consider the environmental effects of capital investments they make. NWPCo. cites no ICCTA provision that preempts or gives the Board jurisdiction over the internal decision making process utilized by any railroad entity to determine whether and how it decides to repair or rehabilitate a rail line. The ICCTA's intent was largely to deregulate the rail industry and to allow the market to operate freely. California, though its subsidiary agency, acts as a market participant, or proprietor, when deciding whether and how to lease its rail line to a private company and to invest millions of state dollars rehabilitating that line. A state government that owns a railroad is as free as any private railroad company to choose for itself the process that must be followed before a final decision can be made to repair or rehabilitate a rail line it owns. If Burlington Northern allowed its shareholders to challenge the legitimacy of a decision by its management to rehabilitate an environmentally sensitive rail line, such an action would not be preempted by the ICCTA. It would not be in the Board's purview. The same principle applies to states that own railroads.

Finally, contrary to NWPCo.'s assertions, there is no attempt to impose CEQA regulation on NWPCo. as it operates the rail line. NCRA voluntarily agreed with the California Transportation Commission to comply with CEQA in carrying out its proposed project in order to qualify for up to $60 million in taxpayer dollars needed to fund that project. Once again, California is as free as any private railroad company to decide the class of people authorized to enforce the state's rights as against those who have breached obligations they owe to the state. If Burlington Northern were to allow shareholders to sue management for taking steps not authorized by corporate bylaws, that would not be preempted and would not be in the Board's purview. The same principle applies to California, as the owner of a rail line, when it chooses how to ensure that its subsidiary public rail authority complies with obligations owed the state.

STATEMENT OF FACTS

California created NCRA in 1989 to maintain rail service in the north coast area. Cal. Gov. Code § 93000 *et seq*. Maintaining rail service was a concern because California feared that the federal government might authorize or discontinue such service. *Id*. § 93001.

NCRA secured title to or easement rights on the entire rail line from Humboldt to Marin County (sometimes referred to as the Northwest Pacific Railroad Line or "NWP Line"). AR:16:8170.[1] On the southern portion of that line, NCRA acquired easements through an agreement with Northwestern Pacific Railroad Authority ("NWPRA"), subject to NWPRA's consent to any future transfer of the acquired rights. AR:8:4498. Sonoma-Marin Area Rail Transit District ("SMART"), another state-created public agency, became NWPRA's successor-in-interest to this agreement in 2004. AR:21:10970.

In 1996, NCRA went before the Board to be approved as the operator, doing business as "Northwestern Pacific Railroad," AR:9:4584, pursuant to its state-conferred authority to select an operator. Cal. Gov. Code § 93020(f). The Board later approved NCRA's agreements to change operators: in 2001 with "Northwestern Pacific Railway Co. LLC" ("NWPY"), AR:9:4603, and in 2006 with petitioner here, Northwestern Pacific Railroad Company or NWPCo. to replace NWPY, AR:13:6725. NCRA, however, still retains residual common carrier rights to the line, AR:21:10967, is "solely" responsible for rehabilitation of the line, AR:13:6734, and must use its best efforts to secure public funding to reopen, rehabilitate, and restore the line, AR:13:6739-40.

[1] Citations to "AR" refer to the documents submitted with this reply. The first number refers to the volume and the second, to the page number. "App" refers to documents also submitted with this reply. "AR" documents are appended at Exhibit A. The page numbers proceed numerically. "App." documents are appended at Exhibit B. The page numbers also proceed numerically.

In June 2011, SMART approved an Operation and Coordination Agreement ("SMART Agreement") with NCRA, which authorized NCRA to conduct freight rail operations from Healdsburg to Lombard, passenger excursion service intended primarily for entertainment and recreation, and providing the consent necessary before NWPCo. could serve as the operator for freight rail services. AR:21:10969-11015.

NCRA Needs to Fund Rehabilitation of the Line

NCRA desperately needed financial help to rehabilitate its line, which for decades had been dilapidated and unsafe. In 1990, for example, the Federal Railroad Administration issued Emergency Order 14, closing passenger service from Eureka to Willits, citing inadequate maintenance. AR:8:4079. In 1998, the same agency issued EO21, closing most of the line and noting "hundreds of defective track conditions." AR:9:4592-93. Further, extensive soil and water pollution on the line and other facilities led to a 1999 consent decree with the state, requiring NCRA to clean up the Rail Line and deal effectively with contamination of water and other resources. App:877b:2027-32. In May, 2011 the Railroad Administration partially lifted EO21, between Lombard and Windsor, i.e., a portion of the Russian River Division. AR:20:10695.

California Authorizes Funding to Repair and Reopen the Line

In 2000, California adopted the Transportation Congestion Relief Program, and authorized funding to NCRA "to repair and upgrade track to meet Class II (freight) standards in Napa, Sonoma, Marin, Mendocino, and Humboldt Counties." Cal. Gov. Code § 14556.40(a)(32). This allocation included $4.1 million for environmental remediation and $31 million for "long-term stabilization projects." Cal. Gov. Code § 14556.50(e), (i).

NCRA took several steps to qualify for these funds for the rehabilitation of the line. AR:9:4695. In 2001, NCRA entered into a Master Agreement for the State Funded Transit Projects ("Master Agreement") with the California Department of Transportation ("Caltrans"), AR:9:4620-46, which requires California Transportation Commission approval before appropriated funds can be distributed. AR:9:4623, 4629. The Master Agreement required NCRA to submit "program supplement(s)" for projects, which incorporate all the terms and conditions of the Master Agreement. AR:9:4623-24.. Under its terms, NCRA may not request State funds for a project that "may have a significant effect on the environment" unless the request is accompanied by an EIR as required by CEQA. AR:9:4638. NCRA promised to comply with these terms and approved the Master Agreement. AR:9:4643.

The same year, NCRA adopted a Policy Manual, with guidelines for implementing CEQA because, as "a public agency, NCRA is required to comply with [CEQA]." AR:20:10623, 10633.

The California Transportation Commission conditioned future Traffic Congestion Relief Program funding on development of a Strategic Plan, a line assessment, and a cost estimate of capital needs for the entire line. AR:9:4692. In May 2001, the Commission accepted NCRA's Strategic Plan and authorized funding for a comprehensive assessment of needed capital improvements and environmental compliance. *Id*. In 2002 NCRA reported that it was developing this comprehensive assessment, and that it was committed to restoring service on the entire line by completing "the projects identified in the Strategic Plan and the Capital Projects Assessment." AR:9:4693. NCRA represented that it would be "well positioned to commence the appropriate environmental review with both the 2001 Strategic Plan and an update." AR:9:4696.

NCRA predicted that environmental review for the southern portion of the line ("Russian River Division" or "RRD") would be "less complex" than for the northern portion ("Eel River Division" or "ERD"), AR:13:6298-99, and that "funding approval for projects on the southern portion of the line . . . will be a targeted goal upon completion of the assessments." AR:9:4696.

NCRA completed a 2002 Capital Assessment Report ("CAR"), a comprehensive review of the conditions on the entire line, and which recommended development of a combined EIR/Environmental Impact Statement. AR:9:4715, 4716, 4740. The next step for NCRA was to obtain California Transportation Commission's concurrence, as a prerequisite for NCRA's funding application, to obtain funding for environmental review. AR:9:4717 ("Upon state acceptance by NCRA of the CAR including its findings and recommendations, the next step in implementation will be for the NCRA to seek concurrence from Caltrans and the [Commission] with their action plan. Upon achieving this concurrence, the NCRA will need to make application and seek approval of the necessary funding from [the Commission]").

In 2005, NCRA issued an "Updated Capital Assessment Report – Russian River division," focusing on the work and costs to reopen the southern Russian River Division. AR:13:6298-300.

In January 2006, NCRA issued a request for proposals to provide freight rail and/or excursion service on the line. AR:13:6593. NCRA "envision[ed] a private-public partnership for reopening" the line, acknowledging that "the public, as a matter of policy, funded acquisition of the line to preserve rail service, and continues to dedicate public resources to capital improvement of the line." *Id.* NCRA identified Traffic Congestion Relief Program projects 32.1 to 32.9 (corresponding to the allocation categories in Cal. Gov. Code section 14556.50) as the source of funding. AR:13:6600.

In March 2006, NCRA reported to the California Transportation Commission that, pursuant to CEQA, it would process a mitigated Negative Declaration for the reopening of the Russian River Division. AR:13:6632.

NCRA Contracts with NWPCo. for Operations

In September 2006, NCRA entered into the Lease (an Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease) with NWPCo. Through the Lease, NCRA conveyed to NWPCo. its right as a common carrier to operate the rail line. AR:13:6727. The Lease is conditioned upon SMART's consent to NWPCo. as operator, and NCRA's CEQA compliance as it applies to the transaction. AR:13:6731.

From the beginning, NWPCo. knew that the state funding – conditioned on CEQA compliance – was crucial. NWPCo. thus represented to the California Transportation Commission in October 2006 that it would "fully participate with NCRA in the planning, implementation, and acceptance of the NWP Line rehabilitation." App.8:77b:2055, 2064. NWPCo. acknowledged that "[f]uture construction phasing will be based on . . . environmental clearance," and that its schedule to resume service is "contingent on" receiving authorization to spend the public funds. App.8:77b:2068.

NCRA Applies for and Receives State Traffic Congestion Relief Program Funds

In November 2006, NCRA applied for the $31 million in state funding for "Project 32.9," to upgrade the line to FRA Class 2 and 3 standards. AR:13:6789-90. These funds were to be spent on reopening the Russian River Division and to prepare an EIR/EIS for the Eel River Canyon. AR:13:6790. Remaining Project 32.9 funds and funds from additional sources would then be used to reopen the balance of the line. *Id*. To secure the appropriation, NCRA promised

that "once an Initial Study is complete, appropriate CEQA and NEPA documentation will be prepared." AR:13:6791.

The State approved the first program supplement for Project 32.9 pursuant to the Master Agreement in January 2007, which included a scope of work for an EIR/EIS for the Russian River Division reopening, AR:13:6802-03, and one for the Canyon (which is part of the northern Eel River Division), AR:13:6804. NCRA expressly promised that, "as a condition of reimbursement of State funds obligated to this Project, [NCRA] accepts and will comply with the covenants, obligations, terms and conditions set forth in said Master Agreement." AR:13:6801. With this first allocation, the State provided a total of $6,826,000: $2,129,000 for development of the RRD EIR, $3,300,000 for the Canyon EIR, and $1,397,000 for engineering design work. AR:13:6806.

In February 2007, NCRA submitted a Strategic Plan update, stating that it would do a categorical exemption for "in-kind repair work" within the existing right-of-way and "will begin an EIR under CEQA to review the impacts of freight operations on [the southern] section of the line." App:8:77b:2091. NCRA reiterated its intention to use the state funds to reopen the RRD, and represented that it had conferred with NWPCo. about the plans and work. App:8:77b:2092. NCRA stated that it had approved the Lease "contingent upon . . . NCRA['s] compliance with the California Environmental Quality Act." App:8:77b:2093.

In March 2007, NCRA applied for and received a second allocation for $1,530,000. AR:13:6809, and modified its scope of work to eliminate NEPA review for the southern RRD. AR:13:6822. In April 2007, NCRA applied for a third allocation of $7,495,000, and received it in 2010. AR:13:6927. Approving funding, the California Transportation Commission found that

NCRA "is producing an [EIR]." AR:13:6931-32. In July 2007, NCRA sought a fourth allocation of $13,588,000, approved in 2009. AR:16:8077.

In September 2007, when NWPCo. agreed to lend NCRA money to tide it over until it could be reimbursed from the state funds, it stipulated that NCRA's compliance with the state funding conditions was critical: "NCRA shall expend the Loan Proceeds solely for the purposes authorized under the [Traffic Congestion Relief Program] and shall in a timely manner perform all obligations and requirements necessary to seek reimbursement from the Funding Agencies for such expenditures." App:13:101:3691-92.

With funding appropriated, and having participated in the review of plans and projected costs, NWPCo. submitted its August 2007 Notice of Exemption to this Board for change of operators, which the Board approved. AR:16:8170. NWPCo. averred upon oath in its filing that "[a]greements will be reached among NWPCo., NCRA, and SMART that will govern NWPCo.'s accession of exclusive operating rights and common carrier obligations over the line," AR:16:8106, anticipating the need to amend the 2006 Lease, which occurred in 2011. AR:21:10965.

In February 2008, NCRA submitted its fifth allocation request, seeking $1,561,000, AR:16:8577, for a total of $31 million for all five allocations. NCRA also presented an amended application for Project 32.9, changing the scope to replace the Canyon EIR with a geotechnical study and mapping, AR:16;8580, and requesting funds previously designated for the Canyon EIR be reallocated for RRD repair and reconstruction. AR:16:8586. The application identified the RRD Draft EIR "currently being prepared," and the maintenance categorical exemption, as specific tasks required for the RRD reopening. AR:16:8582-83.

NCRA Proceeds with CEQA Review

NCRA utilized two distinct CEQA processes to reopen the line – development of the EIR at issue in the case before the California Supreme Court for resuming service (including extensive rehabilitation) and categorical exemptions for routine maintenance and repair.

In May and July 2007, NCRA issued two Initial Studies to comply with CEQA with respect to the Russian River Division. AR:7:3413-66, 3467-3519. Both Initial Studies acknowledged that rehabilitation of the line is required before trains could safely travel, and that such work is included as part of the EIR's RRD project. AR:7:3423, 3427-29, 3477, 3481-83.

In June 2007, NCRA issued a CEQA Notice of Exemption for maintenance and repair work on the line from Lombard to Windsor, AR:16:7996, finding that these routine maintenance activities would not generate significant impacts, AR:16:7997, and promising that a "full (EIR) under CEQA" would be prepared prior to resuming the operation of the railroad." AR:16:0800.

In September 2007, the City of Novato sued NCRA and NWPCo., challenging the CEQA Notice of Exemption as violating CEQA. *City of Novato v. North Coast Railroad Authority*, Marin County Superior Court Case No. CIV-07-4645 ("*Novato*"), AR:17:8900. In its defense, NCRA argued that it was developing the EIR (as NCRA had also represented to other state agencies and the public) and that, "[u]ntil the [EIR] is certified and condition of compliance with [CEQA] is satisfied, the agreement entered into between NCRA and NWPCo. does not authorize NWPCo. to take possession of the property or to commence operations." App:14:104:3831, ¶ 50 (emphasis added). NWPCo. fully agreed, stating:

> NCRA . . . determined that a full EIR was called for and commissioned such a study at a projected cost of $2.3 million. The EIR is now in progress. The NCRA will not permit the operation of freight traffic until the EIR is certified.

Id. 3768. NWPCo. admitted that the Lease was absolutely conditioned on CEQA compliance, stating:

> The [Lease] condition of environmental compliance is unconditional, broad, and completely at the discretion of the public agency. Since operation of the rail line is subject to the condition, the agency has not committed to a course of action until such time as the condition is met.

Id. at 3769.

In November 2008, the *Novato* parties entered into a consent decree ("Novato Consent Decree"), which required NCRA and NWPCo. to do certain "work" on the line. AR:17:8899-8951. The parties agreed that NCRA would comply with CEQA for the work. AR:17:8911. As signatories, both NCRA and NWPCo. agreed that such environmental review does "not constitute an unreasonable interference on interstate commerce." AR:17:8902.

NCRA Issues the RRD Project EIR and Approves the Project

Recognizing that operations could not commence absent CEQA compliance, NCRA reiterated that "certification of this Environmental Impact Report by the NCRA Board will satisfy . . . the [Lease] with NWPCo. and will, if the project is approved, result in the operation of freight commerce on the line." AR:5:2026.

On June 20, 2011, NCRA approved the RRD Project. AR:1:18-74; App:8:77b:2128-30. NCRA also approved the SMART Agreement, AR:19:10969-11015.

Following this CEQA step, NCRA and NWPCo. executed an amendment to the Lease, stating that the "condition relating to obtaining the necessary consent from [SMART] . . . is deemed satisfied. The condition relating to compliance with the California Environmental Quality Act (CEQA) is deemed satisfied as to the Russian River [D]ivision." AR:21:10965-10968. NCRA filed the requisite CEQA document for its approvals on June 28, 2011. AR:1:1.

ARGUMENT

I. The Board Should Exercise Its Discretion to Decline to Issue a Declaratory Order in This Matter

A. The Board's Decision Here Will Not Terminate a Controversy or Remove Uncertainty.

The Board may institute proceedings for a "declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e); 49 U.S.C. § 721. The Board has consistently declined to institute proceedings for a declaratory order where the moving party has failed to demonstrate that this standard has been met. *See, e.g., SEA-3, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 35853, 2015 WL 1215490 (served March 17, 2015) (declining to institute a declaratory order proceeding regarding a preemption question raised in on-going state litigation); *Union Pac. R.R. Co. – Petition for Declaratory Order*, STB Finance Docket No. 35021, 2007 WL 1437360 (May 15, 2007) (denying a declaratory order where precedent was already established and no facts or evidence were presented to justify a declaratory order).

The case before the California Supreme Court does not create uncertainty regarding NWPCo.'s ability to operate the line. Whether any portion of the line is currently operating is irrelevant, as a matter of law, to the issue before the California Supreme Court. The point in time relevant there is the date that NCRA certified the EIR for the rehabilitation and reopening project. The certification of the report occurred on June 20, 2011. AR:1:18-74; App:8:77b:2128-30. At that time the line was not operating because the conditions necessary for operation had not been met. Such conditions included compliance with CEQA, the consent of SMART (which owns part of the rail line at issue) to designation of NWPCo. as operator, and the release of the federal shutdown order. *E.g.,* AR:1:19 ("in September 2006 the NCRA entered into an agreement with a private sector operator [NWPCo.] to provide freight railroad service between Lombard and Willits, subject to environmental review of the resumption of freight

railroad service"); Environmental Impact Report, North Coast Railroad Authority, Russian River Division, Volume I of II, Nov. 5, 2009 ("certification of this Environmental Impact Report by [its] board will satisfy. . . the 'Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease dated September 2006' with NWPCo. and will, if the project is approved, result in the operation of freight commerce on the line," AR2026); 76 Fed. Reg. 27171 (May 10, 2011) (Federal Railroad Administration releasing a portion of the Russian River Division); *see also* AR:5:2026; AR:9:4696; AR:13:6731, 6931-32; AR:19:10969-11015;AR:21:10965; App:8:77b:2068, 2093. If any uncertainty exists as to operations on the line, that uncertainty is not as a result of the CEQA case currently before the California Supreme Court, but because of the agreements that NWPCo. entered into with the owners of the line, NCRA and SMART.

In addition, the Board has made its views known, without regard to state funding issues and federalism issues implicated in cases similar to CATs' California case. On December 12, 2014, the STB issued its decision in *California High-Speed Rail Authority – Petition for Declaratory Order*, STB Finance Docket No. 35861, 2014 WL 7149612 (Dec. 12, 2014). In that declaratory order, the STB decided both of the issues that NWPCo. raises here: whether the market participation doctrine or independent commitments to comply with CEQA provide exceptions to ICCTA preemption, even while acknowledging that funding issues may change the result. *HSRA Order*, 2014 WL 7149612 at *8, 10, 11. Even though the facts here are different from those at issue in the *HSRA Order*, the order represents the Board's views on those issues. Yet another decision is unlikely to affect the parties' positions in the California case.

Moreover, the California Supreme Court will issue an opinion on preemption in CATs' case. A dissatisfied party from that litigation can petition the U.S. Supreme Court for review. If

the Board issued a decision here, it may be appealed to either the D.C. or Ninth Circuit Court of Appeals. Thus, a Board decision in this matter will not terminate a controversy; it will only engender further controversy.

B. The Board Should Decide that It Does Not Have Authority Under Section 5 of the Administrative Procedures Act to Issue a Declaratory Order Here; in the Alternative, the Board Should Abstain from Considering the Petition.

The Board lacks authority to issue a declaratory order here, where the proceeding is unconnected to any proceeding under the Board's authority. The *Attorney General's Manual on the APA* is instructive here. This Manual represents "the Government's own most authoritative interpretation of the APA," to which the U.S. Supreme Court has "repeatedly given great weight. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 218 (1988). The Manual casts serious doubt on the Board's authority to issue a declaratory order in this case:

> The purpose of section 5 (d) [now 5(e)], like that of the Declaratory Judgment Act (28 U.S.C. 400), is to develop predictability in the law."
>
> This grant of authority to the agencies to issue declaratory orders is limited by the introductory clause of section 5 so that such declaratory orders are authorized only with respect to matters which are required by statute to be determined "on the record after opportunity for an agency hearing.

Department of Justice, *Attorney General's Manual on the Administrative Procedures Act* (1947), 59, *available from* http://archive.law.fsu.edu/library/admin/1947iv.html. To put it another way, section 5(e) does not extend the Board's jurisdiction to decide quintessentially state cases like CATs' case pending before the California Supreme Court; that section merely grants the Board additional remedies it can provide. *Cf Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 15 (1983), superseded by statute on other grounds, 28 U.S.C. § 1441(e) (quotations and citation omitted) (the Declaratory Judgment Act does not "extend" courts' jurisdiction, but merely "enlarge[] the range of remedies available"). Thus, the U.S. Supreme Court has held that "if, but for the availability of the declaratory judgment procedure, the federal

claim would arise only as a defense to a state created action, jurisdiction is lacking." *Id.* (quotation marks and citation omitted, describing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950)).

The situation before the Board is analogous to that in *Skelly Oil.* But for section 5(e) of the Administrative Procedures Act, the very claim that NWPCo. attempted to remove to the federal court and was remanded for lack of a federal claim, *Californians for Alternatives to Toxics*, 2012 WL 1610756, is again before a federal forum. *See also Franchise Tax Bd.*, 463 U.S. at 18-20 (declining to take jurisdiction of state declaratory claim because doing so would backdoor state claims as federal declaratory judgment actions). The Board should therefore dismiss NWPCo.'s Petition.

Even if the Board had such authority, the principles that apply to courts issuing orders under the Declaratory Judgment Act should apply equally to the Board, according to the Manual:

> [S]ince the issuance of declaratory orders is a matter of sound discretion, it is clear that an agency need not issue such orders where it appears that the questions involved will be determined in a pending administrative or judicial proceeding, or where there is available some other statutory proceeding which will be more appropriate or effective under the circumstances. More broadly, it appears that "The administrative issuance of declaratory orders would be governed by the same basic principles that govern declaratory judgments in the courts." Sen. Rep. p. 18; H.R. Rep. p. 31 (Sen. Doc. pp. 204, 263).

Id. at 60; *compare* Declaratory Judgment Act, 28 U.S.C. § 2201(a) (permissive), *with* 5 U.S.C. § 554(e) (the agency, "in its sound discretion, may issue a declaratory order").

Here, dismissing the petition would better serve the principles embodied in doctrines applicable to courts, including the *Brillhart/Wilton* and abstention doctrines. In *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491, 494-95 (1942), the Supreme Court held that a district court has discretion to dismiss a declaratory judgment action when "the questions in controversy . . . can better be settled in" a pending state court proceeding. In *Wilton v.Seven*

Falls Co., 515 U.S. 227, 289-90 (1995), the Court ruled that the district court may decline to entertain a federal declaratory judgment action when state court proceedings "'present[] opportunity for ventilation of the same state law issues.'" The three factors relevant in making this determination are 1) avoiding needless determination of state law issues; 2) discouraging forum shopping; and 3) avoiding duplicative litigation. *Government Employees Ins, Co., v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998).

All three factors are present here. As the Board appears to recognize in the *HSRA Order*, any decision on preemption may be altered by conditions of state funding, 2014 WL 7149612, at *11; and other state issues exist in CATs' case as to the applicability of CEQA to state agencies as a decision making tool. These are issues that should be left to the California courts: they raise important California state law issues about protecting the environment and informed self-government, *see Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*,47 Cal. 3d 376, 392, including, determining the nature of CEQA as it applies to state agencies and whether CEQA is regulatory. *Cf. Woodfeathers, Inc. v. Washington Cty., Or.*, 180 F.3d 1017, 1021 (9th Cir. 1999) (finding the second prong of *Younger* abstention [determining whether the state issues involves important state interest with regard to the federal preemption issue] was met because the control of solid waste disposal, a nuisance, implicates an important state interests).

Moreover, the Board should discourage NWPCo.'s forum shopping. Forum shopping is the "'practice of choosing the most favorable jurisdiction or court in which a claim might be heard.'" *R.R. Street & Co., Inc. v. Transport Ins. Co.*, 656 F.3d 966, 981 (9th Cir. 2011) (quoting Black's Law Dictionary 726 (9th ed. 2009)). Forum shopping certainly could be viewed as one reason NWPCo. waited to file its Petition before the Board until after the case was fully

briefed before the California Supreme Court, more than four years after the case was filed in state court.

Lastly, should the Board consider NWPCo.'s Petition, duplicative litigation may result. Deciding any aspect of the preemptive effect of the ICCTA on CEQA would be to decide substantially the same issues that were not only already decided in the *Town of Atherton* and related issues that will be decided by the California Supreme Court in CATs' case. Thus, a decision here would clearly result in duplicative efforts and possibly conflicting results.

Abstention doctrines that have developed (in cases not involving declaratory judgments) are similarly instructive. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976), for example, allows district courts discretion to dismiss a case in "consideration[] of [w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" justified dismissal." The relevant factors for a court to weigh, similar to the factors already analyzed above, are: 1) which court first assumed jurisdiction; 2) the inconvenience of the federal forum; 3) the desire to avoid piecemeal litigation; 4) the order in which the forums obtained jurisdiction; 5) whether federal law or state law provides the rule of decision on the merits; 6) whether the state court proceedings can adequately protect the rights of the federal litigants; 7) the desire to avoid forum shopping; and 8) whether the state court proceedings will resolve all issues before the federal court. *R.R. Street & Co., Inc.*, 656 F.3d at 978-79.

The balance of these factors favors the Board's dismissal here. As discussed above, the state court assumed jurisdiction over four years ago; this proceeding will result in duplicative efforts of the parties, the Board, and the courts; the case implicates important state policies, and

the California Supreme Court case may obviate any need to have the Petition decided. For all these reasons, the Board should dismiss the Petition.

II. The ICCTA Does Not Preempt California's Requirement that Adequate CEQA Review Precede NCRA's Line Repair Project.

A. The ICCTA Does Not Preempt the Project at Issue in the CEQA Litigation Because the Board Lacks Jurisdiction over NCRA's Project.

NWPCo. characterizes the CEQA litigation as targeting *construction* of a rail line and operations on that line "that the Board has specifically authorized, thus impinging upon the Board's exclusive jurisdiction over rail transportation." NWPCo:20 (quoting the *HSRA Order*). NWPCo. either misstates what it is that the Board "specifically authorized," or it misapprehends the scope of what is meant by "construction" of the line.[2] In reality, the CEQA "project" for which the challenged EIR was prepared is NCRA's decision *whether* to repair and reopen the line that precedes the actual repair and operation. The EIR here was intended to inform NCRA's decision about whether to move forward with rehabilitating a dilapidated railroad that another agency, the Federal Railroad Administration, shuttered years ago for safety reasons. See AR:9:4592 (Dec. 9, 1998). The Board did not assert any jurisdiction over NCRA's process for deciding whether and how to reestablish service along the Russian River Division of the railroad. The Board merely certified lessee NWPCo. as a potential future operator of the line "upon consummation of the transaction." AR:16:8117, 8207. That "transaction," by NWPCo.'s and NCRA's own admission, included CEQA compliance and consent by SMART, co-owner of the rail line. AR:13:6731. In that process, NCRA submitted sworn testimony to the Board that it

[2] NWPCo. is also wrong when it asserts that the Board "authorized the repair and operation of the Russian River Division by NCRA." NWPCo.:20. NCRA never applied to the STB for authorization to repair, reopen or operate the line because it did not need to obtain the STB's permission to do so.

needed to comply with CEQA because of the state funding it had received. AR13:6573 (STB Finance Docket No. 34337).

As discussed further below, the Board does not have authority over rehabilitation work on an existing line or any say in the process a railroad – private *or* public – uses to decide whether or how to proceed with that work. Nor does the Board's approval of a change in operator status preempt California's ability to make an informed decision about state-funded, discretionary infrastructure projects merely because CEQA compliance may affect how repairs are conducted, may result in judicial review, or may convince the state not to go forward with the project at all.

Were this not the case, the Board could dramatically expand its legislatively-limited jurisdiction and effectively commandeer taxpayer revenue to compel state action, even if California ultimately decided to forego the project for financial, environmental, or other reasons. As explained below, Congress did not grant such plenary authority to the STB. Such authority would be inconsistent with the most basic tenets of federalism. *E.g., Printz v. United States,* 521 U.S. 898 (1997).

B. The History of the ICCTA Reflects Evolving Congressional Concern About the Financial Viability of the Industry, Not Intent to Preempt Traditional State Decision Making Processes.

The ICCTA is not the all-pervasive federal regulatory regime that NWPCo. and the Association of American Railroads ("AAR") imply it is. In nearly 130 years of railroad legislating, Congress has never expressed intent either to displace the states' ability to control their own public expenditures and decision making processes or to preempt the exercise of traditional state police power protecting public health, safety, and the environment. Nor has Congress extended federal jurisdiction over repair work on existing lines. Rather, the history of

the ICCTA and its predecessor statutes reflects congressional concern with the economic sustainability of the interstate rail transportation system as a whole. That concern prompted Congress to assert increasing (and ultimately exclusive) federal jurisdiction over railroad rate-setting and to shield interstate carriers from financially onerous state mandates to invest in capital-intensive new lines or operations for the benefit of local commerce. Congress has never, however, conveyed plenary federal planning jurisdiction over the rail industry or preempted traditional state authority to plan and fund public rail lines.[3]

1. The Interstate Commerce Act of 1887

American railroads were originally chartered under state law and regulated pursuant to historic state police powers.[4] But early state efforts to curb monopolistic behavior and corruption in the rapidly-expanding rail industry proved largely ineffective.[5] After the U.S. Supreme Court struck down Illinois's ability to regulate freight rates on interstate routes, *St. Louis & Pacific Railway Co. v. Illinois,* 118 U.S. 557 (1886) (finding regulation unconstitutional under the Commerce Clause), the federal government stepped into the economic regulation of railroads for the first time with adoption of the Interstate Commerce Act ("ICA") in 1887. The

[3] See generally Paul Stephen Dempsey, The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure, 95 Marq. L. Rev. 1151, 1152 (2012) ("Dempsey I") ("Congress [in 1887] instituted regulation under the ICC largely to protect the public from the monopolistic abuses of the railroads. Between 1920 and 1975, however, the goal of the national transportation policy shifted to protection of the transportation industry from . . . unconstrained competition.").

[4] Zachary Smith, Tailor-Made: State Regulation at the Periphery of Federal Law, 36 Transp. L.J. 335, 338 (2009) (citing James Ely, Jr. Railroads and American Law (2001)); Herbert Hovenkamp, Regulatory Conflict in the Gilded Age: Federalism and the Railroad Problem, 97 Yale L.J. 1017, 1034, n.90 (1988) (noting that the rail system was developed "largely by means of state initiative and almost exclusively under state control" and that "before 1887 federal regulation was virtually nonexistent").

[5] See James W. Ely, Jr., "The Railroad System Has Burst Through State Limits": Railroads and Interstate Commerce, 1830-1920, 55 Ark. L. Rev. 933 (2003) ("Ely"); Paul Stephen Dempsey, Transportation: A Legal History, 30 Transp. L.J. 235, 254-65 (2003) ("Dempsey II").)

ICA outlawed rebates and pooling, forced railroads to publish rates, and ultimately required the new Interstate Commerce Commission ("Commission") to ensure that rail fees were "just and reasonable." Smith, *supra*, at 339-40; Dempsey II, *supra*, at 265; Hovenkamp, *supra*, at 1035.)

In response to early, narrow judicial interpretations of the ICA, Congress conveyed increasing authority on the Commission over the next three decades to regulate interstate rail rates. Hovenkamp, *supra*, at 267-69; Ely, *supra*, at 966-67; Dempsey I, *supra*, at 1163-64. The economic challenge facing regulators at the time was that "[m]onopoly railroads earned monopoly profits, while competing railroads were driven into bankruptcy." Hovenkamp, *supra*, at 1035-44 (explaining that "railroad interests seemed destined to be either filthy rich or perpetually broke"). Fierce competition in long-haul interstate markets drove rates down to the point where carriers often could not cover fixed costs, while state regulators tried to prevent monopoly rents on more profitable short-haul intrastate routes, where lack of competition allowed a greater return. *Id.* at 1049-55. The Supreme Court eventually recognized that this short-haul/long-haul problem threatened the long-term economic health of the rail industry, and allowed the federal government increasing leeway to address *intrastate* rates in connection with the Commission's supervision of *interstate* routes. Ely, *supra*, at 969-73.

2. The Transportation Act of 1920

These concerns moved Congress to enact the Transportation Act of 1920. Dempsey II, *supra*, at 272 ("After World War I, [federal] policy . . . shifted from one of protecting the public from the market abuses of the transportation industry to one of preserving a healthy economic environment for common carriers."). Congress was concerned with "freeriding by the states," with state-imposed low rates for intrastate rail traffic threatening the overall financial viability of the industry. Ely, *supra*, at 976 (citing *R.R. Comm'n of Wisconsin v. Chicago, B. & Q. R. Co.*,

257 U.S. 563 (1922)). To address this concern, the Transportation Act augmented the Commission's powers, conveying new authority to supervise the rail industry's issuance of securities and to regulate intrastate rates when they affected interstate commerce. Ely, *supra*, at 974; *Dayton-Goose Creek Ry. Co. v. United States*, 263 U.S. 456, 478 (1924).

Relevant here, the Transportation Act also provided "that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad unless and until the Commission shall certify that public convenience present or future requires it, and that no carrier shall abandon all or any portion of its line or the operation of it without a similar certificate of approval." *R.R. Comm'n of California v. S. Pac. Co.* 264 U.S. 331, 344 (1924) (discussing paragraphs 18 to 21 of section 402). This new statutory language did not provide plenary federal jurisdiction over rail operations, but instead targeted specific activities, and there is no evidence that Congress intended the Commission to engage in affirmative planning for a national rail system, to oversee repairs of existing rail lines, or to govern the processes railroads – or their owners – require of railroad management before a management decision counts as having been validly made on behalf of, and binding on, the railroad. Rather, the narrow purpose of this new provision was "to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions." *Id.* at 347.

By requiring federal authorization for *new* construction, expansion, and operation of rail lines, Congress intended both to prevent overbuilding of expensive infrastructure believed to threaten the industry's financial vitality and to bar "states from requiring carriers to provide service at a loss, a step which contradicted the national policy of building a strong rail system."

Ely, *supra,* at 974-75. Despite extending federal authority over new and expanded lines, the Transportation Act did not give the Commission direct authority over *intrastate* rail rates and explicitly exempted "the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state" from the new federal certification requirement. *R.R. Comm'n of California*, 264 U.S. at 345 (quoting paragraph 22 of section 402).

3. The Staggers Act of 1980

It was not until the Staggers Act of 1980 that Congress directly addressed state jurisdiction over intrastate routes, even as it simultaneously "began the substantial economic deregulation of the surface transportation industry and the whittling away of the size and scope of the [Commission]." H.R. Rep. No. 104-311, 1st Sess., p 82 (1995). In response to new concerns about the industry's economic viability, the Staggers Act "deregulated most railroad rates, legalized railroad shipping contracts, simplified abandonments, and stimulated an explosion of service and marketing alternatives." *Id.* at 91.

Even with this considerable statutory overhaul, states still retained a role in economic regulation, albeit one constrained by federal oversight. The Staggers Act provided that "[a] State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier . . . if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle." Pub. L. 96-448, § 214(b) [former 49 U.S.C. § 11501, subd. (b)(1)]. The statute required each state "exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation" to submit its "intrastate regulatory rate standards and procedures" to the Commission for review and certification. *Id.* [former 49 U.S.C. § 11501, subd. (b)(2)].

To effectuate these changes, the Staggers Act for the first time expressly preempted state economic regulation of railroads (rates, schedules, classifications, etc.) unless the state rules were certified by the Commission. This new preemption language, codified in section 10501(d), provided: "The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive." Pub. L. 96-448, § 214(d) [adding former 49 U.S.C. § 10501, subd. (d)]. The Conference Report explained that this provision preempted only state financial regulation of the industry:

> The Conferees' intent is to ensure that the price and service flexibility and revenue adequacy goals of the Act are not undermined by state regulation of rates, practices, etc., which are not in accordance with these goals. Accordingly, the Act preempts state authority over rail rates, classifications, rules, and practices. States may only regulate in these areas if they are certified under the procedures of this section.
>
> The remedies available against rail carriers with respect to rail rates, classifications, rules and practices are exclusively those provided by the Interstate Commerce Act, as amended, and any other federal statutes which are not inconsistent with the Interstate Commerce Act. No state law or federal or state common law remedies are available.

H.R. Conf. Rep. No. 96-1430, 2nd Sess., p.106 (1980). The Staggers Act thus made clear that state legislatures and state courts could not regulate railroad economics, even on intrastate lines, without federal concurrence.

While the Staggers Act altered the federal-state balance with regard to economic regulation of railroad rates, it did not substantively change the provisions of the earlier Transportation Act governing federal supervision over new construction, extension, and abandonment of lines. Sections 10901 through 10906 of the Staggers Act merely recodified the requirement (from section 402, paragraphs 18-21) of the Transportation Act that federal approval

was necessary for construction, extension, acquisition, operation, and abandonment of *interstate* lines under the Commission's jurisdiction. (Former 49 U.S.C. §§ 10901-06 (1981).) And section 10907 reiterated (from section 402, paragraph 22 of the Transportation Act) that "[t]he Commission does not have authority under sections 10901–10906 of this title over . . . the construction, requisition, operation, abandonment or discontinuance of spur, industrial, team, switching or side tracks if the tracks are located, or intended to be located, entirely in one state." (Former 49 U.S.C. § 10907 (1981).)

4. The ICCTA of 1995

With enactment of the ICCTA in 1995, Congress completed the economic deregulation that it began under the Staggers Act, further curtailing federal regulatory authority over the railroad industry. Under the ICCTA, the new STB, as successor to the Commission, now had jurisdiction over the economic regulation of both interstate and intrastate lines, and the statute simultaneously "extend[ed] exclusive Federal jurisdiction to matters relating to spur, industrial, team, switching or side tracks formerly reserved for State jurisdiction under former section 10907." H.R. Rep. No. 104-311, pp. 95-96. While the ICCTA extended federal licensing jurisdiction (for new construction, expansion, and abandonment of interstate lines and for acquisition or operation of an existing interstate line by a new carrier) to intrastate lines, it did not substantively change the limited breadth of that licensing jurisdiction.

The ICCTA included several conforming changes "to reflect the direct and complete pre-emption of State economic regulations of railroads." *Id.* These changes included:

(1) deleting the language of prior section 10501(b) regarding federal certification requirements for state rate-setting because state rate-setting was no longer allowed;

(2) moving the "jurisdiction" and "preemption" language of prior section 10501(d) into section 10501(b); and

(3) deleting prior section 10907 language that exempted the construction or extension of wholly intrastate rail lines from federal licensing certification and adding new language to revised section 10501(b) to clarify that "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, *even if the tracks are located, or intended to be located, entirely in one State*" in order to bring new intrastate infrastructure activities within the STB's certification jurisdiction.

49 U.S.C. § 10501(b)(2) (emphasis added); *see* H.R. Conf. Rep. No. 104-422, 1st Sess., p.167 ("In light of the exclusive Federal authority over auxiliary tracks and facilities, this subject is integrated into the statement of general jurisdiction."); Sen. Rep. No. 104-176, p.6 ("The bill would also eliminate Federal certification and review procedures for State regulation of intrastate rail transportation.").

The House Conference Report on the ICCTA summarized the purpose of these conforming revisions:

> The changes include extending exclusive Federal jurisdiction to matters relating to spur, industrial, team, switching or side tracks formerly reserved for State jurisdiction under former section 10907. The former disclaimer regarding residual State police powers is eliminated as unnecessary, in view of the Federal policy of *occupying the entire field of economic regulation* of the interstate rail transportation system. Although States retain the police powers reserved by the Constitution, *the Federal scheme of economic regulation and deregulation* is intended to address and encompass all such regulation and to be completely exclusive.

H.R. Conf. Rep. No. 104-311, pp. 95-96 (emphasis added). Thus, Congress did not expand – or intend to expand – the scope of federal certification jurisdiction over new railroad infrastructure; it merely extended that limited jurisdiction to wholly intrastate activities that had previously been exempted in order to complete the economic deregulation of the rail industry.

This more complete historical context reveals the critical flaw in NWPCo.'s preemption argument. In crafting the ICCTA and its predecessors, Congress was focused on the economic viability of the evolving railroad system, and its statutory response reflects concern about the destabilizing effect of state rate regulation and state-mandated overbuilding and expansion of rail

lines. As it stands today, the ICCTA gives the Board carefully-circumscribed exclusive jurisdiction to (1) adjudicate complaints concerning discriminatory rates or practices by common carriers (49 U.S.C. § 11701) and (2) grant or deny licenses for specific infrastructure activities (new line construction, existing line extensions), change of operator status, and abandonment of existing lines (49 U.S.C. §§ 10901, 10903). There is no evidence in the historic record that Congress even remotely intended to create a federal agency with plenary railroad regulatory or planning authority or to usurp a private or public railroads' decisionmaking processes, or states' traditional ability to make decisions that protect public health and the environment.

C. The ICCTA Does Not Convey Board Jurisdiction Over the NCRA Rail Line Project or Expressly Preempt CEQA Compliance for the Project.

NWPCo.'s preemption argument incorrectly elides two distinct ICCTA directives – one addressing the Board's "exclusive jurisdiction" and the other expressly preempting "remedies . . . with respect to regulation of rail transportation." As the plain language and structure of the ICCTA demonstrates, neither of these directives prevents California from requiring that NCRA's decision to repair and reopen the rail line be made only after adequate CEQA review, nor do they preclude states from allowing citizens help the state ensure that NCRA complies with that requirement.[6]

[6] Preemption is fundamentally a question of congressional intent. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). To determine the scope of preemption, courts look not only to the preemption clause, but also to the statutory structure and purpose. *Medtronics, Inc. v. Lohr*, 518 U.S. 470, 485-86 (1996). In all preemption cases, courts "start with the presumption that the states' historic police powers shall not be superseded by federal law unless that is shown to be the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947). Further, the scope of preemption, if any, is to be determined while keeping this presumption in mind. *Medtronic*s, 518 U.S. at 485. That is, because states are "independent sovereigns," courts "have long presumed that Congress does not cavalierly pre-empt state-law causes of action" *Id.* The party seeking to overcome the presumption against preemption thus bears a heavy burden. *De Buono v. NYSA–ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997). Accordingly, "[t]he applicable preemption provision must be read narrowly 'in light of

1. The Board Lacks Jurisdiction over NCRA's Proposed Repair Project.

Section 10501(b) provides "exclusive" Board "jurisdiction" over (1) "transportation of rail carriers, and the remedies [provided by the ICCTA] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers" and (2) "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. § 10501(b). As discussed above, this statutory language was intended to displace state financial regulation and infrastructure requirements that might undermine market competitiveness in the rail industry.[7]

The reach of the Board's exclusive jurisdiction over construction and operational activities in subdivision (b)(2) is, in turn, defined and circumscribed by section 10901, which establishes procedures for "Authorizing construction and operation of railroad lines." Section 10901(a) provides that "[a] person may—(1) *construct an extension* to any of its railroad lines; (2) *construct an additional* railroad line; (3) provide transportation over, or by means of, an *extended or additional* railroad line; or (4) in the case of a person other than a rail carrier, *acquire* a railroad line *or acquire or operate* an *extended or additional* railroad line, only if the Board issues a certificate authorizing such activity under subsection (c)." 49 U.S.C. § 10901(a)

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the presumption against pre-emption of state police power regulations,'" *Cipollone*, 505 U.S. at 518 (quotations omitted), such as CEQA.

[7] The Board's exclusive jurisdiction under subsection (b)(1) to adjudicate disputes over allegations of discriminatory rates and other practices is not at issue here. Chapter 111 of the ICCTA requires that common carriers operating a railroad provide (i) transportation services upon reasonable request, and (ii) nondiscriminatory access to terminal facilities, switch connections, and side tracks. 49 U.S.C. § 11101-11103. If it receives a complaint about a carrier's failure to comply with these obligations, the Board may begin an investigation and take appropriate action to compel compliance. *Id.* § 11701. The Board also may pursue civil penalties against a noncomplying rail carrier, and an injured party may seek money damages against the carrier in federal district court. *Id.* §§ 11702, 11704, 11901. Because subsection (b)(1) is not relevant to the case before the Court, Plaintiffs do not discuss it further here.

(emphasis added). The Board has limited discretion in exercising this jurisdiction. It must issue a certificate authorizing these activities at the request of an applicant, "unless the Board finds that such activities are inconsistent with the public convenience and necessity." *Id.* § 10901(c).

Thus, consistent with the ICCTA's legislative history and Congress' statutory policy findings (*see* 49 U.S.C. § 10101), section 10501(b)(2)'s jurisdictional provisions and section 10901(a) work together to (1) prohibit states from regulating railroad rates or mandating *new* lines or service *extensions* and (2) prevent the Board from unduly impeding a railroad's business decision to move forward with new construction, acquisition, or operation of lines or facilities. The statute does *not* empower the Board, however, to compel a rail carrier to construct, acquire or operate a new line or extend an existing line. Nor does it authorize the Board to intrude on the business judgments, internal governance, or decisions of any railroad (private or public) concerning whether or how to undertake and/or finance such activities.[8]

When it granted the change of operator request and authorized NWPCo. to become the potential future carrier on the NCRA line, the Board was doing only that – qualifying a potential new operator. The Board's section 10901(a) licensing authority over new operators, new owners, and extensions of existing lines and construction of new lines is strictly reactive to carrier or other affected party applications. Like most licensing bodies, the Board may grant or deny a request for one of the enumerated activities in section 10901(a), in response to an

[8] Section 10903 of the ICCTA provides a somewhat more rigorous Board process in connection with potential abandonment of an existing line or discontinuance of service. A rail carrier must submit a detailed application identifying the service and labor impacts of the proposed abandonment or discontinuance, and the Board must grant the action if it "finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance." 49 U.S.C. § 10903(d). The rail line at issue here was shut down by federal order and can be reopened only at substantial cost to California taxpayers. The question of whether the line thereby has been or may be permanently "abandoned" is not before the Court in this case. Rather, it is a question for another day, should California decide not to resume operations and instead abandon the line.

application, but Congress did not charge the agency with affirmative responsibility or authority for directing such activities.

Most critical here, the Board does not have – and has never asserted – any section 10901(a) authority or statutory jurisdiction over the rehabilitation and repair work necessary to reopen the NCRA line. *Lee's Summit, MO v. Surface Transp. Bd.*, 231 F.3d 39, 42 n.3 (D.C. Cir. 2000) (STB lacks jurisdiction over line rehabilitation); *Detroit/Wayne County Port Authority v. I.C.C.*, 59 F.3d 1314 (D.C. Cir. 1995) (jurisdiction does not extend to improvements of existing track). As the STB itself has often explained, "Congress' purpose in enacting the Transportation Act of 1920 [was] to encourage railroads to maintain and improve existing services, thereby strengthening their common carrier abilities, before spending capital constructing a new line or extending an existing one to serve new customers." *Union Pac. R.R. Co.—Petition for Declaratory Order—Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX* (STB, Aug. 19, 1998) 2 S.T.B. 646, 1998 WL525587 *3 (finding no STB jurisdiction over carrier's repair and reopening of an inactive existing line).[9] Consistent with this purpose, "the construction of an extension to a rail line, or an additional rail line, is one that enables a carrier to penetrate or invade a new market" and therefore falls within section 10901, while the "rehabilitation and reactivation" of an existing line does not implicate such concerns and thus "does not come within the Board's section 10901 jurisdiction." (*Id.* *3-4 [citing *Texas & Pacific v. Gulf, Colorado & Santa Fe Ry.* (1926) 270 U.S. 266].)[10]

[9] While the Association of American Rail Roads' reply makes much of the reference in this decision to preemption, it did not analyze preemption other than to mention the Board's precedent on preemption.

[10] See also *BNSF Ry.—Petition for Declaratory Order*, STB Finance Docket No. 35164, 2009 WL 1416468 at *8 (S.T.B. May 19, 2009); *City of Stafford, TX v. So. Pac. Transp. Co.* (ICC Nov. 8, 1994) 1994 ICC LEXIS 216, *aff'd*, 69 F.3d 535 (5th Cir. 1995); *Denver & Rio Grande W. R.R.—Joint Constr. Project-Relocation Over Burlington N.R.R.* (1987) 41 I.C.C.2d 95, 97.

Even where, as here, the STB has approved a change in the owner and operator status of an existing line, "no STB authority is necessary when a carrier proposes to improve or relocate an existing line without extending the railroad's territory." *Swanson Rail Transfer, LB—Declaratory Order—Swanson Rail Yard Terminal* (S.T.B., 13, 2011) Fed Carr. Case. P37354, 2011 WL 2356468 *2 (finding no Board jurisdiction over rehabilitation and reactivation of line that "will not take . . . rail service into any new territory or market" and noting that the new carrier had already obtained state environmental permits for the work].) The Board's approval of NWPCo's application for a change in operator status is not, accordingly, a federal mandate to repair and reopen the line. Under the ICCTA "construction and operation" language on which NWPCo.'s argument hinges, the Board could no more order NCRA to reopen its line than could the Department of Motor Vehicles order someone to drive by virtue of having issued that person a driver's license. *See California High-Speed Rail Authority – Construction Exemption – in Merced, Madera & Fresno Ctys.*, Cal., FD 35724, 2013 WL 3053064, at *12 (June 13, 2013) ("The Board's grant of authority to construct a rail line (whether under § 10901 or by exemption under § 10502) is permissive, and not mandatory—that is, the Board does not require that an approved line be built).

Because no Board decision was required for NCRA's rehabilitation and reopening project, no federal environmental review was required for those activities. *E.g., Union Pac. R.R. Co.*, 1998 WL 525587, *5.) The Board's only consideration of environmental issues came in connection with its August 30, 2007, notice authorizing NWPCo. as the qualified future carrier on the line once the lease transaction was consummated and "after repairs" were completed. AR:16:8207, 8540. In that notice, the Board concluded that NWPCo.'s "anticipated operations would be below the threshold requiring the Board's environmental review" in its governing

regulations and therefore rejected Friends of the Eel River's appeal of that decision. See AR:16:08539-42. The Board never considered the environmental impacts associated with the line repair and reopening project that is the subject of the challenged EIR because such activities fall outside of its jurisdiction.

NWPCo.'s suggestion that the Board considered environmental review for the project or made a permitting decision is, therefore, incorrect. NWPCo:10-11, 20. Because NCRA's line repair project does not involve construction, acquisition, or extension of a line under section 10901, or the abandonment or discontinuance of a line under section 10903, there is no federal authority over the project and no federal "remedy" available to CATs.[11]

Here, unlike in the High-Speed Rail case, there is (and will be) no federal environmental review because NCRA's repair activities fall outside of the STB's jurisdiction. Unless the repair occurs, there is no "operation" on the line subject to STB jurisdiction. The proposed rehabilitation project, funded by California taxpayers, may have significant adverse environmental impacts. Under California law, NCRA must therefore complete an EIR that meaningfully discloses those impacts to the public and identifies mitigation that may lessen or avoid them. If CEQA is preempted here, there will be no state or federal environmental review of any kind completed for the next phase of potentially damaging repair work along the Eel River Division of the line.[12]

2. Section 10501(b) Does Not Expressly or Categorically Preempt CEQA.

[11] True, the STB's decision to grant NWPCo.'s common carrier certification without any environmental review was subject to administrative challenge, and Plaintiff Friends of the Eel River, in fact, challenged it. AR:16:8281-8347. But there is no federal venue to challenge NCRA's environmental review for the repair project.

[12] The dilapidated condition of that segment reveals the enormous amount of physical work – and attendant environmental impact – involved in any repair effort. (*Hard Times on the Railroad: Eel River Canyon*, https://www.youtube.com/watch?v= RhCjYNKXNvk.)

Separate from its jurisdictional language, section 10501(b) also provides: "Except as otherwise provided in this part, the *remedies provided under this part with respect to regulation of rail transportation* are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501, subd. (b) (emphasis added). On its face, this provision does not "categorically preempt" state actions merely because they may incidentally affect operation of a rail line in some way. Contrary to NWPCo.'s assertions, CEQA does not "regulate rail transportation" – it is a decisionmaking and political accountability tool, a law of general applicability which, with a few delineated exceptions, applies to all discretionary projects conducted by all California public agencies – and thus does not fall within the ICCTA's express preemption clause.

NWPCo. argues that CEQA nonetheless constitutes a facially preempted "preclearance" requirement because, in its view, CEQA litigation: (1) "can prevent a public railroad from proceeding with an Board-authorized project" (NWPCo:19-22) or "can be used to deny the public railroad the right to engage in activities the Board has authorized" (*Id.*); and (2) "has the effect of regulating 'matters directly regulated by the Board – such as the construction, operation, and abandonment of rail lines . . . .'" NWPCo:20.

Notably, these arguments do not constitute an "express preemption" defense, as NWPCo. suggests. The ICCTA's plain text and legislative history say nothing about "preclearance" requirements. Moreover, as a factual matter, the rail line rehabilitation work analyzed in the EIR is not, as explained above, "an STB-approved project." Most important, compliance with CEQA for purposes of deciding whether or how to commence the repair project does not "regulate" rail transportation or in any way impinge upon the Board's exclusive jurisdiction to approve applications for new or extended lines, service, operators, or abandonment.

The decision whether to proceed with rehabilitation and reopening of the line is wholly within the discretion of a California public agency. If a railroad (private or public) decides to undertake such a project, some facet of its future activities (line extension, new operator status, etc.) may require Board certification, and the Board's approval or denial of that certification may be subject to the ICCTA's exclusive remedies. But there are no federal "remedies" or "avenues to challenge" capital investment decisions outside of the STB's circumscribed jurisdiction. The CEQA litigation cannot possibly have the effect of denying or "significantly delay[ing] an entity's right to construct a line that the Board has specifically authorized, thus impinging upon the Board's exclusive jurisdiction over rail transportation," NWPCo:20, 33, because there was no such "specific authorization."

D. There Is No Implied or "As Applied" Preemption of CEQA Compliance or Litigation in CATs' CEQA Case.

As a threshold matter, any "as applied" preemption analysis must be conducted on a case-by-case basis. NWPCo.'s petition does not raise "as applied preemption" as a reason the ICCTA should preempt CEQA; nor do any of the replies by the Association of American Railroads or the California High Speed Rail Authority. CEQA is a law of general applicability implemented under the state's traditional police powers, and that the question of whether ICCTA preempts any particular exercise of police powers by the Environmental Agencies must be determined on a case-by-case basis. There have, thus, been no facts identified that would show that CATs' CEQA enforcement action "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941) (articulating the test for implied preemption).

Even assuming Plaintiffs prevail and the court remands this matter to NCRA for further environmental review or the consideration of additional mitigation measures (and even

assuming, that NCRA decides to cancel the project), there is no implied or "as applied" preemption here. Implied "conflict pre-emption exists *only* where 'compliance with both state and federal law is impossible,' or where 'the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"" *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) (quoting *California v. ARC AmericanCorp*, 490 U.S. 93, 100, 101 (1989)).

The U.S. Supreme Court in *Oneok* emphasized "the importance of considering the *target* at which the state law *aims* in determining whether that law is pre-empted." *Id.* at 1599 (emphasis in original). There, the Court held that a state antitrust lawsuit for false price reporting, wash trades, and anticompetitive collusive behavior was not preempted by the Federal Energy Regulatory Commission's jurisdiction over interstate natural gas rates, including federal authority to issue rules and regulations to prevent "any manipulative or deceptive device or contrivance" for interstate sales. *Id.* at 1601. In so holding, the Court emphasized that the target of the antitrust lawsuit (collusive retail rates) was properly actionable under a state law of general applicability, even though application of that law "might well raise pipelines' operating costs, and thus the costs of wholesale natural gas transportation." *Id.* at 1601.

Similarly, the U.S. Supreme Court held in *Dan's City Used Car, Inc. v. Pelkey*, 133 S. Ct. 1769, 1774 (2013), that state law consumer protection claims were not within the "target at which [Congress] aimed" in the FAAAA; that target was "a State's direct substitution of its own governmental commands for competitive market forces." The ICCTA takes aim at the same target. If it is inclined to consider implied preemption, the STB should read the ICCTA's preemption of remedies related to the economic regulation of rail transportation narrowly to

accommodate state environmental laws of general applicability designed to inform public agencies, and the public, of a project's impacts before deciding on a course of action.

Dan's City and *Oneok* are directly relevant here. As was true for the generally applicable state law at issue in each of them, CEQA does not target rail transportation or stand as an obstacle to accomplishing Congress' intent to deregulate the rail industry and make the market more competitive. To the contrary, California's purchase of the failed North Coast line and the proposed major rehabilitation project are efforts to make this railroad financially viable. NWPCo. (and AAR) cannot pretend that NCRA – as a public agency – can escape its environmental review obligations because STB has exclusive authority over the state's project to rehabilitate the line and reestablish service. (Association of American Railroads Reply at p. 5 "AAR:5")

III. The *Nixon* Clear-Statement Rule Applies to California's Governance of Its Subdivision Rail Agencies.

Reading section 10501(b) to preempt CEQA here would run afoul of the clear-statement rule articulated in *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004) and *Gregory v. Ashcroft* 501 U.S. 452 (1991). NWPCo. contends that *California v. Taylor,* 353 U.S. 553 (1957) and related cases allow ICCTA to preempt how a state governs the decisionmaking process of a subsidiary public agency that happens to operate a railroad. NWPCo:21. But there is no exception to the clear-statement doctrine in cases involving public rail agencies, and section 10501(b) does not contain unmistakably clear language preempting NRCA's obligation to comply with CEQA. For these reasons alone, this CEQA is not preempted here.

A. *Nixon* and *Gregory* Govern the Interpretation of Section 10501(b); They Are Not the Basis of a Tenth Amendment Challenge.

Nixon and *Gregory* establish a rule of statutory interpretation that requires an unmistakably clear statement from Congress before a court will read federal statutes, including section 10501(b), to interfere with California's arrangements for conducting its own government. *Nixon*, 541 U.S. 125 at 140. Federalism concerns undergird the clear-statement doctrine. This rule "acknowledg[es] that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461. As *Gregory* explained, since the federal political process is the primary "protection of the States against intrusive exercises of Congress' Commerce Clause powers, [courts and the STB] must be *absolutely certain* that Congress intended such an exercise." *Id*. at 464 (emphasis added) (citing *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985)).

NWPCo.'s discussion of the failed Tenth Amendment challenge in *Taylor* misses the point. NWPCo:21. *Taylor*, which predates *Nixon* and *Gregory*, did not involve the statutory interpretation issue presented here.

B. The Clear-Statement Rule Does Not Make Exceptions for Cases Involving State Governance of Public Rail Agencies.

CATs' CEQA litigation involves an agency that occupies two roles. NCRA is a common carrier that has entered the rail market and is subject to federal rail regulations. *See Taylor*, 353 U.S. at 568. NCRA also is a public agency created by the Legislature and bound by the public laws of California, including CEQA. Gov. Code § 93000 et seq.; *Mountain Lion Foundation v. Fish & Game Com.*, 16 Cal.4th 105, 112 (1997).

In *Gregory*, the Supreme Court recognized that the clear-statement requirement protects state laws that go "beyond an area traditionally regulated by the States" and are instead "most fundamental" to a state's character as a sovereign entity. *Gregory*, 501 U.S. at 460. *Gregory* held that courts must be certain Congress intended to infringe on such state sovereign interests

before reading a statute to "upset the usual constitutional balance of the federal and state powers." *Id*. at 461 (finding no unmistakably clear intent in a federal age discrimination statute to preempt state-adopted age limits for state judges). As the Court recognized in *Nixon*, a state's "chosen disposition of its own power" and control of a subsidiary agency are core sovereign interests. *Nixon*, 541 U.S. at 140-41; *see also City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424, 437 (2002) ("[w]hether and how" a state grants powers to its subdivisions "is a question central to state self-government."). California courts have consistently recognized that a core element of the state's sovereign power is its governance of the state's political subdivisions. *See California Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231, 254-55 (2011) (quoting *Hunter v. Pittsburgh* (1907) 207 U.S. 161, 178-79 ("The number, nature and duration of the powers conferred upon [public agencies] . . . rests in the absolute discretion of the State")); *In re Sanitary Board of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 457 (1910) (same); *In re Pfahler*, 150 Cal. 71, 79 (1906) (same).

In *Taylor*, the Supreme Court did not address these core sovereign functions but instead found that, after entering the rail market, a state railroad could not operate in violation of federal law. In *Taylor*, the Supreme Court considered the applicability of federal law to the Belt Railroad. The Court addressed a conflict between the Railway Labor Act, which granted collective bargaining rights to employees of rail carriers, and California civil service laws, which forbid such collective bargaining rights for state employees. *Taylor*, 353 U.S. at 559-60. The Belt Railroad argued that it was not bound by federal regulation of rail carriers, and again the Court rejected that argument. The Court held that, once California entered the interstate rail market, the "State may not prohibit the exercise of [labor] rights which the federal Acts protect." *Id*. at 560. Because California's labor law was directly hostile to the collective-bargaining rights

guaranteed by the Railway Labor Act, state law had to give way. *Id*. at 560-61, 65-67; see also *United Transp. Union v. Long Island R. Co.*, 455 U.S. 678, 681 (1982) (requiring a public railroad to comply with the Railway Labor Act did not violate the Tenth Amendment because "operation of a railroad engaged in interstate commerce is not an integral part of traditional state activities.").

These cases stand for the limited proposition that state rail carriers must comply with federal rail regulations governing the interstate rail market. *See, e.g., City of New Orleans v. Texas & Pac. Ry. Co.*, 195 F.2d 887, 889 (5th Cir. 1952) (public railroad subject to federal law "so long as it engages in interstate and foreign commerce."). Contrary to NWPCo.'s argument, however, these cases do not go further and preempt state statutes that are unrelated to federal rail regulation and instead only govern public state and local entities generally.[13] There is no conflict between California's interests in making public rail authorities comply with CEQA and the holding in *Taylor*. Moreover, none of these cases involved core issues of state sovereignty, such as the state's ability to control the authority and jurisdiction of its political subdivisions. By contrast, what is at stake in the CEQA litigation does involve such core issues – how the state chooses to control the decision making process of a state agency, and the methods California has chosen to ensure transparency and thereby hold its government (including political subdivisions, such as NCRA) politically accountable to citizens for decisions these officials make that affect the environment.

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[13] Board decisions addressing federal regulation of public railroads (NWPCo:21) are also irrelevant. NCRA's obligation to comply with federal law is undisputed. To the extent that NWPCo. asks the Board to read these decisions as limiting California's sovereign authority over its subdivisions, the Court should decline to do so. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 172-74 (2001).

Further, NWPCo.'s preemption argument focuses exclusively on federal requirements applied to rail carriers, arguing that they displace state-law obligations that otherwise control California agencies. NWPCo:19-22. This exclusive focus on federal law conflicts with the analysis required by clear-statement precedent. "The Supreme Court has applied *Gregory* [by] focusing on the state functions necessarily affected by operation of the [federal] statute, and not exclusively on the actual conduct proscribed by Congress." *United States ex rel. Long v. SCS Business & Technical Institute, Inc.,* 173 F.3d 870, 888 (D.C. Cir. 1999). This one-sided analysis leads NWPCo. to overlook the important sovereign interests that would be nullified by preemption in this case, and assumes a conflict between CEQA and Congress' power to regulate rail where none exists.

Through CEQA, the Legislature established requirements for public-agency decision making and accountability when agencies take actions that may cause significant environmental impacts. CEQA is but one of many agency-governance and accountability statutes through which California exercises sovereign control over its subdivisions. *See Nixon*, 541 U.S. at 140-41; see also Gov. Code § 6250 et seq. (California Public Records Act); § 11120 et seq. (Bagley-Keene Act); § 54950 et seq. (Brown Act); § 81000 et seq. (Political Reform Act).

In fact, the sovereign interests that CEQA advances extend even further than the self-governance principles that *Nixon* protected. California also expresses its sovereignty through laws that reach the heart of representative government. *Gregory*, 501 U.S. at 461. CEQA's environmental review process facilitates informed democracy by promoting public agency accountability to the electorate. An EIR "is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can

respond accordingly to action with which it disagrees." *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988); *see also Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* 42 Cal.3d 929, 936 (1986) (the "privileged position" that the public holds in the CEQA process "is based . . . on notions of democratic decision-making."). Consequently, requiring an agency – in this case NCRA, *not* NWPCo. – "to fully comply with the letter of [CEQA]," including its public disclosure provisions, facilitates "appropriate action come election day should a majority of the voters disagree" with an agency's decision. *People v. County of Kern*, 39 Cal.App.3d 830, 842 (1974).

For these reasons, the state sovereignty issues here reach further than those in *Nixon*. In *Nixon*, the state sovereignty at stake was limited to the state's authority to control its subsidiary agencies. CEQA serves a similar purpose, but is also an instrument that California has selected to enhance political accountability and transparency in public agency decision making. Thus, the clear-statement requirement operates with greater force here.

The facts in *Nixon* further demonstrate why preemption of CEQA is unavailable here. As with regulation of railways, regulation of the telecommunications industry falls well within Congress' commerce power. Unlike the STB's limited regulatory authority over the railroad industry, Congress chose to give much broader authority to the Federal Communications Commission to regulate telecommunications. *See Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 700 (1984) (Congress gave the FCC "broad responsibilities to regulate all aspects of interstate communication"); *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311, 320 (2d Cir. 2000) (recognizing "the FCC's broad authority" over telecommunications). Despite this broad federal authority over telecommunications, *Nixon* refused to apply uniformly Congress' prohibition on states restricting the "ability of any entity" to offer interstate or intrastate

telecommunication services to both state and private telecommunication providers. *Nixon*, 541 U.S. at 140-41.

Moreover, *Nixon* resolved a much greater conflict between Missouri law and federal law than is alleged to exist between CEQA and the ICCTA. In *Nixon*, Missouri's law specifically targeted the subject matter of the Telecommunications Act's preemption clause – the entry of "an entity" (i.e., a municipality) into the telecommunications market. *Nixon*, 541 U.S. at 129. Nonetheless, the Court would not read that federal preemption clause to interfere with the state's control over telecommunication services offered by a state subdivision. *Id*. at 140-41. In CATs' CEQA litigation, while ICCTA preemption is limited to state regulation of rail transportation, CEQA does not target the railroad industry. As a law of general application, CEQA's effect on railroads is, at most, indirect and incidental. Compared with *Nixon*, it is even harder to find congressional intent to preempt how California uses CEQA to govern the process by which decisions are made by public railroad authorities.

Even if a conflict did arise between California's exercise of its sovereign interests through CEQA and federal regulation in the ICCTA, *Nixon* and *Gregory* still require an unmistakably clear statement before the state's sovereign interest gives way. Neither NWPCo., AAR nor the HSRA even tried to identify any text or legislative history that clearly shows congressional intent to preempt state control of the decision making processes of public rail authorities. They studiously ignore the *Nixon-Gregory* issue, though both NWPCo. and HSRA faced and argued that issue at length in the state court CEQA litigation.

IV. The ICCTA Does Not Preempt CEQA's Requirements Pertaining to State Proprietary Conduct.

In addition to the clear-statement doctrine, the market participant doctrine applies here to defeat preemption. In owning the railroad, in establishing NCRA to implement the State's plans

to maintain rail service on California's north coast, and in authorizing NCRA to use public funds and other resources to pursue opportunities in the rail market, the State acted as a proprietor of public property. Under the market participant doctrine, courts presume that state and local requirements governing such market activities are not preempted unless Congress evidences contrary intent. NWPCo.'s arguments are wrong; the market participant doctrine is both "available" in the context of ICCTA preemption and defeats any such preemption here.

In arguing that the market participant doctrine does not apply to California's purchase of a railroad, its use of a subsidiary agency to implement the State's plans, and the State's efforts to repair and rehabilitate the RRD portion of the state-owned rail line, NWPCo. conflates market participation with "market transaction" and seeks to distinguish NCRA – a California public agency – from "the state." NWPCo:24. NWPCo. pretends that the State of California was not involved with the railroad it owns at the times relevant to NWPCo.'s interpretation of the market participation doctrine. NWPCo:24. But the repair and rehabilitation project, NCRA approval of which required CEQA compliance, was funded by appropriations authorized by the Legislature. Cal. Gov. Code § 14556.40(a)(32). NCRA retains residual common carrier rights to the rail line, AR:21:10967, and is "solely" responsible for rehabilitation of the rail line. AR:13:6734. The Lease Agreement between NCRA – acting on behalf of the state – and NWPCo. was explicitly conditioned upon (and could not be consummated until) NCRA had complied with CEQA. AR:13:6731. NWPCo. explicitly acknowledged to the State that its schedule to resume service is "contingent on" receiving authorization to spend public funds on the repair and rehabilitation project. App.8:77b:2068. A separate political subdivision of the State – the Sonoma-Marin Rail Transit District– was required to approve the Lease Agreement between NCRA and NWPCo. before operations could begin on that portion of the rail line controlled by SMART. AR:8:4498,

§ 16.04; AR:13:6731. The State of California's relationship with NCRA and the repair and rehabilitation project at issue is fundamentally different from how NWPCo. attempts to portray that relationship – that of "passive shareholder." The State – in the guise of its subsidiary public agencies such as NCRA, CalTrans, and the California Transportation Commission, and via legislative appropriations – is actively involved in every aspect of the "transactions" at the heart of the project for which the State required CEQA compliance.

NWPCo. and AAR also argue that – as to the CEQA litigation – requiring compliance with CEQA, and allowing citizens to enforce that requirement, is a regulatory act, not that of a market participant, and thus not subject to the market participant doctrine. NWPCo:27-30; AAR:9-10 To a large extent, this argument hinges on NWPCo. maintaining the illusion that CEQA is being imposed on NWPCo., and that CEQA is the "quintessential environmental pre-clearance law" that imposes environmental review on non-state actors as a condition for receiving approval of a permit. NWPCo:27.

This is pure flim-flammery. CEQA compliance has not been imposed on NWPCo. In this case, a public agency – NCRA – implements State policy to repair and rehabilitate a state-owned railroad and to reestablish freight rail service on that line. It is NCRA, and NCRA only, that is subject to CEQA compliance because CEQA requires California public agencies to comply with CEQA as part of the process by which they decide whether and how to implement their discretionary projects. In this case, use of funds appropriated by the Legislature to repair and rehabilitate the State's rail line, is such a discretionary project. CEQA touches and concerns NWPCo. only to the extent that the Lease, by which NCRA transferred common carrier status on the line to NWPCo., contains, as a condition precedent, that NCRA comply with CEQA in regard to NCRA's repair and rehabilitation project, in the absence of which all parties

understood the Federal Railroad Administration would never lift EO21 and allow operations to resume on the line.

Moreover, California has never required either NCRA or NWPCo. to obtain a permit in order to repair the line or resume operations on that line. CEQA can, in some instances (though not the one at hand), indirectly regulate non-state third parties, such as a private railroad, if that railroad must obtain a permit before being allowed to conduct some of the private railroad's business. But in that case, the "regulation" is actually the permit requirement. There is, and never was, a requirement that NWPCo. obtain a permit. CEQA does not regulate the actions of a third-party non-state actor. In this case, CEQA solely applies to the process by which NCRA – as a California public agency – makes decisions that may have a significant effect on the environment.

Outside of the specific areas to which it gave the Board jurisdiction – construction, extension, operation and abandonment, as well as rates, classifications, rules, practices, routes, services and facilities (49 U.S.C. § 10501(b)) – the ICCTA deregulated the rail industry. The goal of both the Staggers Act and the ICCTA was to reduce federal regulation over interstate rail and encourage free market activity. See Section I; 49 U.S.C. § 10101(2) (statutory policy "to minimize the need for Federal regulatory control over the rail transportation system"). Deregulation allows both public and private entities to decide for themselves how to engage the rail market, and Congress expected that Burlington Northern, Union Pacific, and the State of California would make these decisions differently, not uniformly. Nothing in the ICCTA forecloses either private or state proprietors from setting their own criteria governing such decisions. *Cf. Tocher v. City of Santa Ana*, 219 F.3d 1040, 1048-50 (9th Cir. 2000) (upholding public market participation despite the FAAAA preemption clause intended to set national

standards for conducting towing business], abrogated on other grounds in *City of Columbus*, 536 U.S. at 432).

A. NCRA's Obligation to Comply with CEQA When It Pursues Proprietary State Activity Is Not Preempted.

The market participant doctrine recognizes that public entities, like private entities, engage markets in numerous ways to pursue their unique interests. *See Building & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 227 (1993) ("*Boston Harbor*"). Federal courts have adopted alternative tests to determine whether a particular state action falls within the market participant doctrine. *Cardinal Towing v. City of Bedford, Tex.,* 180 F.3d 686 (5th Cir. 1999) and *Johnson v. Rancho Santiago Community College Dist.,* 623 F.3d 1011 (9th Cir. 2010). Here, the relevant test is whether the challenged state action reflects the state's "interest in its efficient procurement of needed goods and services, as measured *by comparison with the typical behavior of private parties in similar circumstances*." *Cardinal Towing*, 180 F.3d at 693 (emphasis added). Numerous courts have upheld standards for proprietary actions that apply to public agencies but not private entities. See *White v. Massachusetts Council of Const. Employers, Inc.* 460 U.S. 204 (1983); *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1045-46 (9th Cir. 2007); *Tocher*, 219 F.3d at 1048-50; *Big Country Foods, Inc. v. Board of Educ. of Anchorage School Dist., Anchorage, Alaska*, 952 F.2d 1173, 1178-79 (9th Cir. 1992). There is no requirement that public and private proprietors act identically. *See Rancho Santiago,* 623 F.3d at 1026-28.

Moreover, "'efficient procurement' means procurement that serves the state's purposes – which may include purposes other than saving money – just as private entities serve their purposes by taking into account factors other than price." *Engine Manufacturers*, 498 F.3d at 1045-46. It is undisputed that private entities may, as part of their proprietary actions, embrace

standards that require them to consider environmental factors in their decisionmaking processes. *Id*. at 1047 (citing private programs for procuring less-polluting vehicles); *Services Employees International Union, Local 99 v. Options—A Child Care and Human Services Agency*, 200 Cal.App.4th 869, 873, 877 (2011) (private childcare provider agreed to Brown Act compliance). Neither NWPCo. nor AAR has identified a provision in the ICCTA that would prevent such private behavior. Consequently, the ICCTA does not preempt CEQA's application to state proprietary actions, which serves California's purpose of considering and, where feasible, reducing the environmental impacts of public actions before resources are irretrievably committed to those endeavors. *Laurel Heights*, 47 Cal.3d at 392.

B. Market Participant Cases Protect from Preemption State Rules Governing Proprietary Activity.

NWPCo. contends that this case does not involve state proprietary conduct because "CEQA compliance and remedies are outside the ordinary behavior of private parties." NWPCo:27. This argument misapprehends both CEQA and the market participant doctrine.

First, an agency's actions and obligation to comply with CEQA do not "stand alone." CEQA always applies to decisions regarding "discretionary projects proposed to be carried out or approved by public agencies." Pub. Res. Code § 21080(a). Relevant here, discretionary projects subject to CEQA include "actions undertaken by any public agency including but not limited to public works construction" and publicly-financed activities. Guidelines § 15378(a)(1), (2). Thus, CEQA operates only in conjunction with discretionary agency actions to pursue the State's proprietary interests, including NCRA's discretionary actions to lease the rail line, fund line repair and rehabilitation, and carry out its project.

It is the State of California that is acting – in the guise of NCRA – as the proprietor of its railroad to rehabilitate its rail line, convince the FRA to rescind EO21 and to reestablish rail

services along the line, and it is the State that has *imposed on itself* the requirement that CEQA shall be complied with when decisions are made about whether, when and how that project is to be approved. NCRA exists only as an agent of the State of California; it has no legally distinct status. *City of Columbus*, 536 U.S. at 425 (state subdivisions "are created as convenient agencies to exercise such of the State's powers as it chooses to entrust to them"). Under the market participant doctrine, it is irrelevant that "not only the state, but also some of its political subdivisions, are directed to take" actions. *Engine Manufacturers*, 498 F.3d at 1045; *Big Country Foods*, 952 F.2d at 1179 ("A state should not be penalized for exercising its power through smaller, localized units; local control fosters both administrative efficiency and democratic governance."). NCRA's spending and contractual actions consistent with its statutory mission to own and operate the NWP line, including spending on major repairs to reopen the line and on an EIR to evaluate the impacts of that work, merely further the state's proprietary interests. See AR:13:6796, 16:8080, 8572; Gov. Code § 93020 (empowering NCRA to "acquire, own, operate, and lease property" to pursue its state-assigned mission).

Second, the market participant doctrine does not support NWPCo.'s attempt to sever CEQA and its enforcement mechanisms from state proprietary conduct. Rather, under the doctrine, courts evaluate the standards that govern proprietary actions as a component of the larger state proprietary decisionmaking process. For instance, in *Engine Manufacturers*, plaintiffs argued that the Clean Air Act preempted "fleet rules" adopted by the South Coast Air Quality Management District, which set various environmental standards for vehicles purchased or leased by state or local agencies. *Engine Manufacturers*, 498 F.3d at 1036-37. In establishing these rules, the South Coast Air District did not itself procure goods in the marketplace. Rather, the District's rules set standards that "govern[ed] purchasing, procuring, leasing, and contracting

for the use of vehicles by state and local governmental entities." *Id*. at 1045. The Ninth Circuit held that the environmental standards required for these proprietary actions ultimately reflected California's "interest in its efficient procurement of needed goods and services," and thus, the rules were not preempted. *Id*. at 1048; *but see* 1049 (fleet rules that governed *private* purchases fell outside of the market participant doctrine).

Similarly, in *White v. Massachusetts Council of Construction Employers, Inc.*, the Supreme Court considered an as-applied challenge to an executive order setting workforce standards for construction projects financed by the city of Boston. *White*, 460 U.S. at 205. The court held that "applying . . . the executive order to projects funded wholly with city funds" was protected under the market participant doctrine because "the Commerce Clause establishes no barrier to conditions" that govern the market behavior of public entities. *Id*. at 209, 214-15. Other market participant cases employ the same method of analysis. *See Hughes v. Alexandria Scrap Corp.* (1976) 426 U.S. 794, 797-98, 809-10 (upholding statutes enacted to encourage market transactions for protecting Maryland's environment); *Tocher*, 219 F.3d 1040, 1048-49 (upholding ordinance authorizing the creation of rules to guide a city's contracts for towing services); *Big Country Foods*, 952 F.2d at 1175 (upholding Alaska statute requiring school districts to pay more to purchase in-state milk).[14]

Thus, the focus of market-participant cases is not "whether the challenged program constituted direct state participation in the market" as opposed to attempting to implement policy by regulating itself. NWPCo:26-27. Like other market participant cases, applying CEQA to publicly-pursued and financed rail projects properly furthers the State's proprietary interest in

[14] In contrast, the market participant doctrine does not shield states' exercise of their spending powers to regulate private conduct in a manner that would interfere with the National Labor Relations Act. *Chamber of Commerce of U.S. v. Brown* (2008) 554 U.S. 60; *Wisconsin Dept. of Industry, Labor and Human Relations v. Gould Inc.* (1986) 475 U.S. 282, 287.

ensuring that agencies consider environmental impacts when spending public resources on publicly-pursued projects. *Engine Manufacturers Assn.*, 498 F.3d 1031.

Nor does CEQA's citizen enforcement mechanism transform state requirements for proprietary action into preempted regulations. *Engine Manufactures* rejected an almost identical argument: "we do not see how action by a state or local government that is proprietary when enforced by one mechanism loses its proprietary character when enforced by some other mechanism." *Engine Manufacturers*, 498 F.3d at 1048 (upholding rules that contained enforcement mechanisms). Just like CEQA, the vehicle emission rules in *Engine Manufacturers* were adopted separately from the proprietary behavior they governed. Nor did the Clean Air Act's preemption waiver for certain California air regulations dictate the outcome in *Engine Manufacturers*. The Ninth Circuit observed that there was "no contention that California has obtained a waiver for the [challenged] Fleet Rules." *Engine Manufacturers*, 498 F.3d at 1043, n. 3.

For similar reasons, NWPCo. is wrong to argue that the market participant doctrine precludes a State's use of the citizen suit mechanism to enforce requirements that State has imposed on the proprietary actions it takes through its subsidiary public agencies. NWPCo:28-29. First, at least one non-California case has allowed plaintiffs to rely on the doctrine to defeat preemption as against public agencies. *See Electrical Contractors, Inc. v. Dept. of Education*, 303 Conn. 402, 449-54 (2012). Moreover, *Town of Atherton*, 228 Cal.App.3d 314, 339 (2014) properly rejected the same argument NWPCo. makes here, observing that "there is no authority supporting the argument that the power to 'invoke' the doctrine is reserved for [public agencies] to selectively assert in order to exempt those projects of [their] choosing from federal

preemption." As a question of law, the applicability of the market participant doctrine does not turn on the identity of the party that asserts it.

Ultimately, it is the purpose, not the form, of the state action that matters. *Tocher,* 219 F.3d at 1048-50. State statutes that are intended to regulate private behavior fall outside of the market participant doctrine. In contrast, enactments that are intended to govern a public entity's proprietary actions – like the fleet rules upheld in *Engine Manufacturers*, the workforce standards applied in *White*, and CEQA here – are properly protected by the market participant doctrine.

V. Defendants' Voluntary Agreements to Comply with CEQA Are Not Preempted.

NWPCo. raises a red herring when it argues that "NWPCo, as a private rail operator, never voluntarily (or involuntarily) agreed to submit to CEQA regulation by any state actor in operating its railroad." NWPCo:30. There has never been a claim in any of the CEQA litigation that NWPCo. is subject to CEQA "regulation" by a state actor. NCRA (not NWPCo.) is required to comply with CEQA as part of the process by which that California public agency decides whether to approve its project to repair and rehabilitate the rail line between Lombard and Willits, and the particulars of that project including the details of repairs and rehabilitation work for which no appropriations have yet been made. NWPCo.'s rights may be affected only in that NCRA's lack of CEQA compliance may mean that NCRA's approval of its repair and rehabilitation project was not authorized under California law.

NWPCo. does not dispute the general rule that voluntary agreements are not subject to preemption. NWPCo:32-33; *see Flynn v. Burlington N. Santa Fe Corp.,* 98 F.Supp.2d 1186 (E.D. Wash. 2000) ("no authority" under ICCTA for the proposition that a carrier is "precluded from voluntarily complying with local permitting regulations"). Rather, NWPCo. asserts that

"voluntary agreements to be regulated by CEQA are preempted by the ICCTA because, despite what a carrier might think, they are an unreasonable interference with the Board's jurisdiction over railroad operations." NWPCo:33 (citing to the Board's *HSRA Order*). But the Board's *HSRA Order* concerned a project to construct a new rail line, which is subject to Board jurisdiction over new construction.

The CEQA litigation at issue here, and the agreements that NCRA signed, were necessary to obtain state funding to repair and rehabilitate an existing rail line. As has been shown above, the STB has no jurisdiction over repair and rehabilitation of existing lines. Indeed, the deregulatory aspects of the ICCTA mean that a railroad – whether public or private – is free to contract in any way it chooses in order to obtain funding for its repair and rehabilitation projects. NWPCo:33. NWPCo. offers only a theoretical argument, with no facts relevant to this case.

Here there is no question that NCRA voluntarily agreed to comply with CEQA on numerous occasions. AR:9:4620-46 (the Master Agreement with State); AR:13:6731 (Lease Agreement between NCRA and NWPCo.); App:8:77b:2055, 2064, 2068 (NWPCo. Business Plan); AR:17:8911 (Novato Consent Decree). NCRA and NWPCo. also voluntarily agreed that the right to operate under the Lease was subject to SMART's consent and execution of equipment lease and tax approvals, AR:13:6731, and NWPCo.'s compliance with the consent decree with the state. AR:13:6746.

The question of unreasonable interference is a fact-based inquiry. NWPCo. makes no attempt to demonstrate that enforcement of CEQA interferes with interstate commerce. To the contrary, the facts here show unequivocally that CEQA compliance is a benefit, not a burden, because it was an integral element of the public funding that enables rail transport. NCRA freely

elected to receive over $31 million in State funds with conditions, including CEQA compliance, to get trains hauling freight in interstate commerce once more. This public financial support was also critical to the NCRA partnership with NWPCo. to reopen the Line. *See, e.g.*, AR:13:6595, 6600-01, 6739, 6750.

Enabling commerce is the opposite of interfering with commerce. *See Mason & Dixon Lines Inc. v. Steudle*, 683 F.3d 289, 294 (6th Cir. 2012) (no dormant Commerce Clause violation when completion of state-funded road construction contract "encourage[s] the flow of commerce"); AR:17:8901-02 (in Novato Consent Decree, NCRA and NWPCo. averring CEQA review is not "unreasonable burden on interstate commerce"). A contrary interpretation would be antithetical to the very purpose of the ICCTA, which was enacted to allow railroads to be competitive modes of transportation as against other ground transportation.

As discussed above, the only relevant transaction before the Board was a conveyance to NWPCo. of NCRA's right to operate. The Board lacks jurisdiction over line rehabilitation, repair and maintenance. Since NWPCo. and NCRA had agreed in the Lease to condition NWPCo.'s operation rights on NCRA's CEQA compliance, the Board could not have approved anything different from rights given by the Lease. The Board could not approve rights NCRA did not have, including the right to proceed without CEQA compliance to which NCRA committed itself in both the Master Agreement and NCRA's internal directive.[15]

Voluntary CEQA compliance here does not create an unreasonable burden on railroad operations; to the contrary, the facts establish that CEQA compliance *facilitates* operation.

[15] The Board acknowledged that NWPCo.'s right to operate was subject to conditions outside of its jurisdiction, noting that "NWPCo. invoked the Board's authority to acquire the common carrier obligations and, *after repairs*, to conduct rail operations on the line." AR:16:8540 (emphasis added). Thus, the Board recognized that rail operations could occur after repairs, which under state law and the voluntary commitments of NCRA required review under CEQA.

Defendants have the burden to establish facts that a voluntary agreement, by which a railroad obtains financing for repair and rehabilitation of its line, constitutes an unreasonable burden on railroad operations. (*Wichita Terminal Ass'n, BNSF Ry. & Union Pac. R.R. Co.— Petition for Declaratory Order*, FD No. 35765, 2015 WL 3875937 (June 22, 2015) ("voluntary agreements between rail carriers and state or local entities are not enforceable under § 10501(b) where [ ] the *railroad demonstrates* that enforcement of its agreement would unreasonably interfere with the railroad's operations.") (emphasis added). It should be emphasized that NCRA's agreement with the CTC to comply with CEQA was an agreement between that railroad and a state agency. NWPCo. was never party to that agreement. Moreover, neither NCRA nor NWPCo. have ever presented facts to rebut the presumption that the voluntary agreements railroads make to finance themselves benefit railroad operations. There is no onerous contract enforcement or law that unreasonably interferes with the Line's operations. NWPCo.'s apparent notion that the potential effect of CEQA compliance through a third-party enforcement action would be sufficient to preempt voluntary agreements, absent specific facts, is contrary to well-established case law, as is the *HSRA Order*, 2014 WL 7149612 at*8, NWPCo. relies upon. *See Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 414-15 (5th Cir. 2010).

CONCLUSION

The ICCTA reflects a century of congressional concern over economic regulation of railroads – such as unfair competition between rail carries, fair and non-discriminatory rates, and rail line expansions that might prove to undo the rail industry. The statute is not intended to

wrest state decision making from the California legislature or its people. If it is inclined to consider NWPCo.'s petition, the Board should deny it.

DATED: December 22, 2015

Respectfully Submitted

By: _____

Sharon E. Duggan
Helen H. Kang
Deborah A. Sivas
William Verick

Attorneys for Californians for Alternatives to Toxics

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2015, I caused a copy of the foregoing to be served by electronic mail or first-class mail upon the following:

Andrew B. Sabey
Cox, Castle & Nicholson
50 California Street, Suite 3200
San Francisco, CA 94111

Counsel for Northwestern Pacific Railroad Co.

Christopher Neary
North Coast Railroad Authority
110 South Main Street, Suite C
Willits, CA 95490

Counsel for North Coast Railroad Authority

Amy J. Bricker
Shute Mihaly & Weinburger
396 Hayes Street
San Francisco, CA 94102

Counsel for Friends of the Eel River

Anthony J. LaRocca
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Counsel for the Association of American Railroads

William A. Mullins
Baker & Miller
2401 Pennsylvania Avenue NW
Washington, D.C. 20037

Counsel for California High Speed Rail Authority

Matt Lang

Mathew Lang

EXHIBIT A

Californians For Alternatives to Toxics, et al. v.
North Coast Railroad Authority, et al.
Marin County Superior Court Case No. CIV1103591

Friends of the Eel River v. North Coast Railroad Authority, et al.
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03/31/06	NCRA Executive Director, Mitch Stogner	E-mail from Heather Lindsteadt, on behalf of Mitch Stogner, NCRA to Board of Directors re response to NCRA Request for Proposals	13	06723
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09/13/06	NCRA	Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease, between NCRA and Northwestern Pacific Railroad Company. (Note date agreement made is specified on pg. 1 of I. Preamble.)	13	06725-06786
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11/09/06 (effective date)	NCRA	NCRA's CTC/TCRP Application and Program Supplement/Amendment for TRCP Project, first allocation for $6,826,000: to upgrade NWP rail line to FRA class 2 and 3 standards, stabilize landslides, with first phase to be completed to result in operable phase of Russian River Division from Lombard to Windsor, with attachments: Attachment I: Scope of Work; Attachment II: CTC Resolution; Attachment III: Certification of Funds; Attachment IV: Special Conditions	13	06801-06810
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03/15/07	NCRA	NCRA's CTC/TCRP Application and Program Supplement/Amendment for TRCP Project, second allocation	13	06818-06828

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		for $1,530,000 to upgrade to FRA Class 2 and 3 long-term stabilization and have first phase of project to result in operable phase of Russian River Division from Lombard to Windsor; with attachments: Attachment I: Scope of Work; Attachment II: CTC Resolution; Attachment III: Certification of Funds; Attachment IV Special Conditions		
04/01/07	Association of American Railroads	Association of American Railroads, The Official Railway Equipment Register, Circular No. OT-10, OT Rules-1 to OT Rules-73, effective 4/1/07, except as noted, Code of Car Service Rules/Code of Car Hire Rules	13	06829-06901
04/25/07-04/26/07	NCRA	NCRA TCRP Allocation Request for NCRA Russian River division Lombard to Willits-Signals; for $31,000,000 (notes original TCRP Application approved 3/15/07), with attachments: Attachment I: Categorical Exemption, filed 2/07; Attachment II: Project Description	13	06902-06926
04/26/07	NCRA	NCRA's CTC/TCRP Application and Program Supplement/ Amendment for TRCP Project, third allocation for $7,495,000- to upgrade NWP rail line to class 2 and 3 standards, stabilize landslides, with first phase to be completed with operable segment of Russian River Division from Lombard to Windsor and geotechnical study with mapping in Canyon; updates approved project schedule, with attachments: Attachment I: Scope of Work; Attachment II: CTC Resolutions; Attachment III: Certification of Funds; Attachment IV: Special Conditions	13	06927-06937
04/30/07	Tom Stokely, Principal Planner, Trinity County	E-mail from Tom Stokely, Principal Planner, Trinity County to John Wooley re EIR	13	06938
06/__/06	Sonoma-Marin Area Rail Transit	SMART Final EIR for the proposed Sonoma-Marin Area Rail Transit (SMART) project, to provide passenger rail service along approximately 70 miles of existing Northwestern Pacific rail corridor, with implementation of a bicycle/pedestrian pathway within or adjacent to the rail corridor	14 and 15	06939-07432 and 07433-07995
06/04/07	NCRA	Notice of Exemption to Office of Planning and Research and County Clerk, for Russian River Division Maintenance and Repairs at NCRA Mileposts 1.0 to 62.9 in Napa, Marin, Sonoma and Mendocino counties. Attached: Clarification of Routine Maintenance and Repair Activities, Russian River Division Freight Rail Project.	16	07996-08041
06/19/07	NCRA	Letter from Mitch Stogner, NCRA to Lillian Hames, SMART re NCRA's planned EIR under CEQA concerning projections for freight service and whether consistent with SMART's June 2006 FEIR.	16	08042
07/10/07	NCRA	Notice of CEQA Public Agency Scoping Meeting on North	16	08043-

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		Coast Railroad Authority Russian River Division Freight Rail Project on July 31, 2007 at City of Novato Unified School District Education Center, with attached Notice of Preparation with attachments: Figure 2-1: Project Location; Figure 2-2: Number of Freight Trains and Their Cars at Various Locations along the Rail Corridor and Public Agency Scoping Meeting Location Map.		08049
07/10/07	NCRA	Notice of CEQA Public Agency Scoping Meeting on North Coast Railroad Authority Russian River Division Freight Rail Project on August 29, 2007 at City of Santa Rosa City Hall, with attached Notice of Preparation with attachments: Figure 2-1: Project Location; Figure 2-2: Number of Freight Trains and Their Cars at Various Locations along the Rail Corridor.	16	08050-08056
07/10/07	NCRA	Notice of CEQA Public Agency Scoping Meeting on North Coast Railroad Authority Russian River Division Freight Rail Project on August 31, 2007 at City of Petaluma City Hall, with attached Notice of Preparation with attachments: Figure 2-1: Project Location; Figure 2-2: Number of Freight Trains and Their Cars at Various Locations along the Rail Corridor and Public Agency Scoping Meeting Location Map	16	08057-08063
07/10/07	NCRA	NCRA Notice of Preparation of an Environmental Impact Report for the North Coast Railroad Authority Russian River Division Freight Rail Project, with attachments: Figure 2-1: Project Location; Figure 2-2: Number of Freight Trains and Their Cars at Various Locations along the Rail Corridor	16	08064-08068
07/10/07	NCRA	North Coast Railroad Authority Russian River Division Freight Rail Project Notice of Preparation and Initial Study Distribution List	16	08069-08070
07/10/07	NCRA	Federal Railroad Administration Emergency Order (EO) Summary	16	08071
07/18/07	Christopher Brown, Mendocino County Air Quality Management District	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08072-08073
07/19/07	Peter Chamberlin, Town of Windsor	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08074-08076
07/25/07 (effective date)	NCRA	NCRA's CTC/TCRP Application and Program Supplement for TRCP Project, fourth allocation for $13,588,000 to upgrade NWP rail line to class 2 and 3 standards and stabilize landslides, with first phase: to result in operable phase of Russian River Division	16	08077-08088

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		extending north from Lombard to Windsor, with geotechnical study with mapping of Canyon, with attachments: Attachment I: Scope of Work; Attachment II: CTC Resolution; Attachment III: Certification of Funds; Attachment IV: Special Conditions		
07/31/07	NCRA	NCRA EIR Scoping Session Meeting (recorded on DVD).	16	08089
07/31/07	Roger Roberts, Marin Conservation League	Comment letter from Roger Roberts, President of Marin Conservation League to Notice of Preparation and Initial Study and after review of documents from NCRA, SMART and NWPR	16	08090-08093
08/03/07	Wayne Goldberg, City of Santa Rosa	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08094-08096
08/04/07	Victoria Brandon, Sierra Club Lake Group, (part of Sierra Club's Redwood Chapter)	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08097
08/08/07	Ron Bendorff, City of Rohnert Park	Comment Letter to the 7/10/07 Notice of Preparation and Initial Study for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08098-08099
08/08/07	Katy Sanchez, Native American Heritage Commission	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08100
08/09/07	David Porter	Comment Letter adding comments made at 7/31/07 NCRA Scoping Session in Novato, re the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08101
08/09/07	Northwestern Pacific Railroad Company	Northwestern Pacific Railroad Company's Verified Notice of Exemption (and transmittal letter), in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC*, Finance Docket No. 35073, Before The Surface Transportation Board	16	08102-08119
08/14/07	Michael Long, U.S. Dept. of Interior	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project, but only for the portion of the project within Mendocino County, as other segments of the Project under jurisdiction of Sacramento Fish and Wildlife Office.	16	08120-08121
08/14/07	Craig	Comment Letter to the 7/10/07 Notice of Preparation for the	16	08122-

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	Tackabery, County of Marin,Dept.of Public Works	North Coast Railroad Authority Russian River Division Freight Rail Project, with flood control, traffic operations and County Airport comments.		08124
08/15/07	Susan Ristow	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08125-08129
08/16/07	Sharon McNamee, County of Marin, Dept. of Parks & Open Space	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08130-08131
08/17/07	Northwestern Pacific Railroad Company	Northwestern Pacific Railroad Company's Certificate of Compliance per 49 CFR sect. 1150.32(b), via letter dated 8/17/07 to Surface Transportation Board, in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* Finance Docket No. 35073, Before The Surface Transportation Board	16	08132
08/21/07	Marsh Sue Lustig, City of Cotati	Comment Letter to the 7/10/07 Notice of Preparation and Initial Study for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08133-08134
08/22/07	Doug Wilson, Sierra Club Marin Group	Comment Letter to the 7/10/07 Initial Study for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08135-08143
08/22/07	Frank Kemper, Dept. of Forestry and Fire Protection	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08144
08/23/07	Rachel Warner, Marin County Community Development Agency	Fax of attached 8/20/07 Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project, with attached: 8/14/07 letter from Craig Tackabery, Department of Public Works; 8/16/07 letter from Sharon McNamee, Marin County Department of Parks and Open Space	16	08145-08156
08/23/07	Tom Berns, Novato Community Hospital/ Sutter Marin	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08157-08158
08/23/07	Atty. Ellison	Comment Letter to the 7/10/07 Notice of Preparation for the	16	08159-

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08/23/07	Frank Kemper, Dept. of Forestry and Fire Protection	Amended/revised comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08168-08169
08/24/07	Surface Transportation Board	Northwestern Pacific Railroad Company – Change in Operators Exemption – Notice of Exemption - North Coast Railroad Authority, Sonoma-Marin Area Transit District and Northwestern Pacific Railway Co., LLC, STB Finance Docket No. 35073, decided 8/16/07; served 8/24/07	16	08170-08171
08/24/07	Betty Miller, CA Dept. of Transportation	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project, with attached Appendix G	16	08172-08174
08/27/07	Andy Peri, Marin County Bicycle Coalition	Comment Letter, sent via e-mail to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08175-08179
08/28/07	Tim Doherty, San Francisco Bay Conservation & Development Commission (BCDC)	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08180-08182
08/29/07	Gus Wolter, Mayor, City of Cloverdale	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08183
08/29/07	Lillian Hames, Sonoma-Marin Area Rail Transit	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08184-08188
08/30/07	Baywood Partners, Inc.	Baywood Partners, Inc.'s Motion, Petition & Request (sent via letter dated 8/28/07, filed 8/30/07) to require NCRA or NWPCO to negotiate with Baywood for reasonable rental charge for use of Baywood property to operate railroad: in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* Finance Docket No. 35073	16	08189-08203
08/30/07	Northwestern	Reply to Baywood Properties, Inc.'s Response to NWPCO's	16	08204-

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	Pacific Railroad Company	Change of Operator Notice of Exemption, in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* Finance Docket No. 35073		08205
08/30/07	Surface Transportation Board	Northwestern Pacific Railroad Company – Change in Operators Exemption – Notice of Exemption - for North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC, STB Finance Docket No. 35073, decided 8/24/07, served 8/30/07	16	08206-08207
08/30/07	Maureen Gaffney, San Francisco Bay Trail	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project, with attached Map of San Francisco Bay Trial Alignment: Marin, Sonoma, Napa	16	08208-08211
08/30/07	Jesse Robertson, CA Dept. of Transportation	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08212
08/30/07	Louis Hagler, MD	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08213
08/30/07	Daniel Keen, City of Novato	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08214-08228
08/31/07	Mendocino Railway	Mendocino Railway's Petition to Stay in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* Finance Docket No. 35073, Before The Surface Transportation Board	16	08229-08266
08/31/07	Daniel Schonbrunn, Transportation Solutions Defense and Education Fund	Comment Letter to the 7/10/07 Notice of Preparation for the North Coast Railroad Authority Russian River Division Freight Rail Project	16	08267-08268
09/04/07	Northwestern Pacific Railroad Company	Northwestern Pacific Railroad Company's Reply in Opposition to the Petition to Stay of Mendocino Railway in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* Finance Docket No. 35073, Before The Surface Transportation Board	16	08269-08276
09/07/07	Chairman,	Surface Transportation Board Decision Denying Mendocino	16	08277-

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	Surface Transportation Board	Railway's Petition for Stay, in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC*, STB Finance Docket No. 35073		08279
10/__/07	Stop NCRA	Printout from "Stop NCRA" website	16	08280
10/01/07	Friends of the Eel River	Friends of the Eel River's Petition to Revoke Exemption of Northwestern Pacific Railroad Company in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC,* STB Finance Docket No. 35073	16	08281-08347
10/15/07	State of CA, Dept. of Fish & Game	2007 Environmental filing fee cash receipt No. _21727 (no. illegible), issued to NCRA for NCRA Russian River Freight Rail Project, county administrative fees.	16	08348-08349
10/19/07	Northwestern Pacific Railroad Company	Northwestern Pacific Railroad Company's Reply in Opposition to the Petition to Revoke of Friends of Eel River in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC*, Finance Docket No. 35073, Before The Surface Transportation Board	16	08350-08356
11/01/07	NCRA	NCRA Contract Documents, Technical Specifications, and Bid Documents, Schellville to Wingo, Railroad Embankment Repairs-Issued for Bid; with attached NCRA Site Plans for Schellville to Wingo Railroad Embankment Repairs	16	08357-08538
02/01/08	Surface Transportation Board	Surface Transportation Board Decision (decided 1/31/08, served 2/1/08), Denying Petition filed by Friends of the Eel River's Petition for Revocation of the Notice of Exemption based on environmental grounds, in re: *Northwestern Pacific Railroad Company - Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District, and Northwestern Pacific Railway Co., LLC*, Finance Docket No. 35073	16	08539-08542
02/08/08 (revised date)	CA Dept. of Transportation	Master Agreement, State Funded Transit Projects between State of CA, Department of Transportation, Division of Mass Transportation and "Recipient" North Coast Rail Authority (agreement originally effective 2/21/01), with Attachments: CTC Resolution #G-91-2; and NCRA Resolution #2010-1	16	08543-08570
02/13/08	NCRA	NCRA's CTC/TCRP Application and Program Supplement/Amendment for TRCP Project, fifth allocation for $1,561,000 to upgrade to FRA Class 2 and 3 and for long-term stabilization of landslides; final phase of project to be completed to result in operable phase of Russian River Division from Lombard to Windsor, with attachments: Attachment I: Scope of	16	08571-08578

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		Work; Attachment II: CTC Resolution; Attachment III: Certification of Funds; Attachment IV: Special Conditions		
02/14/08	NCRA	NCRA's 2nd Amended Traffic Congestion Relief Program (TCRP) Application for $31,000,000: changed project name from upgrading to restoring Russian River Division to FRA Class 2 and 3, and changed Stabilization to: Geotechnical Study and Mapping of Canyon Section; changed Project purpose from upgrading NWP rail line to restoring it; changed requirement that EIS would be required as no federal funds would be utilized, just local funds and other TCRP funds, with rehabilitation projects extending from Lombard to Windsor, with geotechnical study and mapping in the Canyon	16	08579-08590
PART H(2): REMAINDER OF THE RECORD				
2/18/08	NCRA	Respondent North Coast Railroad Authority's Fourth Amended Designation and Index to Administrative Record and to Appendix in *City of Novato v. North Coast Railroad Authority, et al.*, Marin County Superior Court, Case No. CV 074645: **VOLUME I** 1. Capital Assessment Report, NWP prepared by HNTB/ Wildan dated July 2002 (1-270); 2. Updated Capital Assessment Report, Russian River Division, Lombard to Willits, prepared by HNTB/Wildan, dated November 2005, presented in text format by HNTB/Wildan (271-390); **VOLUME II** 3. Russian River Division Rehabilitation Program (Lombard to Willits) prepared by HNTB, dated November 4, 2005 (391-606); 4. Initial Study NCRA Russian River Division Freight Rail Project, dated May 2007, prepared by Kleinfelder (607-660); **VOLUME III** **Project 32.4 Emergency Repairs-Declared Storm Disaster December 31, 2005** 5. Agenda, Board of Directors Meeting, Wednesday, March 8, 2006 (661-662); 6. Final Approved Minutes, Board of Directors Meeting, March 8, 2006 (663-665); 7. Traffic Congestion Relief Program Application Project 32.4 (666-678); 8. North Coast Railroad Authority Strategic Plan and	17	08591-08601

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		Progress Report dated February 23, 2006 (679-696); 9. Notice of Exemption dated August 22, 2006 for Emergency Levee/Roadbed and Debris Removal Repairs, filed in Marin County on September 8, 2006 (697); 10. NCRA Allocation Request Traffic Congestion Relief Program-NCRA Urgent Railroad Repairs (698-738): a. 4-27-07 $390,000 PA/ED; $261,000 PS&E; b. 10-12-06 $1,475,000-levee repair-San Antonio Creek; c. 3-15-07 $690,000 Revetment repairs, King Salmon, Humboldt County d. 12-13-07 CTC Meeting $2,084,000 Schellville levee repair and track work; 11. Notice of Exemption for Railroad Repairs MilePost 1.25 to 13.5 dated October 5, 2007 (739-740); 12. Agenda NCRA Board of Directors Meeting June 13, 2007 (741-743); 13. Staff Report re NCRA/Fish & Game MOU, Mitch Stogner NCRA Board of Directors June 13, 2007 (744); 14. NCRA Board of Directors Minutes June 13, 2007 (745-750); 15. Agreement between NCRA and Department of Fish and Game, Agreement No. P0630022 (751-765); 16. Agenda NCRA Board of Directors Meeting, September 12, 2007 (1559-1561); 17. Minutes NCRA Board Meeting, September 12, 2007 (772-777); 18. Letter from Patrick Casey to Mitch Stogner dated September 11, 2007 re Bid Received for King Salmon Revetment Repair (778-781); 19. Letter from Mitch Stogner to Scott Farley of Kernen Construction, Award of Contract Revetment Repair (782-783); 20. Construction Agreement dated August 31, 2007 NCRA – Gilotti Brothers/Cooper Crane JV and related contract documents (784-829); 21. Minutes NCRA Borad of Directors Meeting October 11, 2006 (830-835); 22. Construction Agreement NCRA – Gilotti Brothers, Inc. for urgent repairs, track bed repairs, levee repairs, debris removal, and grade crossing replacement, dated October 25, 2006 (836-864);		

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		Project 32.9 – Upgrade to FRA Class II and III and Stabilization 23. Agenda, NCRA Board of Directors Meeting August 16, 2006 (864-868); 24. Minutes, NCRA Board of Directors Meeting August 16, 2006 (869-873); 25. Traffic Congestion Relief Program Application for upgrade to FRA Class 2 prepared for California Transportation Commission meeting November 8, 2006 (874-885); 26. Notice of Exemption, for Russian River Division, Maintenance and Repairs MPM 1.0 to MPM 62.9 dated February 4, 2007 (886-905); 27. NCRA Board of Directors Minutes of February 14, 2007 (906-910); 28. Amended Notice of Exemption for Russian River Division Maintenance and Repairs dated June 4, 2007 (911-942); 29. Allocation Request to California Transportation Commission dated January 29, 2007, Traffic Congestion Relief Program and related funding documents (943-958); 30. Letter from HNTB Project Manager Pat Casey to Stogner dated June 28, 2007 transmitting Mass Electric Construction bid dated June 18, 2007 (959-962); 31. NCRA – Mass Electric Construction Agreement, dated July 7, 2007 (963-968); 32. NCRA Board of Directors Meeting Agenda July 11, 2007 (969-970); 33. NCRA Board of Directors Meeting Minutes July 11, 2007 (971-975); **<u>VOLUME IV</u>** **Other Documents** 34. Notice of Preparation of Environmental Impact Report for the North Coast Railroad Authority, Russian River Division Freight Rail Project, dated July 10, 2007 (976-979); 35. Comments of City of Novato on Preparation of EIR for Russian River Division Freight Rail Project dated August 30, 2007 (980-994); 36. Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease between North Coast Railroad Authority and Northwestern Pacific Railroad Company ("NWP Co."), September 2006 (995-1056);		

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		37. Bridge Financing and Security Agreement between NCRA and NWP Co. dated September 12, 2007 (1057-1062); 38. Federal Railroad Administration Emergency Order No. 21, dated published December 9. 1998 (1063-1067); 39. Notice of Partial Relief from Emergency Order No. 21 issued February 1, 2001 by the Federal Railroad Administration (1068-1073); 40. Surface Transportation Board Finance Docket No. 35073, Notice of Filing served August 24, 2007 (1074-1076); 41. Business plan for the NWP Co., October 25, 2006 (1077-1147); 42. Administrative Final Programmatic Environmental Assessment, South End Alternative, issued March 2004 (1148-1237); 43. Southern Pacific Railroad Region Timetable dated November 1, 1985 (portions relating to Northwestern Pacific Railroad) (1238-1241); 44. Northwestern Pacific Railroad Time Table No. 1, Effective Monday July 22, 1996 (1242-1245); **VOLUME V** 45. California Northern Lease Agreement with Southern Pacific Railroad dated August 27, 1993 for Northwestern Pacific Line (1246-1339); 46. NCRA Administration and Contracting Policy Manual as excerpted in Petitioner's "Partial Record" (1340-1377); 47. NCRA August 7, 2007 Notice of Planned Activities Upgrading the Russian River Division (1378-1392); 48. Order Regarding Purchaser of Railroad, U.S. Bankruptcy Court, Case No. 1-86-01976 dated November 10, 1991 (1393-1397); 49. California Western Complaint to the Surface Transportation Board dated May 22, 2003 (1398-1404); 50. All agendas and minutes of the Board of Directors for North Coast Railroad Authority for the years 2006 through September 2007 (1405-1568); **APPENDIX – VOLUME VI** 51. CTC Letter to Stogner April 21, 2006 (1569-1570); 52. Stogner Memos to NCRA Board (1571-1581); 53. Proposed Negative Declaration re Lease Agreement with NWP Co., cover letter 11/27/2006 (1582-1605); 54. Stogner Memos to NCRA Board (1606-1634); 55. Activity Reports (1635-1668);		

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		56. Hames Memo to SMART Board 7/18/2007 (1669-1671); 57. NCRA Strategic Plan Update 2/15/2007 (1672-1676); 58. CalTrans Program Supplement/Amendment 12/18/2006 (1677-1686); 59. Notice of Exemption 6/4/2007 (1687-1732); 60. Lucero to Stogner email 5/24/07 (1733); 61. NCRA Mitigated Negative Declaration of Environmental Impact (1734-1749); 62. Principles of Agreement 4/30/1996 (1750-1760); 63. Request for Proposed 1/17/2006 (1761-1778); 64. NCRA Resolution No. 2006-02 (1779-1783); 65. NCRA Board of Directors Minutes (1784-1792); 66. Printouts from NCRA (1793-1795); 67. NWP Co. Proposal for Operator Service of NWP Line 3/31/2006 (1796-1834); 68. TCRP Application Amendment Approval March 14-15-2007 CTC Meeting (1835-1858); 69. NCRA-Mass Electric Contract (1859-1873); 70. Mitigation Measures Table Updated Capital Assessment Report – Lombard to Willits (1874-1881); **APPENDIX – VOLUME VII** 71. Technical Advisory Committee Draft Final The Long Term Financial Feasibility of the Northwestern Pacific Railroad (July 2002) (1882-2099); 72. Notice of Exemption 10/5/2007 (2100); 73. Operating Agreement for Northwestern Pacific Line by and between NWPRA and NCRA dated August 19, 1996 (2101-2201); 74. First Amendment to Operating Agreement for Northwestern Pacific Line by and between NWPRA and NCRA dated February 11, 1998 (2202-2204); **APPENDIX – VOLUME VIII** 75. The Long Term Financial and Economic Feasibility of the NWP-Final (2205-2328); 76. Caltrans Master Agreement – State Funded Transit Projects (2329-2380); 77. Walter ltr [to] Neary and Stogner re Joint Application dated 1-8-08 (2380-2381); 78. Neary ltr [to] Walter re reply to 1/8/08 letter 1-9-08 (2382); 79. NCRA Draft Agenda 1-9-08 (2383-2384); 80. Hemphill ltr Barna re joint application request 1-11-08 (2385-2386);		

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		81. 2008 Project Programming Request (2387-2391); 82. California's Northern Freight Corridor Restoration Project (2392-2402); 83. NCRA Draft Agenda 12-21-07 (2403-2404); 84. Schellville to Wingo Bid 12-19-07 (2405-2408); 85. NCRA Agenda 11-7-07 & 11-1-07 (2409-2418); 86. Timber Bridge Repairs Bid (2419-2422); 87. December 12/13, 2007 TCRP Allocation (2423-2443); 88. NCRA Agenda 11-1-07 (2444-2446); 89. NCRA Draft Minutes 10-17-07 (2447-2449); 90. Railroad Grade Crossing Warning System Repair and Replacement Bid (2450-2454); 91. Stogner memo NCRA Board re Committee Assignments 11-1-07 (2455); 92. NCRA Board of Directors meeting Minutes 11-19-2003 (2456-2480); 93. Notice of Exemption FRA Emergency Order 21 Compliance (2481-2487); 94. NCRA September 2006 Strategic Plan 9-15-06 (2488-2492); 95. NCRA Management and Funding Plan for the Rehabilitation of the NWP Line (2493-2508); 96. Response to Planning, Engineering and Project Management RFPs (2509-2527); 97. Proposition 1B Funding Application Correspondence (2528-2554); 98. Resolution No. 2006-02 (2555); **APPENDIX – VOLUME IX** 99. California Governor Proclamation of Emergency (2556); 100. Summary of 2005-06 Storm Damage FEMA Resubmittal 11/4/2006 (2557-2569); 101. California Dept. Fish and Game Application for Dept. Army Permit 8/6/2007 (2570-2573); 102. NCRA Staff Report re Fish & Game MOU 6/13/2007 (2574-2589); 103. Schellville to Wingo Railroad Embankment Repairs, Bidding and Contracting Requirements, December 2007 (2590-2823); 104. NCRA September 2006 Strategic Plan, September 15, 2006 (2824-2828); 105. NCRA TCRP Application – 32.9 (2829-2903); 106. Partial Transcript of Proceedings, City of Novato, Special City Council Meeting re Proposed Resumption of Freight Train Service 7/19/2007 (2904-2918);		

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		107. Master Agreement with California Dept. of Transportation (2919-2945); 108. California Transportation Commission Minutes November 8-9, 2006 (2946-2965); 109. Dept. [of] Transportation Staff Report for November 8-9, 2006 Meeting (2966-2972); 110. Program Supplement/Amendment (2973-2982); **APPENDIX – VOLUME XI** 111. Consent Decree entered July 14, 1999 in *State of California v. NCRA* Mendocino County Superior Court, Case No. CV80240 (2983-3008); 112. Construction Agreement between Ghilotti Bros/Cooper Crane JV and NCRA (Contract T-3) (3009-3111); 113. Photographs of Construction Activities (3112-3117); 114. First Portion Contract Documents, Technical Specifications and Bid Documents-Russian River Division, Lombard to Willits – Timber Bridge Repairs, Contract T-3 (3118-3230); **APPENDIX – VOLUME XII** 115. [Second Portion] Contract Documents, Technical Specifications and Bid Documents – Russian River Division, Lombard to Willits – Timber Bridge Repairs, Contract T-3 (3230-3443); 116. SMART Indemnity Request re storm damage, April 6, 2006 (3444-3454).		
PART H(3): REMAINDER OF THE RECORD				
02/26/08	HNTB Companies	Foss Creek Storm Damage NCRA Conceptual Repair Memorandum, with Exhibits: Vicinity and Site Maps, Diagram of Foss Creek and Tributaries 2006., Ex. A: Foss Creek Washout Existing Condition Diagram; Ex. B: Proposed Foss Creek Repair Diagram; Exhibit C: Section Proposed Foss Creek Diagram	17	08602-08609
02/26/08	ARC	Bakers Creek Storm Damage NCRA Conceptual Repair Memorandum, with Location Map of Bakers Creek Washout; Exhibit A: Aerial Map of Bakers Creek Washout; Exhibit B: Plan for Bakers Creek; Exhibit C: Section Embankment Repair Diagram; Exhibit D: Repair Diagram	17	08610-08617
3/6/08	SMART	SMART Supplemental EIR as passenger rail service was modified in 2008 to add weekend rail service, etc., with appendices: Appendix 1: NOP and Scoping Comments Summary;	17	08618-08849

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		Appendix 2: Transportation Technical Issues; Appendix 3: Biological Resources Species Lists; Preliminary Determination of Waters of the United States for the Hamiltion Station Site (Garcia and Associates)		
08/12/08	SMART	Comment letter from Lillian Hames of SMART on NCRA's Draft Trail Guidelines	17	08850-08851
08/22/08	Allen Tacy, Brandywine Station	Comment letter on NCRA's Draft Trail Guidelines	17	08852
10/02/08	Christine Culver, Sonoma County Bicycle Coalition	Comment letter on NCRA's Draft Trail Guidelines	17	08853-08854
10/02/08	Chris Rail, Green Wheels	Comment letter on NCRA's Draft Trail Guidelines	17	08855-08857
10/02/08	Jennifer Rice, Redwood Community Action Agency	Comment letter on NCRA's Draft Trail Guidelines	17	08858-08859
10/02/08	Deb Hubsmith, Andy Peri, Marin County Bicycle Coalition	Comment letter on NCRA's Draft Trail Guidelines	17	08860-08862
10/07/08	Maureen Gaffney, Bay Trail Project	Comment letter on NCRA's Draft Trail Guidelines	17	08863-08864
10/08/08	Voight Family Sculpture Foundation	Comment letter on NCRA's Draft Trail Guidelines	17	08865
10/17/08	Cathy Haagen-Smit, International Mountain Biking Association	Comment letter on NCRA's Draft Trail Guidelines	17	08866
10/21/08	Jill Geist, Humboldt County Board of Supervisors	Comment letter on NCRA's Draft Trail Guidelines	17	08867-08871
10/21/08	James Rogers	Comment e-mail on NCRA's Draft Trail Guidelines	17	08872

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10/23/08	Michael Hackett, City of Arcata	Comment letter on NCRA's Draft Trail Guidelines	17	08873-08875
10/24/08	Alan Falleri, City of Willits	Comment letter on NCRA's Draft Trail Guidelines	17	08876-08879
10/27/08	Willard Richards, Sonoma County Transportation & Land Use Coalition	Comment letter on NCRA's Draft Trail Guidelines, with attached 10/27/08 transmittal letter requesting that issues in comment letter be placed on hold until after 11/4/08 election	17	08880-08881
10/29/08	Mark Leno, Assemblyman, 13th District	Comment letter on NCRA's Draft Trail Guidelines	17	08882-08883
10/29/08	Patricia Berg, Assembly-woman, et al.	Comment letter on NCRA's Draft Trail Guidelines	17	08884-08887
10/29/08	Patricia Wiggins, Senator, 2nd Dist., CA State Senate	Comment letter on NCRA's Draft Trail Guidelines	17	08888
10/30/08	Michael Kirn, City of Healdsburg	Comment letter on NCRA's Draft Trail Guidelines	17	08889-08893
10/30/08	Phillip J. Dow, Mendocino Council of Governments	Comment letter on NCRA's Draft Trail Guidelines	17	08894-08895
10/30/08	Linda Thomas, Coastal Commission	E-mail from Linda Thomas, Coastal Commission to NCRA, with attached letter dated 10/30/08 requesting extension of comment period on NCRA Draft Trail Guidelines, with NCRA's e-mail response (part of e-mail string) approving extension	17	08896-08898
11/03/08	Superior Court	Consent Decree between City of Novato, North Coast Railroad Authority and Northwestern Pacific Railroad Company re *City of Novato v. North Coast Railroad Authority, et al*, Case No. CV 074645, Marin County Superior Court	17	08899-08951
11/04/08	Neil Davis, Ukiah Valley Trail Group	Comment letter on NCRA's Draft Trail Guidelines	17	08952-08953
11/25/08	Allen Tacy,	Transmittal and comment letter with photos on NCRA's Draft	17	08954-

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	Brandywine Station	Trail Guidelines		08956
12/09/08	Karen Diemer, City of Arcata, et al.	Supplemental comment letter on NCRA's Draft Trail Guidelines, with attached: Rails-with-Trails: A Preliminary Assessment of Safety and Grade Crossings, prepared by Rails to Trails Conservancy, dated Nov. 2005	17	08957-08996
12/15/08	Robert Merrill, California Coastal Commission	Comment letter on NCRA's Draft Trail Guidelines	17	08997-09000
12/15/08	Rex Jackman, Department of Transportation	Comment letter on NCRA's Draft Trail Guidelines	17	09001-09002
12/15/08	P-A WinterSun	Comment letter on NCRA's Draft Trail Guidelines	17	09003
02/11/09	Mike Kerns, Sonoma County Transportation Authority	Comment letter on NCRA's Draft Trail Guidelines	17	09004-09005
02/26/09	Rose Fua, State of CA, Dept. of Justice	Letter from Rose Fua to Mitch Stogner re Compliance with Consent Decree, and attaching exhibits 1-4.	17	09006-09028
03/09/09	NCRA	Notice that Draft Environmental Impact Report for the North Coast Railroad Authority Project has been issued for public comments and advises: (a) of a public meeting on DEIR set for 4/15/09; (b) that written comments may be submitted to NCRA at address provided.	17	09029
03/13/09	NCRA	Notice by NCRA to State Clearinghouse that comment period has been extended for North Coast Railroad Authority Russian River Division Freight Rail Project Draft Environmental Impact Report – period extended to 5:00 p.m. May 1, 2009, to provide additional review time and allow for public comments from additional public meting set for April 16, 2009 and already scheduled public meeting of April 15, 2009, with attached sign-in sheets from both April 15 and 16, 2009 public meetings.	17	09030
03/20/09	Allen Tacy	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09031
04/07/09	California Assembly Member Jared Huffman	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09032

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04/08/09	Tim Gonzalez, Sonoma County Bicycle & Pedestrian Advisory Committee	Comment letter on NCRA's Draft Trail Guidelines	17	09033
04/13/09	City of Fort Bragg	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09034-09037
04/16/09	Vanessa Vasquez, Californians for Alternatives to Toxics	E-mail of Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09038
04/16/09	Susan Gorin, City of Santa Rosa	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09039
04/16/09	NCRA	Notice from NCRA to Distribution List that DEIR was filed with Governor's Office of Planning and Research on March 9, 2009 and document available online at NCRA's website; and that due to public comments received, comment period extended to 5:00 p.m. May 29, 2009.	17	09040-09041
04/18/09	James Karr	E-mail Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09042
04/18/09	Christine Wright-Shacklett	E-mail transmittal with Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09043-09046
04/20/09	City of Ukiah	Comment letter on NCRA's Draft Trail Guidelines	17	09047-09048
04/20/09	David Stewart, California Public Utilities Commission	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09049-09051
04/23/09	J. Matthew Mullan, Town of Windsor	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09052
04/29/09	Christopher Brown, Mendocino County Air	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project, with 4/30/09 e-mail transmittal	17	09053-09054

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05/04/09	Pamela Torliatt, City of Petaluma	Letter supporting position in letter dated 4/16/09 from Susan Gorin of Santa Rosa, stating opposition to inclusion of Trail with Rail Guidelines in DEIR and FEIR for project	17	09055
05/06/09	Sarah Glade Gurney, City of Sebastopol	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09056
05/07/09	Rose Fua, California Department of Justice	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09057-09064
05/11/09	Marjie Pettus, City of Healdsburg	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09065-09068
05/12/09	Scott Gergus, California Regional Water Quality Control Board North Coast Region	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09069-09071
05/12/09	Nina Regor, City of Cloverdale	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09072
05/14/09	Peter Chamberlin, Town of Windsor	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09073-09076
05/18/09	Allen Tacy	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09077-09078
05/26/09	Lillian Hames, Sonoma-Marin Area Rail Transit	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09079-09099
05/27/09	Patty Clary, Californians for Alternatives to Toxics	E-mail string between Patty Clary, of Californians for Alternatives to Toxics re DEIR citations to NCRA and forwarded to NCRA's consultants	17	09100-09101
05/27/09	Elena Belsky, Sierra Club Marin Group	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09102-09106

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05/27/09	Tim Haddad, Marin County Community Development Agency	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09107-09111
05/27/09	Ron Bendorff, City of Rohnert Park	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09112-09114
05/28/09	Carolos Quilez, Friends of Small Places	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	17	09115-09118
05/28/09	Atty. Kevin P. Bundy of Shute, Mihaly & Weinberger, Counsel for Friends of the Eel River	Comment Letter Re: SCH #2007072052 - North Coast Railroad Authority Russian River Division Freight Rail Project Draft Environmental Impact Report **Exhibits**: A. Mitch Stogner, Memorandum to NCRA Board of Directors Re: Agenda Item E.3 – ISTEA and Stimulus Funding (April 8, 2009) B. North Coast Railroad Authority Board of Directors, Regular Board Meeting Minutes (Wednesday, March 11, 2009) C. Consent Decree, City of Novato v. North Coast Railroad Authority, Marin County Superior Court No. CV 074645 (filed Nov. 3, 2008) D. U.S. Dept. of Transportation, Federal Railroad Administration, Emergency Order No. 21: Northwestern Pacific Railroad: Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage from Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California, 63 Fed. Reg. 67,976 (Dec. 9, 1988) E. Friends of the Eel River, Comment Letter to David Anderson, NCRA, Re: Notice of Preparation of Environmental Impact Report for the NCRA Russian River division (Aug. 23, 2007) F. NCRA Strategic Plan Update (Feb. 15, 2007) G. North Coast Railroad Authority and Northwestern Pacific Railroad Company, Agreement for the Resurrection of	18	09119-09683

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		with an Emphasis on the Russian River, Presentation to State Water Resources Control Board (April 6, 2009) S. Richard Macedo, California Department of Fish an Game, Russian River Salmonids: Overview/Life History/Current Status, Presentation to State Water Resources Control Board (April 6, 2009) (excerpts) T. Pacific States Marine Fisheries Commission, Coho Salmon Fact Sheet, available at http://www.psmfc.org/habitat/edu_coho_facts.html (last visited May 28, 2009) U. Rose Fua, Deputy Attorney General, Letter to Mitch Stogner, NCRA, Re: People of the State of Calif., ex rel. Robert Hight, Director, Calif. Dept. of Fish and Game, et al. v. North Coast Railroad Authority, et al. (December 27, 2007) V. Sonoma-Marin Area Rail Transit District, Draft Comment Letter on the North coast Railroad Authority (NCRA) Draft Environmental Impact Report (DEIR) (May 22, 2009) W. Sonoma County Planning Commission Agenda (May 21, 2009)		
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05/29/09	Marsha Sue Lustig, City of Cotati	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	18	09688-09690
5/29/09	Luis Rivera, California Regional Water Quality Control Board, North Coast Region	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	18	09691-09697
05/29/09	Scott Greacen, Environmental Protection Information Center (EPIC)	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	18	09698-09699

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05/29/09	Atty. Kevin P. Bundy, Shute, Mihaly & Weinberger, Counsel for Friends of the Eel River	Supplemental Comment Letter to the 5-28-09 Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project, with attached: Memorandum from Janice Goebel, North Coast Regional Water Quality Control Board, Re: Field Test of Proposed Herbicide Spray Operations (June 28, 2007)	18	09700-09702
05/29/09	Patty Clary, Californians for Alternative to Toxics	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project **Attachments**: 1. Segawa, Ando, Gana, Goh, Environmental Hazards Assessment Program, Dept. of Pesticide Regulation; Lee, Tran, White and Hsu, Center for Analytical Chemistry, CA Dept. of Food and Agriculture, *Dissipation and Off-site Movement of Forestry Herbicides in Plants of Importance to California Tribes* 2. Diagram (authors unnamed), *Counties Included in the Stipulated Injunction and Order (10/20/2006) for the Protection of California Red-legged Frog*; 3. (Unknown authors), NCRA DEIR, Questions Raised; 4. Letter , originally signed 12/1/04, from Arthur-Jean B. Williams, Chief Environmental Field Branch, U.S. EPA to Laurie Allen, Acting Dir., Office of Protected Resources, National Marine Fisheries Service requesting initiation of ESA section 7(a)(2) consultation; 5. (Unknown authors), "Protection of California Red-legged Frog from Pesticides"; 6. (Unknown authors), Untitled document discussing Children's Vulnerability to Effects of Pesticides, etc.; 7. U.S. EPA October 1998, Reregistration, Eligibility Decision (RED), Triclopyr; 8. Appeal letter dated 4/18/05 from Patricia Clary, Staff Atty. Julia Olson, Peter Harrison, Forestry and Public Lands Associate to Steven Eubanks, USDA Forest Service, appealing 2/23/05 Cottonwood Fire Vegetation Management Project FEIS and ROD; 9. Single CD included with letter is missing.	19	09703-10045
05/29/09	Phillip Dow, Mendocino Council of Governments	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	19	10046-10047
05/29/09	Nona Dennis, Marin	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project	19	10048-10052

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06/02/09	Terry Roberts, California Governor's Office of Planning & Research, State Clearinghouse	Comment Letter to the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project – submitted Draft EIR to selected State agencies for review, and included list of those reviewing agencies on Document Details Report	19	10063-10065
08/12/09	NCRA	NCRA- Policy and Procedures Manual, adopted 5/13/09, submitted for amendment 8/12/09	19	10066-10079
11/09/09	NCRA	Notice of Completion & Environmental Document Transmittal to State Clearinghouse by NCRA of Draft EIR for North Coast Railroad Authority Russian River Division Freight Rail Project: DEIR addresses impacts from resumption of railroad operations on existing section of NWP track from Willits (Mendocino County) to Lombard (Napa County), routine maintenance and repair of the rail line during operations, etc.; comment period to run from 11/10/09 to 12/31/09	19	10080-10081
11/10/09	NCRA	Notice/Letter addressed "To All Interested Parties" providing notification that Revised Draft Environmental Impact Report for North Coast Railroad Authority Project recirculated/issued for public comments.	19	10082-10083
11/10/09	NCRA	Notice/Letter addressed "To All Interested Parties" providing notification that Revised Draft Environmental Impact Report for the North Coast Railroad Authority Project recirculated/issued for public comments. This document stamped posted November 12, 2009 until December 12, 2009.	19	10084-10085
11/10/09	NCRA	Notice/Letter addressed "To All Interested Parties" providing notification that Revised Draft Environmental Impact Report for the North Coast Railroad Authority Project recirculated/issued for public comments. This document file stamped November 12, 2009.	19	10086-10087
11/17/09	Jessica Puccinelli	E-mail string between Jessica Puccinelli, and Heather Lindsteadt and Mitch Stogner of NCRA: re availability of Draft EIR for	19	10088-10089

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		public comments and ending date of comment period		
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12/14/09	NCRA	Notice/Letter to State Clearinghouse that NCRA extended comment period for recirculated Draft EIR to January 14, 2010; provided information on where to send any comments.	19	10091
12/21/09	Scott Morgan, State of California, Governor's OPR, State Clearinghouse and Planning Unit ("OPR")	Memorandum from Scott Morgan, Acting Director of OPR to Scott Morgan, Acting Director: advised that NCRA extending review period for the North Coast Railroad Authority Russian River Division Freight Rail Project to January 14, 2010 to accommodate review process, with attached NCRA's Notice of Completion & Environmental Document Transmittal form indicating extension of comment period to January 14, 2010.	19	10092-10093
01/12/10	Atty. Ellison Folk, Shute, Mihaly & Weinberger, Counsel for Friends of the Eel River	Comment Letter Re: SCH #2007072052 – North Coast Railroad Authority Russian River Division Freight Rail Project Draft Environmental Impact Report, with the attachments below: **Attachments**: (See Attachments to FOER's 5/28/09 Comment Letter, AR 9148-9683) A. Mitch Stogner, Memorandum to NCRA Board of Directors Re: Agenda Item E.3 – ISTEA and Stimulus Funding (April 8, 2009) [Dup. of Ex. A to FOER's 5/28/09 Comment Ltr].: B. North Coast Railroad Authority Board of Directors, Regular Board Meeting Minutes (Wednesday, March 11, 2009) [Dup. of Ex. B to FOER's 5/28/09 Comment Ltr.] C. Consent Decree, City of Novato v. North Coast Railroad Authority, Marin County Superior Court No. CV 074645 (filed Nov. 3, 2008) [Dup. of Ex. C to FOER's 5/28/09 Comment Ltr.] D. U.S. Dept. of Transportation, Federal Railroad Administration, Emergency Order No. 21: Northwestern Pacific Railroad: Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage from Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California, 63 Fed. Reg. 67,976 (Dec. 9, 1988) [Dup. of Ex. D to FOER's 5/28/09 Comment Ltr] E. Friends of the Eel River, Comment Letter to David	20	10094-10549

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		O. California Air Resources Board, Air Quality Monitoring Data Availability Table 1 (excerpts), available at http://www.arb.ca.gov/aqd/netrpt/table1.pdf (last visited May 28, 2009) [Dup. of Ex. O to FOER's 5/28/09 Comment Ltr.] P. Sonoma-Marin Area Rail Transit District, Sonoma-Marin Area Rail Transit Project Final Supplemental Environmental Impact Report, Chapter C.6: Revised Cumulative Impacts (July 2008) (including Chapter C.6 of Draft Supplemental Environmental Impact Report, March 2008) [Dup. of Ex. P to FOER's 5/28/09 Comment Ltr] Q. Bay Area Air Quality Management District, BAAQMD CEQA Guidelines (Dec. 1999) (excerpts) [Dup. of Ex. Q to FOER's 5/28/09 Comment Ltr.] R. David Hines, et al, National Marine fisheries Service, Scope of Potential Frost Protection Impacts on Salmonids, with an Emphasis on the Russian River, Presentation to State Water Resources Control Board (April 6, 2009) [Dup. of Ex. R to FOER's 5/28/09 Comment Ltr.] S. Richard Macedo, California Department of Fish an Game, Russian River Salmonids: Overview/Life History/Current Status, Presentation to State Water Resources Control Board (April 6, 2009) (excerpts) [Dup. of Ex. "**U**" to FOER's 5/28/09 Comment Ltr.] T. Pacific States Marine Fisheries Commission, Coho Salmon Fact Sheet, available at http://www.psmfc.org/habitat/edu_coho_facts.html last visited May 28, 2009) [Dup. of Ex. "**W"** to FOER's 5/28/09 Comment Ltr.] U. Comments of Friends of Eel River on SCH #2007072052 – North Coast Railroad Authority Russian River Division Freight Rail Project Draft Environmental Impact Report, Dated May 28, 2009 [Dup. of FOER's 5/28/09 Comment Ltr (without exhibits): see AR 09119-09145.] V. Sonoma-Marin Area Rail Transit District, Draft Comment Letter on the North coast Railroad Authority (NCRA) Draft Environmental Impact Report (DEIR) (May 22, 2009) [Dup. of Ex. "**V**" to FOER's 5/28/09 Comment Ltr.]		

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01/14/10	Patricia Clary, Californians for Alternatives to Toxics	Transmittal letter to North Coast Railroad Authority on the Russian River Division Freight Rail Project Draft Environmental Impact Report **Attachments** 1. Reference List/Hyperlinks to data in CATS' 1/14/10 comment letter (10 pgs.); and 2. Five CDs submitted with CATS' 1/14/10 Comment letter (Unknown authors), NCRA (bate-stamped with one number per CD).	20	10560-10575
01/14/10	Patricia Clary, Californians for Alternatives to Toxics	Transmittal e-mail, with attached 01/11/10 comment letter to North Coast Railroad Authority on the Russian River Division Freight Rail Project Draft Environmental Impact Report	20	10576-10618
01/19/10	Scott Morgan, State of California, Governor's OPR, State Clearinghouse and Planning Unit ("OPR")	Letter from Scott Morgan, OPR to Mitch Stogner, NCRA listing the State agencies that reviewed the Draft EIR for the North Coast Railroad Authority Russian River Division Freight Rail Project; noting review period closed 1/14/10 and noting comments received	20	10619-10621
02/__/10	NCRA	North Coast Railroad Authority Administration and Contracting Policy Manual, Excerpt of Section 1400, Implementation of California Environmental Quality Act	20	10622-10643
11/11/10	Northwestern Pacific Railroad Company & NCRA	Joint letter request by Northwestern Pacific Railroad Company and NCRA to FRA for partial relief from FRA Emergency Order No. 21	20	10644-10676
01/24/11	Chris Weston	E-mail by Chris Weston to Bernard Meyers with proposal re rail banking	20	10677-10685
03/01/11	NCRA	License Agreement between NCRA and Michael and Deborah Bailey, wherein NCRA grants to Baileys a license to utilize property of NCRA as described in attached exhibits, etc.	20	10686-10690
04/13/11	NCRA	NCRA Draft Resolution re rail banking	20	10691-10693
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05/11/11	NCRA	Notice of Completion & Environmental Document Transmittal from NCRA to State Clearinghouse re: North Coast Railroad Authority Russian River Division Freight Rail Project Draft EIR, indicating posting done from 11/10/09 to 1/14/10.	20	10697-10699
05/11/11	NCRA	Notice of Availability of Final Environmental Impact Report for the North Coast Railroad Authority Russian River Division Freight Rail Project, stamped, posted 5-25/11 to 6/24/11 (re Mendocino County)	20	10700-10701
05/11/11	NCRA	Notice of Availability of Final Environmental Impact Report for the North Coast Railroad Authority Russian River Division Freight Rail Project, stamped, posted 5/12/11 to 6/11/11, posted by County Clerk (re Sonoma County)	20	10702-10703
05/11/11	NCRA	Notice of Availability of Final Environmental Impact Report for the North Coast Railroad Authority Russian River Division Freight Rail Project, filed 5/13/11 and stamped, posted through 7/5/11 (re Humboldt County)	20	10704-10705
05/12/11	Kleinfelder	Kleinfelder Environmental Site Assessment, Willits Former Railroad Maintenance and Fueling Yard, Willits, California	21	10706-10752
05/12/11	Kleinfelder	Kleinfelder Environmental Site Assessment, Willits Former Railroad Maintenance and Fueling Yard, Willits, California, Appendix A, with Sanborn Maps: Figures A1-A14	21	10753-10766
05/12/11	Kleinfelder	Kleinfelder Environmental Site Assessment, Willits Former Railroad Maintenance and Fueling Yard, Willits, California, Appendix B, with Site Photos (Photos Functional Areas 1-4): Figures B1-B40.	21	10767-10807
05/12/11	Kleinfelder	Kleinfelder Environmental Site Assessment, Willits Former Railroad Maintenance and Fueling Yard, Willits, California, Appendix C, with Soil Sampling Data Charts, Figures C1a-C1f, C2a-C2b, C3-C4, C5a-C5b, C6, C7a-C7b	21	10808-10822
05/12/11	Kleinfelder	Kleinfelder Environmental Site Assessment, Willits Former Railroad Maintenance and Fueling Yard, Willits, California, with Site Vicinity Maps, Plate 1, Figures 2-7	21	10823-10829
06/01/11	NCRA	Notice of Availability of Addendum to Final Environmental Impact Report for the North Coast Railroad Authority Russian River Division Freight Rail Project, stamped filed 6/20/11 (re Humboldt County)	21	10830
06/01/11	NCRA	Notice of Availability of Addendum to Final Environmental Impact Report for the North Coast Railroad Authority Russian	21	10831

Date	Author	Description/Title	Vol.	Page
		River Division Freight Rail Project, stamped posted 6/2/11 to 7/2/11, with stamp by County Clerk (re Sonoma County)		
06/13/11	Bradley Erskine, Kleinfelder	Kleinfelder transmittal letter submitting Draft Site Characterization Plan Willits Former Maintenance and Fueling Yard.	21	10832
06/13/11	Kleinfelder	Kleinfelder Draft Site Characterization Plan, Willits Former Railroad Maintenance and Fueling Yard	21	10833-10914
06/13/11	Kleinfelder	Kleinfelder Draft Appendix A-1A: Analytical Schedules, re Functional Areas 1-4: Northern, & Southern Maintenance and Fueling Areas, and other Areas, re: Deep and Shallow Borings, and Undocumented Fill and Debris Piles	21	10915-10923
06/13/11	Kleinfelder	Kleinfelder Draft Appendix B, Health and Safety Plan, Willits Former Railroad Maintenance and Fueling Yard	21	10924-10963
06/13/11	Kleinfelder	Kleinfelder letter to Rose Fua re Site Characterization Plan for Willits Form Railway Yard	21	10964
06/20/11	NCRA	June 2011 Amendment to Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease, between NCRA and Northwestern Pacific Railroad Company, a California Corporation to continue freight operations contemplated by original 2006 agreement/lease and amending various provisions		10965-10968
06/22/11	Sonoma-Marin Area Rail Transit District	Operating & Coordination Agreement for the Northwestern Pacific Line to allow rail operations from Healdsburg to Lombard	21	10969-11015
06/22/11	State of California, Dept.of Fish & Game	State of California – The Resources Agency Department of Fish and Game 2011 Environmental Filing Fee Cash Receipt No. 410150, State Clearing House No. 2007072052, issued to NCRA for North Coast Railroad Authority Russian River Division Freight Rail Project - EIR and County Administrative fees totaling $2,889.25.	21	11016
06/24/11	State of California, Dept. of Fish & Game	State of California – The Resources Agency Department of Fish and Game 2011 Environmental Filing Fee Cash Receipt No. 412228, State Clearing House No. 2007072052, issued to NCRA for North Coast Railroad Authority Russian River Division Freight Rail Project – re fees previously paid to State Clearinghouse for $50.00.	21	11017-11018
9/13/11	Northwestern Pacific Railroad Company, Inc.	Northwestern Pacific Railroad Company, Inc. Notice to NCRA that it has exercised the option granted under the Agreement for the Resurrection of Operations , dated 9/13/06.	21	11019

401474

RECEIVED
OCT 14 2011
BY:

Notice of Determination

TO:

☐ Office of Planning and Research
For U.S. Mail: P.O. Box 3044, Sacramento, CA 95812-3044
Street Address: 1400 Tenth St., Sacramento, CA 95814

☒ County Clerk
County of: Sonoma, Marin, Napa, Mendocino, Trinity, Humboldt
Address: _____

From:

Public Agency: North Coast Railroad Authority
Address: 419 Talmage Rd, Suite M
Ukiah, CA 95482
Contact: Mitch Stogner, Executive Director
Phone: (707) 463-3280

Lead Agency (if different from above: _____

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): SCH #2007072052

Project Title: North Coast Railroad Authority Russian River Division Freight Rail Project

Project Location (include county): Northwestern Pacific Rail Line (Napa, Marin, Sonoma, Mendocino)

Project Description: NCRA with its operator shall resume freight rail service from Willits to Lombard in the RRD. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 corridor, and extends from Willits to Lombard and runs through Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, Napa, Schellville, Novato and the unincorporated areas of Napa, Sonoma, Marin and Mendocino counties. The rail line includes various existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start up phase." Once service is established, the proposed service may increase to three round trip trains per day, 6 days per week with an estimate of 25 round trip cars for 1 trip per day and 60 round trip cars on the other trip. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction and repair activities in four areas: track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line.

This is to advise that the North Coast Railroad Authority has approved the above described project on
☒ Lead Agency or ☐ Responsible Agency
June 20, 2011 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.

FILED
JUN 28 2011
RICHARD N. BENSON
MARIN COUNTY CLERK
BY: J. Whitney, Deputy

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: 419 Talmage Rd, Ste M, Ukiah, CA 95482 and online at www.northcoastrailroad.org.

Signature (Public Agency) Mitch Stogner Title: Executive Director

Date: June 20, 2011 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

POSTED 6/28/11 TO 7/28/11

State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME

2010 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# 401476

STATE CLEARING HOUSE # *(If applicable)*

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY: North Coast Rail. Auth. | DATE: 6/28/11

COUNTY/STATE AGENCY OF FILING: Marin | DOCUMENT NUMBER:

PROJECT TITLE: Freight Rail Serv.

PROJECT APPLICANT NAME: North Coast Rail Auth. | PHONE NUMBER: ( )

PROJECT APPLICANT ADDRESS: Various | CITY: Napa, Marin, Sonoma + Mend. | STATE: CA | ZIP CODE:

PROJECT APPLICANT *(Check appropriate box):*

☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

☐	Environmental Impact Report (EIR)	$2,792.25	$
☐	Mitigated/Negative Declaration (ND)(MND)	$2,010.25	$
☐	Application Fee Water Diversion *(State Water Resources Control Board Only)*	$850.00	$
☐	Projects Subject to Certified Regulatory Programs (CRP)	$949.50	$
☒	County Administrative Fee	$50.00	$ 50.00
☐	Project that is exempt from fees		
	☐ Notice of Exemption		
	☐ DFG No Effect Determination (Form Attached)		
☐	Other _____		$

PAYMENT METHOD:

☐ Cash ☐ Credit ☐ Check ☐ Other _____ TOTAL RECEIVED $ 50.00

SIGNATURE: X [signature] | TITLE: Deputy Clerk

WHITE - PROJECT APPLICANT YELLOW - DFG/ASB PINK - LEAD AGENCY GOLDEN ROD - COUNTY CLERK FG 753.5a (Rev. 11/09)

AR 00002

Assessor-Recorder-County Clerk

County of

Marin

RICHARD N. BENSON

Assessor-Recorder-County Clerk

1 FISH/GAME EXEMPTION	50.00
TOTAL	**50.00**
CHECK 2273	50.00
CHANGE	0.00

06/28/2011 3:45PM 20110628000160
JW TAAXCR5VDF1

Online. Anytime.
www.co.marin.ca.us

Requested By:
Public

Notice of Determination

TO:

☐ Office of Planning and Research
For U.S. Mail: P.O. Box 3044 Sacramento, CA 95812-3044
Street Address: 1400 Tenth St. Sacramento, CA 95814

☑ County Clerk
County of: Sonoma, Marin, Napa, Mendocino, Trinity, Humboldt
Address: _____

From:

Public Agency: North Coast Railroad Authority
Address: 419 Talmage Rd, Suite M
Ukiah, CA 95482
Contact: Mitch Stogner, Executive Director
Phone: (707) 463-3280

Lead Agency (if different from above:
_____

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): SCH #2007072052

Project Title: North Coast Railroad Authority Russian River Division Freight Rail Project

Project Location (include county): Northwestern Pacific Rail Line (Napa, Marin, Sonoma, Mendocino)

Project Description: NCRA with its operator shall resume freight rail service from Willits to Lombard in the RRD. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 corridor, and extends from Willits to Lombard and runs through Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, Napa, Schellville, Novato and the unincorporated areas of Napa, Sonoma, Marin and Mendocino counties. The rail line includes various existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start up phase." Once service is established, the proposed service may increase to three round trip trains per day, 6 days per week with an estimate of 25 round trip cars for 1 trip per day and 60 round trip cars on the other trip. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction and repair activities in four areas: track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line.

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☒ Lead Agency or ☐ Responsible Agency
June 20, 2011 and has made the following determinations regarding the above described project:

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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.

931500
CAROLYN CRNICH
Humboldt County Clerk
FILED
JUN 24 2011
BY J. Halsman
FILED

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: 419 Talmage Rd, Ste M, Ukiah, CA 95482 and online at www.northcoastrailroad.org.

POSTED THROUGH
AUG 01 2011
Humboldt County Clerk

Signature (Public Agency) Mitch Stogner Title: Executive Director

Date: June 20, 2011 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

This notice was posted on JUN 22 2011
and will remain posted for a period of thirty days
until JUL 22 2011

JANICE ATKINSON, Co. Clerk
BY: DEPUTY CLERK

Notice of Determination

11-06224

TO:

☐ Office of Planning and Research
For U.S. Mail: P.O. Box 3044, Sacramento, CA 95812-3044
Street Address: 1400 Tenth St., Sacramento, CA 95814

☐ County Clerk
County of: Sonoma, Marin, Napa, Mendocino, Trinity, Humboldt
Address: _____

From:

Public Agency: North Coast Railroad Authority
Address: 419 Talmage Rd, Suite M
Ukiah, CA 95482
Contact: Mitch Stogner, Executive Director
Phone: (707) 463-3280

Lead Agency (if different from above: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

715147
715151

State Clearinghouse Number (if submitted to State Clearinghouse): SCH #2007072052

Project Title: North Coast Railroad Authority Russian River Division Freight Rail Project

Project Location (include county): Northwestern Pacific Rail Line (Napa, Marin, Sonoma, Mendocino)

Project Description: NCRA with its operator shall resume freight rail service from Willits to Lombard in the RRD. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 corridor, and extends from Willits to Lombard and runs through Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, Napa, Schellville, Novato and the unincorporated areas of Napa, Sonoma, Marin and Mendocino counties. The rail line includes various existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start up phase." Once service is established, the proposed service may increase to three round trip trains per day, 6 days per week with an estimate of 25 round trip cars for 1 trip per day and 60 round trip cars on the other trip. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction and repair activities in four areas: track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line.

8880.25

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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: 419 Talmage Rd, Ste M, Ukiah, CA 95482 and online at www.northcoastrailroad.org.

Signature (Public Agency) Mitch Stogner Title: Executive Director

Date: June 20, 2011 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

410150

State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME

2011 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# 410150

STATE CLEARING HOUSE # (If applicable) 2007072052

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY: North Coast Railroad Authority

DATE: 06/22/2011

COUNTY/STATE AGENCY OF FILING: Sonoma

DOCUMENT NUMBER: 11-0622-1

PROJECT TITLE: North Coast Railroad Authority Russian River Division Freightrail Project

PROJECT APPLICANT NAME: North Coast Railroad Authority

PHONE NUMBER: (707) 463-3280

PROJECT APPLICANT ADDRESS: 419 Talmage Rd Ste M

CITY: Ukiah

STATE: CA

ZIP CODE: 95482

PROJECT APPLICANT *(Check appropriate box):*

☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

☒ Environmental Impact Report (EIR)	$2,839.25	$ 2839.25
☐ Mitigated/Negative Declaration (ND)(MND)	$2,044.00	$
☐ Application Fee Water Diversion *(State Water Resources Control Board Only)*	$850.00	$
☐ Projects Subject to Certified Regulatory Programs (CRP)	$965.50	$
☒ County Administrative Fee	$50.00	$ 50.00
☐ Project that is exempt from fees		
☐ Notice of Exemption		
☐ DFG No Effect Determination (Form Attached)		
☐ Other _____		$

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other _____ TOTAL RECEIVED $ 2889.25

SIGNATURE: X [signature]

TITLE: Deputy Clerk

WHITE - PROJECT APPLICANT YELLOW - DFG/ASB PINK - LEAD AGENCY GOLDEN ROD - COUNTY CLERK FG 753.5a (Rev. 11/10)

SONOMA COUNTY CLERK
2300 COUNTY CENTER DR STE B177
SANTA ROSA CA 95403
707-565-3800

ISSUED TO:
COUNTY OF SONOMA -NORTH COAST RAILROA

RECEIPT # 715147
DATE 06/22/2011 05:09:38 AM

DESCRIPTION	FEE
Eir	2,838.25
Total Amount Due	2,838.25
WRNT/LGLEASE 1208287	2,838.25
410150 & 11-0622-1	
Total Amount Paid	2,838.25

THERE IS NO HIGHER CALLING
THAN PUBLIC SERVICE
JOHN F. KENNEDY
Deputy: CANDERS1

AR 00006

State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME

2011 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# 410150

STATE CLEARING HOUSE # (If applicable) 2007072052

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY: North Coast Railroad Authority — DATE: 06/22/2011

COUNTY/STATE AGENCY OF FILING: Sonoma — DOCUMENT NUMBER: 11-0622-1

PROJECT TITLE: North Coast Railroad Authority Russian River Division Freight/Rail Project

PROJECT APPLICANT NAME: North Coast Railroad Authority — PHONE NUMBER: (707) 463-3280

PROJECT APPLICANT ADDRESS: 419 Talmage Rd Ste M — CITY: Ukiah — STATE: CA — ZIP CODE: 95482

PROJECT APPLICANT *(Check appropriate box):*

☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

☒ Environmental Impact Report (EIR)	$2,839.25	$ 2839.25
☐ Mitigated/Negative Declaration (ND)(MND)	$2,044.00	$
☐ Application Fee Water Diversion *(State Water Resources Control Board Only)*	$850.00	$
☐ Projects Subject to Certified Regulatory Programs (CRP)	$965.50	$
☒ County Administrative Fee	$50.00	$ 50.00
☐ Project that is exempt from fees		
☐ Notice of Exemption		
☐ DFG No Effect Determination (Form Attached)		
☐ Other _____		$

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other _____ TOTAL RECEIVED $ 2889.25

SIGNATURE: X [signature] — TITLE: Deputy Clerk

WHITE - PROJECT APPLICANT | YELLOW - DFG/ASB | PINK - LEAD AGENCY | GOLDEN ROD - COUNTY CLERK | FG 753.5a (Rev. 11/10)

SONOMA COUNTY CLERK
2300 COUNTY CENTER DR STE B177
SANTA ROSA CA 95403
707-565-3800

ISSUED TO:
COUNTY OF SONOMA -NORTH COAST RAILROA

RECEIPT # 715147
DATE 06/22/2011 08:04:38 AM

DESCRIPTION	FEE
Eir	2,839.25
Total Amount Due	2,839.25
WANT/LGLEASE 1208267 410150 & 11-0622-1	2,839.25
Total Amount Paid	2,839.25

THERE IS NO HIGHER CALLING
THAN PUBLIC SERVICE
JOHN F. KENNEDY
Deputy: CANDERS1

931500

CAROLYN CRNICH
Humboldt County Clerk

FILED JUN 24 2011 FILED

BY [signature]

DUPLICATE

SONOMA COUNTY CLERK
2300 COUNTY CENTER DR STE B177
SANTA ROSA CA 95403
707-565-3800

ISSUED TO: HEATHER LINDSTEADT

RECEIPT # 715151
DATE 06/22/2011 09:06:43 AM

DESCRIPTION	FEE
Process Fee	50.00
Total Amount Due	50.00
CHECK 2271 410150 & 11-0622-1	50.00
Total Amount Paid	50.00

THERE IS NO HIGHER CALLING
THAN PUBLIC SERVICE
JOHN F. KENNEDY
Deputy: CANDERS1

TO THE TREASURER OF THE
COUNTY OF SONOMA
SANTA ROSA, CALIFORNIA

VENDOR NO. 655167 01 DATE PAID 06/16/2011 201 01208287 No. 1208287

VOUCHER NUMBER	P.O. NUMBER	DESCRIPTION	AMOUNT
CP1134859 01		NCRA FISH AND GAME FILING FEE	2,839.25
			$2,839.25

REORDER D908 • U.S. PATENT NO. 5538290, 5575508, 5641183, 5785353, 5984364, 6030000

RECORDING REQUESTED BY
AND MAILED TO:

NAME: _____

STREET: _____

CITY: _____

2011-E0043
Recorded at the request of:
NORTH COAST RAIL ROAD
06/23/2011 11:21 AM
Fee: $50.00 Pgs: 1 of 1

OFFICIAL RECORDS
Susan M. Ranochak - Clerk-Recorder
Mendocino County, CA

(TITLE OF DOCUMENT)

notice of Determination

POSTED FROM: 6/23/11 TO: 7/23/11

This page added to provide adequate space for recording information
(Additional recording fee applies)

Notice of Determination

TO:

☐ Office of Planning and Research
For U.S. Mail: P.O. Box 3044 Sacramento, CA 95812-3044
Street Address: 1400 Tenth St. Sacramento, CA 95814

☒ County Clerk
County of: Sonoma, Marin, Napa, Mendocino, Trinity, Humboldt
Address: _____

From:

Public Agency: North Coast Railroad Authority
Address: 419 Talmage Rd, Suite M
Ukiah, CA 95482
Contact: Mitch Stogner, Executive Director
Phone: (707) 463-3280

Lead Agency (if different from above:
_____

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): SCH #2007072052

Project Title: North Coast Railroad Authority Russian River Division Freight Rail Project

Project Location (include county): Northwestern Pacific Rail Line (Napa, Marin, Sonoma, Mendocino)

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Signature (Public Agency) Mitch Stogner Title: Executive Director

Date: June 20, 2011 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME

2011 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# 410150

STATE CLEARING HOUSE # *(If applicable)* 2007072052

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY: North Coast Railroad Authority — DATE: 06/22/2011

COUNTY/STATE AGENCY OF FILING: Sonoma — DOCUMENT NUMBER: 11-0622-1

PROJECT TITLE: North Coast Railroad Authority Russian River Division Freight/rail Project

PROJECT APPLICANT NAME: North Coast Railroad Authority — PHONE NUMBER: (707)463-3280

PROJECT APPLICANT ADDRESS: 419 Talmage Rd Ste M — CITY: Ukiah — STATE: CA — ZIP CODE: 95482

PROJECT APPLICANT *(Check appropriate box):*

☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

☒ Environmental Impact Report (EIR)	$2,839.25	$ 2839.25
☐ Mitigated/Negative Declaration (ND)(MND)	$2,044.00	$
☐ Application Fee Water Diversion *(State Water Resources Control Board Only)*	$850.00	$
☐ Projects Subject to Certified Regulatory Programs (CRP)	$965.50	$
☒ County Administrative Fee	$50.00	$ 50.00
Project that is exempt from fees		
☐ Notice of Exemption		
☐ DFG No Effect Determination (Form Attached)		
☐ Other _____		$

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other _____ TOTAL RECEIVED $ 2889.25

SIGNATURE: x [signature] — TITLE: Deputy Clerk

WHITE - PROJECT APPLICANT | YELLOW - DFG/ASB | PINK - LEAD AGENCY | GOLDEN ROD - COUNTY CLERK | FG 753.5a (Rev. 11/10)

SONOMA COUNTY CLERK
2300 COUNTY CENTER DR STE B177
SANTA ROSA CA 95403
707-565-3800

ISSUED TO:
COUNTY OF SONOMA -NORTH COAST RAILROA

RECEIPT # 715147
DATE 06/22/2011 08:04:38 AM

DESCRIPTION	FEE
Eir	2,839.25
Total Amount Due	2,839.25
WRNT/LGLEASE 1208687	2,839.25
410150 & 11-0622-1	
Total Amount Paid	2,839.25

THERE IS NO HIGHER CALLING
THAN PUBLIC SERVICE
JOHN F. KENNEDY
Deputy: CANDERS1

AR 00012

RESOLUTION NO. 2011-02

DATED: June 20, 2011

Resolution of the Board of Directors of the North Coast Railroad Authority making findings, certifying an Environmental Impact Report, adopting a Statement of Overriding Considerations, and Approving a Project resuming freight rail service from Willits to Lombard in the Russian River Division. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 corridor, and extends from Willits to Lombard and runs through the towns of Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, and Novato. The rail line includes various existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start up phase." Once service is established, the proposed service may increase to three round trip trains per day, six days per week with an estimate of 25 round trip cars for one trip per day and 60 round trip cars on the other two trips. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction and repair activities in four areas: track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line.

SECTION 1
PROPOSED PROJECT AND PROCEDURAL HISTORY

WHEREAS, the North Coast Railroad Authority ("NCRA") was formed by the North Coast Railroad Authority Act to ensure continuing freight rail service to the North Coast area pursuant to the North Coast Railroad Authority Act (Government Code 93000 §§ et seq.);

WHEREAS, NCRA is governed by its Board of Directors ("Board").

WHEREAS, in 1995, NCRA, the Golden Gate Bridge Highway and Transportation District, and Marin County established a joint powers authority for the purpose of purchasing the Northwestern Pacific Railroad Line, ("the line") extending from Lombard near Napa in Napa County, to Willits in Mendocino County from Southern Pacific Railroad Co., which transaction was concluded on April 30, 1996;

WHEREAS, in 1998 the Federal Railroad Administration issued Emergency Order No. 21 closing the line until potential safety issues caused by deferred maintenance extending back several decades were corrected;

WHEREAS, in 2000 the California Legislature adopted the Traffic Congestion Relief Act which appropriated to the NCRA $31 million pursuant to Government Code §14556.50 in part for restoration of the Line, which appropriation was allocated to the NCRA by the California Transportation Commission beginning in December 2006 for restoration of the Line;

WHEREAS, the repairs were made and the Federal Railroad Administration subsequently released the operation of the Emergency Order 21 permitting freight railroad service for the portion of the line between Lombard in Napa County to Windsor in Sonoma County;

WHEREAS, in September 2006 the NCRA entered into an agreement with a private sector operator, (the "operator,") to provide freight railroad service between Lombard and Willits, subject to environmental review of the resumption of freight railroad service;

WHEREAS, in July 2007 the NCRA issued a Notice of Preparation of an Environmental Impact Report in compliance with the agreement with the operator. Subsequently, NCRA retained an environmental consultant to prepare the necessary environmental documents. The consultant conducted public scoping sessions in Santa Rosa in Sonoma County, and Novato in Marin County, and a scoping session in Petaluma with interested public agencies to determine the scope of the EIR;

WHEREAS, in March 2009 the Draft EIR was released for comment and public hearings on the Draft EIR were held in April 2009 in Petaluma and Willits. During the comment period new information was raised causing the NCRA Board of Directors to cause the Draft EIR to be revised pursuant to CEQA guideline 15088.5. A Revised Draft EIR was prepared and recirculated in November 2009 with a new public comment period extending into January 2010. After comments were received at the close of the public comment period, the Final EIR was prepared and released in May 2011 in which the comments upon the Draft Revised EIR were addressed;

WHEREAS, it was discovered that the Final EIR did not respond to a letter of comment written by one of the Directors of NCRA. An addendum to the Final EIR was prepared and added to the Final EIR on May 31, 2011. The addendum is not a technical addendum as anticipated by CEQA Regulation 15164, but rather is an additional response to a letter received during the public comment period.

WHEREAS, NCRA and its operator propose to resume freight rail service in the Russian River Division ("RRD") of the rail line from Willits to Lombard in the RRD. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 and Highway 37 corridors, and extends from Willits to Lombard and runs through the towns of Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, and Novato. The rail line includes one main line track and various

existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start-up phase." Once service is established, the proposed service may increase to three round trip trains per day, six days per week with an estimate of 25 round trip cars for one trip per day and 60 round trip cars on the other two trips. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction, and repair activities in four areas: Track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line. For purposes of this resolution, these activities shall collectively be called "the Proposed Project" or "Proposed Project";

WHEREAS, NCRA determines, based on the findings set forth in this resolution and the entirety of the record of this proceeding, that operation of the RRD between Willits and Lombard is of independent economic utility and is desirable as a discrete and independent transportation unit based upon the evidence in the record, including but not limited to the Statement of the President of the operator dated September 23, 2009; the fact that the Southern Pacific Railroad Company operated the line as a separate division from 1914 to the mid 1980's; the Southern Pacific Railroad Company leased the Line to California Northern as a discrete entity; the Board of Directors issued a Request For Proposals to the Railroad industry in 2006, receiving a number of proposals, all confining their proposed operations to this portion of the line; the Federal Emergency Management Agency prepared an Administrative Final Programmatic Environmental Assessment in 2004 recognizing the line as having historic independent utility; and the termini are logical in that the line connects at Lombard with the California Northern Railroad and hence to the national rail system, and the line connects with the California Western Railroad at the population center of Willits;

NOW THEREFORE BE IT RESOLVED the Board of Directors of the NCRA finds as follows:

SECTION 2
CEQA COMPLIANCE

2.1 NCRA has engaged teams of biologists, engineers, and other experts to determine the scope of potential impacts which may result from the proposed project. Beginning with the Initial Study, finalized in July, 2007, and through May of 2010, more than $2.8 million dollars was spent by NCRA conducting environmental review and analyzing potential mitigation measures. Substantial additional amounts have been spent since May of 2010 in pursuit of the project's CEQA compliance. The focus of those efforts was to highlight potentially significant impacts and to produce mitigation measures crafted to provide paths to successful mitigation of each potentially significant impact, which are included both in the Final EIR and the appendices attached to it.

2.2 The Final EIR consists of the Draft EIR of November 5, 2009, the Response to Comments on the Draft EIR of November 5, 2009 ("the Response to Comments"), and the Addendum to the Final EIR dated, May 31, 2011.

2.3 The Draft and Final EIRs were completed, noticed, and circulated for public review and agency review and comment in accordance with all procedural and substantive requirements of CEQA and the State CEQA Guidelines.

2.4 The Final EIR constitutes an adequate, accurate, objective, and complete EIR for the purposes of approving the Proposed Project, and represents a good faith effort to achieve completeness and full environmental disclosure for the Proposed Project.

2.5 The Final EIR discloses that the Proposed Project poses certain significant or potentially significant adverse environmental impacts that can be mitigated to less than significant levels. The Board finds that changes or alterations have been required in, or incorporated into, the Proposed Project through the mitigation measures imposed herein on the rail line, which will, in fact, mitigate those impacts to less than significant levels as set forth in Exhibit "A" to this Resolution. The Board therefore determines that, with the exception of those impacts specifically noted, the significant adverse environmental impacts of the Proposed Project summarized in Exhibit "A" to this Resolution have been eliminated or reduced to a point where they would have no significant effect on the environment.

2.6 The Final EIR discloses that the Proposed Project poses certain significant or potentially significant adverse environmental impacts that, even after the inclusion of mitigation measures, may not, or cannot, be avoided if the Proposed Project is approved. These impacts which relate to noise and ground borne vibrations, locomotive headlights during night operations, and cumulative impacts are fully and accurately summarized in Exhibits "A" and "B" to this Resolution, attached hereto and incorporated herein by this reference.

2.7 As to the significant environmental effects of the Proposed Project identified in the Final EIR and this Resolution that are not avoided or substantially lessened to a point less than significant, the Board finds that specific economic, social, or other considerations make additional mitigation of those impacts infeasible, in that all feasible mitigation measures have been incorporated into the Proposed Project, and also make project alternatives infeasible. The Board further finds that it has balanced the benefits of the Proposed Project against its unavoidable environmental risks and determines that the benefits of the Proposed Project outweigh the unavoidable adverse environmental effects. The Board further determines that the unavoidable adverse environmental effects of the Proposed Project are acceptable, and there are overriding considerations which support the Board's approval of the Proposed Project, and that those considerations are identified in Exhibit "C" to this Resolution, attached hereto and incorporated herein by this reference ("the Statement of Overriding Considerations").

2.8 The Final EIR describes a range of reasonable alternatives. Those alternatives are fully and accurately summarized in Exhibit "D" to this Resolution, attached hereto and incorporated herein by this reference. Those alternatives, however, cannot feasibly achieve

certain objectives of the Proposed Project for the reasons set forth in Exhibit "D" to this Resolution. The Board therefore determines that all of the alternatives summarized in Exhibit "D" to this Resolution are infeasible.

2.9 To ensure that the proposed revisions and mitigation measures identified in the Final EIR are implemented, the Board is required by CEQA and the State CEQA Guidelines to adopt a mitigation monitoring program on the revisions the Board has required in the Proposed Project and the measures the Board has imposed to mitigate or avoid significant environmental effects. The mitigation monitoring program for the Proposed Project ("the Mitigation Monitoring Program") is attached hereto as Exhibit E. The Mitigation Monitoring Program will be implemented in accordance with all applicable requirements of CEQA and the State CEQA Guidelines.

2.10 The Board makes the following additional findings relating to the Final EIR and its environmental determinations with respect to the Proposed Project:

(A) The Board received several public comments alleging that the Board was unlawfully piece-mealing operations in the Eel River Division ("ERD") and RRD and that the Final EIR was inadequate because it failed to analyze operations in both the ERD and RRD. The Board finds that any future operations in the ERD are speculative and that the Board has no plan or intention of resuming service in the ERD at this time. The potential resumption of service in the ERD would require additional federal and other funding that does not exist at this time. Given that there are no financial resources available to resume services in the ERD, the Board does not intend to operate in the ERD.

(B) In making the findings and determinations set forth herein and in any exhibit hereto, the Board, on occasion references specific evidence in the record. No such specific reference is intended to be exclusive or exhaustive. Rather, the Board has relied on the totality of the evidence relating to the RRD in the record of these proceedings in reaching its decision.

(C) The findings in this Resolution and all exhibits hereto are true and correct, are supported by substantial evidence in the record, and are adopted as hereinabove set forth.

(D) The Final EIR is adopted and certified as follows:

1. The Final EIR has been completed in compliance with CEQA.

2. The Final EIR was presented to the Board and the Board reviewed and considered the information contained in the Final EIR prior to approving the Proposed Project.

3. The Final EIR reflects the independent judgment of the Board.

4. The Statement of Overriding Considerations, attached hereto as Exhibit C, is hereby adopted.

5. The Mitigation Monitoring Plan attached as Exhibit "E" is hereby adopted.

6. NCRA staff is directed to file a Notice of Determination in accordance with CEQA and state CEQA Guidelines in each County through which the RRD runs.

7. The Proposed Project is approved as follows: NCRA with its operator shall resume freight rail service from Willits to Lombard in the RRD. The NCRA rail corridor is approximately 142 miles, runs roughly along the Highway 101 corridor, and extends from Willits to Lombard and runs through Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, Napa, Schellville, Novato and the unincorporated areas of Napa, Sonoma, Marin and Mendocino counties. The rail line includes various existing sidings, spur tracks, rail yards, stations, and maintenance facilities. The proposed freight service would initially have three round trip trains per week with each train having an estimate of 15 rail cars during the "start up phase." Once service is established, the proposed service may increase to three round trip trains per day, 6 days per week with an estimate of 25 round trip cars for 1 trip per day and 60 round trip cars on the other trip. One 60-car train would go from Willits to Lombard, the second 60-car train would potentially haul waste from Santa Rosa to the Cal Northern connection at Lombard, and the other train would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard. The proposed service does not include transporting hazardous waste, dangerous, highly flammable, or explosive materials. Operating the line would require the following rehabilitation, construction and repair activities in four areas: track and embankment repairs at Bakers Creek north of Cloverdale; Foss Creek north of Healdsburg; mechanical repairs to Black Point Bridge, at the mouth of the Petaluma River; and a new siding at Lombard to allow rail interchange with the Cal Northern Rail Line.

8. The Executive Director of NCRA is hereby designated as the custodian of documents and other materials that constitute the record of the proceedings upon which the Board's environmental and substantive decisions herein are based. These documents may be found at NCRA, 419 Talmage Road, Suite M, Ukiah, California 95482, during normal business hours.

Directors:

Clendenen: X **Hemphill:** X **Kelley:** X **Kier:** ___ **MacDonald:** X
McCowen: X **Meyers:** ___ **Wagenet:** X **Wolter:** X

Ayes: 10 **Noes:** 1 **Absent:** 2 **Abstain:** Ø

So Ordered.

061411

EXHIBIT A

POTENTIALLY SIGNIFICANT IMPACTS THAT ARE MITIGATED TO LESS THAN SIGNIFICANT

The Final EIR identifies the following significant or potentially significant adverse environmental impacts of the Proposed Project that can be mitigated to a less-than-significant level:

AIR QUALITY IMPACTS

Impact AQ-BC1: The Proposed Project would generate dust and other criteria air pollutant emissions during rehabilitation and construction activities at Bakers Creek.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant complying with Mitigation Measure AQ-BC1, which limits the use of gasoline and diesel powered equipment to short periods and meeting CARB emissions standards as well as using BMP's to control dust, which reduces the impact to less than significant.

Impact AQ-FC1: The Proposed Project would generate dust and other criteria air pollutant emissions during rehabilitation and construction activities at Foss Creek.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by complying with Mitigation Measure AQ-FC1, which limits the use of gasoline and diesel powered equipment to short periods and meeting CARB emissions standards as well as using BMP's to control dust, which reduces the impact to less than significant.

Impact AQ-BP1: The Proposed Project would generate dust and other criteria during rehabilitation activities.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by complying with Mitigation Measure AQ-BP1, which limits the use of gasoline and diesel powered equipment to short periods and meeting CARB emissions standards as well as using BMP's to control dust. This reduces the impact to less than significant.

Impact AQ-LS1: Construction of siding from MP 1.0 to MP 2.0 will include grading, placement of track ballast and clean fill, placement of 5,300 feet of new track, extending a culvert, reestablishing drainage ditches, widening an existing timber deck bridge, the embankment, and constructing culverts.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by complying with air quality regulations and NCRA's BMPs as is set forth in Mitigation Measure AQ-LS1.

Impact AQ-NCD1: Construction of quiet zones would generate dust and other criteria air pollutant emissions from the use of gasoline and diesel powered equipment.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by limiting gasoline and diesel powered equipment to short time frames and complying with CARB emission standards. NCRA shall also employ BMP's to mitigate dust impacts and comply with air quality regulations, as is set forth in Mitigation Measure AQ-NCD1.

Impact AQ-OP1: The routine and emergency maintenance activities that will be necessary to allow for safe and efficient operations of the railroad, such as bridge repair, brush cutting, and grade crossing signal maintenance, could cause an adverse air quality impact.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by complying with Mitigation Measure AQ-OP1 and air quality regulations and adhering to BMP's.

Impact BIO-BC1: If conducted improperly, the transport and placement of clean fill and excavation activities may impact the stream habitat and water quality. The installation of the structure and fill placement will likely require operation of equipment within the creek channel and adjacent banks, which will temporarily disturb the sediments and vegetation. These activities may impact sensitive aquatic resources, and could also adversely affect other organisms and communities in the vicinity of work areas. The Biological Field Report (Appendix E) identifies key species and habitats in the area that should be protected. These activities will result in suspended sediments, and may directly injure organisms, bury or alter habitat features, or block migration of fish and invertebrates. The work activities could cause mortality, harm, or disturbance to state- and federally-listed species, if they are present in or near work areas. Migratory passageways for adult or juvenile salmonids, including steelhead, could be temporarily blocked, depending on the final design grade and condition.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing three mitigation measures, BIO-BC1a, BIO-BC1b, and BIO-BC1c, which require compliance with permits, limit work to the dry season, and require a qualified biological monitor to be present, and consultations with appropriate agencies, such as NOAA and CDFG.

Impact BIO-BC2: The timing of rehabilitation work, if in an area not disturbed by noise and during breeding and nesting season (February 15 to September 15) may cause nest abandonment for species covered under the MBTA.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by imposing Mitigation Measure B10-BC2, which requires, among other things, trimming shrubs in construction zones between September 1 and January 31 to reduce impacts to nesting birds, and having a qualified biologist conduct a pre-

construction survey. If active nests are found, depending on the distance from the construction activities, NCRA shall submit a plan to USFWS or CDFG for review and approval.

Impact BIO-BC3: Use of heavy equipment other than on-rail equipment and the storage of supplies and materials could cause damage to sensitive vegetation and wildlife habitat within temporary work areas. Construction access, staging, storage, and parking areas shall be located on ruderal or developed areas. Vehicle travel adjacent to wetlands and riparian areas shall be limited to existing roads and designated access paths. Sensitive natural communities outside of the proposed project work area (i.e., wetlands, waters, riparian zones and oak woodlands) shall be conspicuously marked in the field to minimize impacts on these communities, and work activities shall be limited to outside the marked areas. Workers shall be educated on the potential impacts and measures that will be taken to avoid work in sensitive areas. Qualified biologists shall identify sensitive biological resources and monitor rehabilitation activities to assure successful implementation of NCRA's BMPs (Appendix B). All work shall be conducted in compliance with specific permit conditions.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant through Mitigation Measure BIO-BC3, which requires, among other things: (i) limiting construction, storage, and parking areas to ruderal or developed areas; (ii) vehicle travel adjacent to wetlands is limited to existing roads and designated access paths; (iii) all sensitive areas shall be marked and avoided; and (iv) a qualified biologist shall monitor rehabilitation activities.

Impact BIO-BC4: There could be temporary disturbances of wetlands/waters of the United States at the Bakers Creek site.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant through Mitigation Measure BIO-BC4, and by restoring all areas after work is complete; complying with permit conditions; stabilizing any affected stream bank or channel prior the

rainy season or re-establishing flow; stockpiling and restoring the top 6 inches of top soil in wetlands; and wetland and riparian vegetation shall be re-established.

Impact BIO-BC5: The proposed work at Bakers Creek could result in the introduction or spread of noxious weeds in the vicinity of the rehabilitation area.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure BIO-BC5 and BMP's that will prevent the spread of noxious weeds.

Impact BIO-BC6: The proposed rehabilitation work at Bakers Creek could result in the loss of individuals or habitat of special status species.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-BC6 and conducting a plant survey prior to any work commencing and compliance with permit conditions.

Impact BIO FC-1: The transport and placement of clean fill material and rip-rap may impact the stream habitat and water quality. The installation of the structure and fill placement will likely require operation of equipment within the creek channel and adjacent banks, which will temporarily disturb the sediments and vegetation. The installation of sheet piles will require the use of a pile driver, which can generate significant noise levels and underwater sound pressure levels.

These activities will result in suspended sediments and elevated noise and sound pressure levels, which may directly injure organisms, bury or alter habitat features, or block migration of fish and invertebrates. The work activities could cause mortality, harm, or disturbance to state- and federally-listed species, if they are present in or near work areas. Migratory passageways for adult or juvenile salmonids, including steelhead, could be temporarily or permanently blocked, depending on the final design grade and condition.

Significance Before Mitigation: Potentially Significant

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Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing two mitigation measures BIO-FC1a and BIO-FC1b, which require conformance with permits; working during the appropriate window or dry season; implementing BMPs; the presence of a qualified biological monitor; and immediate cessation of work if a protected species is encountered.

Impact BIO-FC2: The timing of rehabilitation work at the site, if in an area undisturbed by noise and during breeding and nesting season (February 15 to September 15), may cause nest abandonment for species covered under the MTBA.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-FC2 and, among other things, trimming shrubs in construction zones between September 1 and January 31 to reduce impacts to nesting birds, and having a qualified biologist conduct a pre-construction survey. If active nests are found, depending on the distance from the construction activities, NCRA shall submit a plan to USFWS or CDFG for review and approval.

Impact BIO-FC3: Use of heavy equipment other than on-rail equipment and the storage of supplies and materials could cause damage to sensitive vegetation and wildlife habitat within temporary work areas.

Operation of vehicles and equipment in temporary construction access and staging areas, parking of vehicles, and placement of equipment and materials in temporary lay down and storage areas could remove or crush vegetation, damage tree roots, compact soil, or collapse animal burrows. Accidental spill or release of a hazardous material could potentially harm wildlife and impair the recruitment and establishment of onsite vegetation (please refer to Section 3.6, Hazardous Materials). Temporary work areas would be located mostly in ruderal and developed areas, but may overlap small portions of other upland plant communities including oak woodland, mixed scrub, and non-native grassland. Construction-related impacts on common upland plant communities would be less than significant. However, impacts on wildlife in work areas could be considered significant if they interfere substantially with wildlife movement, impede

the use of breeding sites, or conflict with local policies that protect wildlife species and habitats.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-FC3 (a) and (b), which require, among other things: (i) limiting construction, storage, and parking areas to ruderal or developed areas; (ii) vehicle travel adjacent to wetlands is limited to existing roads and designated access paths; (iii) all sensitive areas shall be marked and avoided; and (iv) a qualified biologist shall monitor rehabilitation activities.

Impact BIO-FC4: There could be temporary disturbances of wetlands/Waters of the United States at the Foss Creek site.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-FC4, which requires restoring all areas after work is complete; complying with permit conditions; stabilizing any affected stream bank or channel prior the rainy season or re-establishing flow; stockpiling and restoring the top 6 inches of top soil in wetlands; and wetland and riparian vegetation shall be re-established.

Impact BIO-FC5: The proposed work at Foss Creek could result in the introduction or spread of noxious weeds in the vicinity of the rehabilitation area.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-FC5, which implements BMP's that will prevent the spread of noxious weeds.

Impact BIO-FC6: The proposed rehabilitation work at Foss Creek could result in the loss of individuals or habitat of special status species.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-FC6 and conducting a plant survey prior to any work commencing and compliance with permit conditions.

Impact BIO-BP1: The timing of rehabilitation work, if in an area not disturbed by noise and during breeding and nesting season (February 15 to September 15) may cause nest abandonment for species covered under the MBTA.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-BP1 which requires, among other things, trimming shrubs in construction zones between September 1 and January 31 to reduce impacts to nesting birds, and having a qualified biologist conduct a pre-construction survey. If active nests are found, depending on the distance from the construction activities, NCRA shall submit a plan to USFWS or CDFG for review and approval. Additionally, if rehabilitation work is likely to occur during the nesting season of cliff swallows, a qualified monitor shall inspect the area prior to the rehabilitation work.

Impact BIO-LS1: The siding from MP 1.0 to MP 2.0 is in an area occupied primarily by wetlands and open grasslands. The construction activities of the siding for the interchange with the Cal Northern Line between MP 1.0 and MP 2.0 could cause an adverse impact to biological resources. Construction of the new siding will be conducted in accordance with NCRA's BMP's, but will impact sensitive habitats due to the filling of 0.2 acres of seasonal wetlands and the loss of 0.69 acres of mudflat habitats.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by Mitigation Measure BIO-LS1, which requires replacing losses with equivalent habitat at a 1:1 ratio or other approved compensatory mitigation.

Impact BIO-NCD1: There could be a disturbance of wetland/waters of the United States during construction if additional intersections of the NWP Line requiring quiet zone improvements are identified by the regulatory agencies.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-NCD1, and restoring all areas after work is complete; complying with permit conditions; stabilizing any affected stream bank or channel prior the rainy season or re-establishing flow; stockpiling and restoring the top 6 inches of top soil in wetlands; and wetland and riparian vegetation shall be re-established.

Impact BIO-NCD2: Use of heavy equipment other than on-rail equipment and the storage of materials, and supplies could cause damage to sensitive vegetation and wildlife habitat within temporary work areas.

Operation of vehicles and equipment in temporary construction access and staging areas, parking of vehicles and placement of equipment and materials in temporary laydown and storage areas could remove or crush vegetation, damage tree roots, compact soil, or collapse animal burrows. Temporary work areas would be located mostly in ruderal and developed areas, but may overlap small portions of other upland plant communities including oak woodland, mixed scrub, and non-native grassland. Construction-related impacts on common plant communities would be less than significant. However, impacts on wildlife in work areas could be considered significant if they interfere substantially with wildlife movement, impede the use of breeding sites, or conflict with local policies that protect wildlife species and habitats.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-NCD2 which: (i) limits construction, storage, and parking areas to ruderal or developed areas; (ii) vehicle travel adjacent to wetlands is limited to existing roads and designated access paths; (iii) all sensitive areas shall be marked and avoided; and (iv) a qualified biologist shall monitor rehabilitation activities.

Impact BIO-NCD3: Additional intersections requiring quiet zone improvements that may be required by regulatory agencies may be located in areas now occupied by wetlands. Some wetlands, particularly those on the railroad right-of-way created as a result of deferred maintenance of drainage swales, may require filling to construct quiet zone improvements.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by evaluating wetlands and replacing losses with equivalent habitat at a 1:1 ratio or other approved compensatory mitigation, as set forth in Mitigation Measure BIO-NCD3.

Impact BIO-NCD4: Safety fencing between MP 29.5 to MP 25.9 may restrict the migration of sensitive species across the railroad right-of-way.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-NCD4 and having a qualified biologist review the fencing plans. If a sensitive species is in the area, appropriate measures allowing unrestricted migration across the right-of-way shall be incorporated into the fence.

Impact BIO-OP1: Initially resuming railroad operations, if in an area undisturbed by noise and during the breeding and nesting season, (February 15 to September 15), may cause nest abandonment for bird species covered under the MBTA.

Operational activities could affect raptors and other birds nesting in vegetation or on bridges in or adjacent to the rail corridor. The introduction of noise, vibration, and lighting associated with trains running along the line during nesting season could disrupt nesting, feeding or other life cycle activities, which could cause nest abandonment or nesting failure. Additionally, structure-nesting species such as cliff swallows could have their nests disturbed and breeding success compromised. Active nests of most bird species are protected by the federal MBTA and Section 3503 of the California Fish and Game Code.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by Mitigation Measure BIO-OP1 and limiting the rehabilitation brushing activities to September 15 through February 14, or a different time frame developed in coordination with a qualified biologist.

Impact BIO-OP2: Maintenance and repair activities associated with the operations of the railroad could result in disturbance to stream zones, special-status species and/or nesting birds during railway maintenance activities.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures BIO-OP2a and BIO-OP2b, which require the use of BMPs and consultation with appropriate resource agencies to develop additional protective measures, if necessary. Additionally, herbicide use shall be conducted in accordance with the BMPs identified in the Final EIR.

Impact BIO-OP3: Bridge maintenance activities within the water (for example, pile splicing, repairs to drifting piles, or pile replacement) may impact sensitive fish species and other sensitive wildlife resources. Maintenance work activities that could cause excessive underwater noise impacts, such as pile driving, could harm or disturb fishes including steelhead, Chinook and coho salmon, and Sacramento splittail. These activities would be temporary and confined to a relatively small area, and would potentially affect only a small number of individuals of these species. Maintenance activities could alter river flow or hinder fish passage.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures BIO-OP3a and BIO-OP3b, which require compliance with permit conditions and BMPs and using a vibrating hammer to minimize noise levels and underwater sound pressure levels.

Impact CR-BC1: During rehabilitation activities at Bakers Creek, which involves the replacement of the existing culvert with a concrete arch structure and

backfilling with new material to reconstruct the embankment to prior conditions, a previously unidentified cultural resource may be found during excavation.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure CR-BC1, which requires training workers to identify cultural resources and stopping all work if a cultural resource is identified during rehabilitation activities.

Impact CR-FC1: During rehabilitation activities of the Foss Creek bank, involving the construction of a retaining wall system to prevent future erosion, a previously unidentified cultural resource may be found during excavation.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure CR-FC1, which requires training workers to identify cultural resources and stopping all work if a cultural resource is identified during rehabilitation activities.

Impact CR-BP1: Rehabilitation of the Black Point Bridge may cause a substantial adverse change in the significance of this historical resource via the proposed mechanical and electrical system improvements to update its operation from a manual swing mechanism to mechanical automation.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure CR-BP1. This measure requires obtaining advance approval of the automation plans from the SHPO.

Impact CR-LS1: During construction of the new siding at MP 1.0 – MP 2.0, near Lombard, a previously unidentified cultural resource may be discovered.

Significance Before Mitigation: Potentially Significant

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Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure CR-LS1, which requires training workers to identify cultural resources and stopping all work if a cultural resource is identified during rehabilitation activities.

Impact GEO-BC1: Fill material may be released to Bakers Creek if not placed and managed properly during construction, leading to siltation at the site and downstream from the site.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure GEO-BC1a and GEO-BC1b. These measures require compliance with permits and BMPs for storm water control, contractor training, and controls to prevent spilling excess soil from the embankment while it is being constructed.

Impact GEO-FC1: Fill material may be released to Foss Creek if not placed and managed properly during rehabilitation activities, leading to siltation at the site and downstream from the site.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure GEO-FC1a and GEO-FC1b. These measures require compliance with permits and BMPs for storm water control, contractor training, and controls to prevent spilling excess soil from the embankment while it is being constructed.

Impact GEO-LS1: If not controlled, conducted in dry weather, or improperly engineered, grading operations and the resulting new siding may leave the site susceptible to erosion from surface runoff.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures GEO-LS1a and GEO-LS1b. These measures require agency approved plans for operation and BMPs for construction, compliance with permits and BMPs, contractor training, and controls to prevent spilling excess soil from the embankment while it is being constructed.

Impact GEO-OP1: Parts of the rail line are susceptible to erosion from surface runoff, particularly sloping areas adjacent to drainage swales, creeks, and rivers that feed the Russian, Napa, and Petaluma Rivers. The rail line is most susceptible to impacts where it is located against hill slopes and runoff flows to the tracks. If the rail embankment has not been graded properly or the drainage system (ditches and culverts) has not been properly engineered or maintained, water can pond and run off the slope, causing severe erosion. Embankment fill slopes leading to bridge crossings are more susceptible to long-term erosion. Portions of the alignment in northern Marin County and southern Sonoma County cross marshlands, and are adjacent to creeks and bridge crossings. In general, these areas are stable; however, flooding caused by high storm runoff coupled with high tides can cause localized erosion and loss of fill beneath the rail bed. Debris that accumulates against bridge piles in creeks may impede flow and dam the creek. This may cause water to rise to the level of the embankment, overtop, and severely erode the rail line. In addition, portions of the proposed project may be subject to landslides and slope movement that could cause damage to the rail line and bridges. The hill areas north of Cloverdale are susceptible to landslides and slope movement. These slopes are inherently unstable due to weak underlying materials, or due to over steepening or loading of existing stable slopes. Along the rail line, several areas have been identified with these conditions, including the slopes immediately adjacent to tunnels along the line, which presently exhibit rockfalls and shallow slumping.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure GEO-OP1. This measure requires regular inspection of drainage ditches, culverts, embankments, and the entire rail line in

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accordance with AREMA standards, FRA regulations, and agency approved operation plans immediately after a significant earthquake.

Impact GEO-OP2: The rail line and bridges are susceptible to significant ground shaking and liquifaction from earthquakes that could damage the line. In addition, the rail line could be damaged by displacement where active faults cross the line along the Lombard to Novato segment and in Bakers Creek (Figure 3.4-2). Potential impacts vary based on a number of factors, including distance to the epicenter, magnitude of the earthquake, duration of ground shaking, nature of the underlying soils, and the construction of the structures.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure GEO-OP2. This measure requires the cessation of operations during a significant earthquake and an inspection, in accordance with AREMA standards, FRA regulations, and agency-approved operation plans immediately after a significant earthquake.

Impact GEO-OP3: Fill material may be released to streams, creeks, and rivers if not placed and managed properly during repair of culverts or embankments that may be damaged during earthquakes or storms, leading to siltation at the site and downstream from the site.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures GEO-OP3a and GEO-OP3b. These measures require approved operations plans and BMPs during rehabilitation activities, such as silt fences, contractor training, and project controls to prevent spills, as well as routine maintenance, in accordance with agency and permit requirements.

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Impact HM-BC1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-BC1. This measure requires BMPs for the management of hazardous materials and waste during rehabilitation activities. Additionally, any fill material shall be certified as clean fill.

Impact HM-FC1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-FC1. This measure requires BMPs for the management of hazardous materials and waste during rehabilitation activities. Additionally, any fill material shall be certified as clean fill.

Impact HM-BP1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

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Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-BP1. This measure requires BMPs for the management of hazardous materials and waste during rehabilitation activities.

Impact HM-BP2: Rehabilitation activities (paint removal) at Black Point Bridge may impact fish and wildlife by introducing lead-based paint into the Petaluma River.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-BP2. This measure requires that all paint be removed in accordance with Cal/OSHA standards unless the paint is tested and certified as lead free; consultation with CDFG about any applicable permitting requirements; and engineering controls that prevent the release of LBP into the environment.

Impact HM-LS1: Construction of the siding from MP 1.0 to MP 2.0 will include minor grading, placement of track ballast and clean fill, placement of 5,300 feet of new track, extending a culvert, reestablishing drainage ditches, widening an existing timber deck bridge, the embankment, and constructing culverts. There is the potential that hazardous materials and waste could be mismanaged during the construction of the new siding at Lombard.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-LS1. This measure requires BMPs for the management of hazardous materials and waste during rehabilitation activities. Additionally, any fill material shall be certified as clean fill.

Impact HM-NCD1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-NCD1. This measure requires BMPs for the management of hazardous materials and waste during rehabilitation activities.

Impact HM-OP1: Spills and releases may occur during fueling and light running maintenance and repair activities.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-OP1. This measure requires BMPs that include predetermined fueling areas, spills and overtopping prevention procedures, and secondary containment measures.

Impact HM-OP2: Spraying herbicides along the rail line for weed abatement may cause impacts on and off the railroad right-of-way.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-OP2. This measure requires BMPs that include using a licensed and experienced spraying contractor; limits

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herbicide use to those approved by local permitting agencies; and the use of alternative brush control measures where feasible; a monitoring program; and a prohibition on spraying within 20 feet of a watercourse.

Impact HM-OP3: There is the potential that hazardous materials and waste could be mismanaged during routine maintenance and repair activities such as bridge, culvert, grade crossing signal, or track maintenance.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure HM-OP2. This measure requires maintenance activities to be conducted in accordance with NCRA's BMPs and applicable permits.

Impact N-OP1: Airborne train noise generated by rail operations will exceed FTA/FRA and local jurisdictional impact criteria where houses are present immediately adjacent to the rail right-of-way. Noise exposure generated by Proposed Project freight train operations is expressed in terms of the noise exposure contour information presented in Appendix H of the Final EIR. Based on this data, the Proposed Project would be expected to produce at least a moderate level of impact at noise-sensitive uses directly adjacent to the tracks.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.

Impact N-OP2: Warning horn noise generated by rail operations will exceed FTA/FRA and local jurisdictional impact criteria at vehicle crossings. The proposed project-related noise impact increases substantially near grade crossings due to the use of train warning horns. Along some sections of the line,

there is the potential for severe impact contours near residential uses that are within approximately 700 feet of the tracks (Category 2). The application of quiet zones is not included as a part of the Proposed Project except within a 6.3 mile stretch of trail/road roughly between MP 28.5 and MP 21.9. The potential application of quiet zones along portions of the proposed project corridor would help to reduce the number of people potentially impacted by the train warning horn. However, quiet zones would not mitigate noise exposure to a less than significant level. Noise exposure produced by freight train events without the warning horn would still produce a moderate noise exposure impact at many residential uses within approximately 375 feet of the tracks, with severe impacts within approximately 150 feet of the tracks in some sections. The removal of warning horns cannot be considered as a possible mitigation since that would significantly increase the impact to safety at many crossings and would violate FRA safety regulations. Neither NCRA nor its operator is willing to accept the liability from decreased safety associated with the removal of warning horns, and the cost to construct quiet zones exceeds project funding.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.

Impact N-OP3: Ground borne vibration generated by rail operations will impact exceed FTA/FRA impact criteria along some parts of the rail line. It is expected that adjacent uses with high sensitivity to ground borne vibration (Category 1) could be impacted by the Proposed Project train operations if they are within 225 feet of the tracks. Likewise, residential uses (Category 2) could be impacted by vibration produced by the Proposed Project freight trains within 100 feet of the tracks, and institutional uses (Category 3) could be impacted if they are within 70 feet of the tracks. For the Proposed Project, it is believed that a significant number of residential uses lie within 100 feet of the rail tracks, and may be impacted by long-term operations of the Proposed Project freight trains.

Significance Before Mitigation: Significant and unavoidable

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Significance After Mitigation: Significant and unavoidable

Finding and Explanation: No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.

Impact N-OP4: Ground borne vibration generated by rail operations may impact historic structures such as train depots located within many of the towns and cities along the rail line.

Significance Before Mitigation: Potentially significant

Significance After Mitigation: Less than significant

Finding and Explanation: With the implementation of Mitigation Measure N-OP4, there will be a less than significant impact. Measure N-OP4 requires consultation with the SHPO and adherence to SHPO's recommendations to protect historic structures.

Impact N-OP5: Routine repair activities such as bridge, grade crossing signals, and track maintenance could introduce ground borne vibration into the surrounding areas. Based on the reference levels for equipment and a reduction of -6 VdB per doubling of distance from the construction equipment source(s), daytime construction vibration levels could impact residential structures (Category III) at distances of no more than 90 feet from the source(s).

Significance Before Mitigation: Potentially significant

Significance After Mitigation: Less than significant

Finding and Explanation: With the implementation of Mitigation Measure N-OP5, there will be a less than significant impact. Measure N-OP5 requires the use of techniques that minimize ground- borne vibrations for affected residences.

Impact PFS-OP1: The proposed project could result in the creation of a hazardous condition (i.e. pedestrian/train conflicts), with regard to safety of the public and schools.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure PFS-OP1. This measure requires NCRA and the operator to work with Operation Lifesaver to educate the public on safety and the implementation of standard safety measures, such as signage, fencing, and other physical impediments.

Impact PFS-OP2: The proposed project could result in at-grade crossing collisions.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure PFS-OP2. This measure requires all crossings to have FRA-required safety guards. The crossings shall be inspected regularly and horns and lights shall be used to increase awareness of an approaching train.

Impact PFS-OP3: A train derailment or flying debris could impact people using bike or pedestrian paths along the railroad.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures PS-OP3a and PS-OP3b. These measures require adherence to the procedures identified in the NCRA Trail Projects Guidelines and additional studies for any agency that requests a trail along the rail line.

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Impact PFS-OP4: If it is determined that the freight trains need to be operated at night, the Proposed Project could impact the residences directly adjacent to the tracks due to the locomotive headlights, causing a disturbance in sleep patterns.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: Locomotive headlights are governed by FRA regulations and any impact from locomotive headlights would be of short duration due to the rapidly passing train on the track. Since locomotive headlights are required by law, the Board finds that there are no known or recommended mitigation measures that would reduce the impact and it is significant and unavoidable.

Impact T-NCD1: Traffic delays may occur during the construction of quiet zone improvements roughly between MP 28.5 and MP 21.9.

Significance Before Mitigation: Potentially significant.

Significance After Mitigation: Less than significant.

Finding and Explanation: This impact is mitigated to less than significant by Mitigation Measure T-NCD1. This mitigation requires that appropriate construction permits shall be obtained from the City of Novato. As part of the permit approval process, a traffic control plan shall be prepared and implemented. Construction activities shall be conducted outside of peak commute hours.

Impact T-OP1: Traffic queue lengths at the intersections shown in table 3.10-7 could exceed the available storage area (roadway space available for vehicles to wait) in the opening year of NCRA freight operations, causing traffic to back up across the at-grade crossing upstream from the traffic signal.

Significance Before Mitigation: Potentially significant.

Significance After Mitigation: Less than significant.

Finding and Explanation: This impact will be reduced to less than significant by Mitigation Measure T-OP1. This mitigation requires cooperation with local jurisdictions, and further requires that interconnects between traffic signals and train crossing signals shall be installed to preempt normal signal operations and allow queues to clear before the train crosses.

Impact T-OP2: Road blockages due to NCRA freight operations could interfere with movement of emergency service vehicles near the rail line.

Significance Before Mitigation: Potentially significant.

Significance After Mitigation: Less than significant.

Finding and Explanation: This impact will be reduced to less than significant by Mitigation Measure T-OP2. This mitigation requires that emergency services operations that would be affected by the proposed project shall be provided with an emergency hotline to NCRA's operator's dispatcher so that trains can be stopped or held back in the event of an emergency.

Impact WR-BC1: During construction for rehabilitating the railway at the Bakers Creek site, construction activities will require the transport, placement of fill, and structural features that could potentially result in erosion, increased sedimentation, and possibly alterations to stream flows.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures WR-BC1a, WR-BC1b, WR-BC1c and WR-BC1d. These measures require compliance with the NPDES permit process, a SWPPP submittal to the RWQCB, a Streambed Alteration Agreement, adherence to the guidelines for fish passages as established by CDFG and NMFS, and compliance with WDRs from the RWQCB.

Impact WR-BC2: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure WR-BC2. This measure limits construction activities to an approved work window and implementation of NCRA's BMPs.

Impact WR-FC1: During construction for rehabilitating the railway at the Foss Creek site, construction activities will require the transport, placement of fill, and placement of structural features that could potentially result in erosion, increased sedimentation, and possibly alterations to stream flows.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measures WR-FC1a, WR-FC1b, WR-FC1c and WR-FC1d. These measures require compliance with the NPDES permit process, including submission of a SWPPP, a Streambed Alteration Agreement, adherence to the guidelines for fish passage from CDFG and NMFS, and compliance with WDRs issued by the RWQCB.

Impact WR-FC2: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment, and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact is mitigated to less than significant by implementing Mitigation Measure WR-FC2. This measure limits construction activities to an approved work window and implementation of NCRA's BMPs.

Impact WR-LS1: The siding from MP 1.0 to MP 2.0 is located in an area that is partially occupied by wetlands. Construction of the new siding and ongoing maintenance activities related to the operations of the railroad will be conducted in accordance with NCRA's BMPs, but will impact sensitive habitats due to the filling of 0.2 acres of seasonable wetlands and loss of 0.69 acres of mudflat habitats.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measure WR-LS1, which requires replacing wetland and mudflat losses with equivalent habitat at a 1:1 ratio or other approved conservation ratio.

Impact WR-LS2: During construction of the siding from MP 1.0 to MP 2.0, construction activities will require the transport, placement of fill, and placement of structural features that could potentially result in erosion and increased sedimentation.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measures WR-LS2a and WR-LS2b. These measures require compliance with the NPDES permit process, a SWPPP, BMPs for erosion and sediment control as well as obtaining all necessary permits.

Impact WR-LS3: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil and other contaminants into wetlands.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measure WR-LS3. This measure requires NCRA to implement BMPs and monitoring programs.

Impact WR-NCD1: There could be disturbance of wetlands/waters of the United States during construction of quiet zone improvements if additional intersections of the NWP Line requiring quiet zone improvements are identified by the regulatory agencies.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measure WR-NCD1. This measure requires consultation with local, state and federal agencies prior to performing work, compliance with BMPs during the work, and restoration of any area disturbed during the work.

Impact WR-OP1: Water crossings could become clogged with debris that could reduce drainage capacity and cause structural failure of culverts or bridges. This debris could impede water flow within a designated 100-year flood plain. Inadequate drainage could also cause excessive erosion that could compromise the railroad embankment in the vicinity of the crossings.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measure WR-OP1. This measure requires BMPs, operations plans and monitoring programs, as well as regular inspections and removal of debris.

Impact WR-OP2: Routine maintenance activities could temporarily increase surface erosion, sedimentation and stream flow alterations due to temporary work performed in the water.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measures WR-OP2a, WR-OP2b and WR-OP2c. These measures require routine maintenance in accordance with NPDES permits, SWPPP, BMPs, and adherence to CDFG's fish passage guidelines and WDRs issued by the RWQCB.

Impact WR-OP3: Routine maintenance activities occurring in water at bridges or culverts could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During maintenance activities, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.

Significance Before Mitigation: Potentially Significant

Significance After Mitigation: Less than Significant

Finding and Explanation: The impact will be reduced to less than significant by implementing Mitigation Measure WR-OP3. This measure requires, among other things, avoiding accidental spills by implementing BMPs. Standards for such BMP's are included.

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Impact CUM – SM1: Future combined SMART passenger and NCRA freight operations would result in a permanent increase in ambient noise levels in some segments for sensitive receptors within 50 feet of the tracks.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: Combined SMART passenger and freight service would expose sensitive receptors to noise levels of 64 Ldn for areas where the freight operates at 50 mph and 60 Ldn where the freight operates at 25 mph, for less than two minutes during the day. The impact would increase to over 68 Ldn if freight trains pass between 10 p.m. and 7 a.m.

Impact CUM – SM2: Future combined SMART passenger and NCRA freight operations would result in a significant cumulative impact from train horn noise near grade crossings.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: Based on the information in the Final EIR and the record of these proceedings, the Board finds that the warning horn noise generated by rail operations is significant and unavoidable. Since removing the warnings would violate the FRA's Safety Regulations, the Board finds that there is no known or recommended mitigation measure that would reduce airborne train noise, therefore, this impact is significant and unavoidable. The Board further finds that removing the horns would significantly increase the impacts to public safety, and that imposing quiet zones along portions of the rail corridor would not reduce the warning horn noise to a less than significant level.

Impact CUM – SM3: Future combined SMART passenger and NCRA freight operations would result in a cumulative impact from ground borne noise and vibration.

Significance Before Mitigation: Significant and unavoidable

Significance After Mitigation: Significant and unavoidable

Finding and Explanation: Based on the information in the Final EIR and the record of these proceedings, the Board finds that ground borne vibrations caused by the rail operations for sensitive land uses within 225 feet of the tracks, residential uses within 100 feet of the tracks, and institutional uses within 70 feet of the tracks is significant and unavoidable. The Board finds that there is no known or recommended mitigation measure that would reduce ground borne vibrations caused by rail operations, therefore, this impact is significant and unavoidable.

Based on the Final EIR and the record of these proceedings, the Board finds that, except as is set forth herein, these impacts have been mitigated to a less than significant level by the adoption and enforcement of a Mitigation Monitoring and Reporting Plan. Accordingly, changes or alternatives have been required or incorporated into the Proposed Project that mitigate a significant effect to the environment for the impacts identified in this Exhibit.

Impact CUM – WI1: The relocation of the highway combined with resuming the operations of the proposed NCRA freight railroad could result in an impact to wetlands and salmonids.

Significance Before Mitigation: Potentially significant

Significance After Mitigation: Less than significant

Finding and Explanation: The implementation of Mitigation Measure CUM-WI1 will reduce any impact to less than significant. Measure CUM-WI1 requires agency consultations, obtaining all required permits, and implementation of BMPs.

4.0 MITIGATION MONITORING AND REPORTING PLAN

4.1 INTRODUCTION

The California Environmental Quality Act (CEQA) requires that when an agency approves a project for which mitigation is required, the agency must adopt a Mitigation Monitoring and Reporting Plan (MMRP) that ensures the mitigation measures will be implemented (Public Resources Code Section 21081.6(a)).

This MMRP is intended to satisfy the requirements of CEQA as they relate to the Final Environmental Impact Report (FEIR) for the North Coast Railroad Authority (NCRA) Russian River Division Freight Rail Project. It will be used by NCRA, as the lead agency for the project, to ensure that project activities meet the mitigation program requirements and other permit conditions and regulations imposed by participating responsible agencies. The contractors selected to construct, repair, maintain and/or operate the railroad and other activities associated with the project will be responsible to demonstrate compliance of these measures to NCRA. Compliance will be demonstrated by various means, such as submittal of reports, documentation, contractual requirements, permit requirements, inspections by NCRA and other responsible agencies.

Mitigation is defined by CEQA as a measure which:

- Avoids the impact altogether by not taking a certain action or parts of an action.
- Minimizes impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifies the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reduces or eliminated the impact over time by preservation and maintenance operations during the life of the project.
- Compensates for the impact by replacing or providing substitute resources or environments.

4.2 MITIGATION MONITORING AND REPORTING PLAN

The Table 4-1 MMRP-1 indicates the mitigation measure identification number, potential impact the measure is designed to address, text of the mitigation measure, agency responsible for compliance and implementation, the method of compliance, and timing of the compliance.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
AIR QUALITY				
Bakers Creek – Rehabilitation and Construction Activities				
Impact AQ-BC1: The proposed project would generate dust and other criteria air pollutant emissions during rehabilitation activities. These activities may utilize gasoline and diesel power equipment.	**Mitigation AQ-BC1:** Gasoline and diesel powered equipment shall be used for relatively short periods and shall meet the applicable CARB emission standards. Dust mitigation shall also be employed as necessary and in accordance with air quality regulations and NCRA's BMPs.	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality regulations and meet the applicable CARB regulatory requirements.	During rehabilitation, repair, maintenance and construction activities.
Foss Creek – Rehabilitation and Construction Activities				
Impact AQ-FC1: The proposed project would generate dust and other criteria air pollutant emissions during rehabilitation activities. These activities may utilize gasoline and diesel power equipment.	**Mitigation AQ-FC1:** Gasoline and diesel powered equipment shall be used for relatively short periods and shall meet the applicable CARB emission standards. Dust mitigation shall also be employed as necessary and in accordance with air quality regulations and NCRA's BMPs.	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality regulations and meet the applicable CARB regulatory requirements.	During rehabilitation, repair, maintenance and construction activities.
Black Point Bridge – Rehabilitation and Construction Activities				
Impact AQ-BP1: The proposed project would generate dust and other criteria air pollutant emissions during rehabilitation activities. Project related construction will be limited to the rehabilitation of the existing bridge electrical and mechanical systems. These activities may utilize gasoline and diesel power equipment.	**Mitigation AQ-BP1:** Gasoline and diesel powered equipment shall be used for relatively short periods and shall meet the applicable CARB emission standards. Dust mitigation shall also be employed as necessary and in accordance with air quality regulations and NCRA's BMPs.	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality regulations and meet the applicable CARB regulatory requirements.	During rehabilitation, repair, maintenance and construction activities.
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact AQ-LS1: Construction of the siding from MP 1.0 to MP 2.0 will include grading, placement of track ballast and clean fill, placement of 5,300 feet of new track, extending a culvert, reestablishing drainage ditches, widening an existing timber deck bridge, the embankment, and constructing culverts. The construction activities that will be necessary to construct the siding for the interchange with the Cal Northern line between MP 1.0 and MP 2.0, could cause an adverse air quality impact.	**Mitigation AQ-LS1:** Maintenance and construction activities related to the operations of the railroad will be conducted in accordance with air quality regulations and NCRA's BMPs.	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality regulations and meet the applicable CARB regulatory requirements.	During rehabilitation, repair, maintenance and construction activities.
Novato Consent Decree (MP 35.5 – MP 18.7)				
Impact AQ-NCD1: Construction of the quiet zones would generate dust and other criteria air pollutant emissions from the use of gasoline and diesel powered equipment.	**Mitigation AQ-NCD1:** Construction activities and the use of gasoline and diesel powered equipment shall be used for relatively short periods and shall meet applicable CARB emission standards. Dust mitigation shall also be employed as necessary and in accordance with air quality regulations and NCRA's BMPs. Therefore, the impacts from these minor construction activities are	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality	During rehabilitation, repair, maintenance and construction activities.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
	considered less than significant after mitigation.		regulations and meet the applicable CARB regulatory requirements.	
Operations				
Impact AQ-OP1: The routine and emergency maintenance activities that will be necessary to allow for safe and efficient operations of the railroad, such as bridge repair, brush cutting, and grade crossing signal maintenance, could cause an adverse air quality impact.	**Mitigation AQ-OP1:** Maintenance activities related to the operations of the railroad will be conducted in accordance with air quality regulations and NCRA's BMPs.	NCRA NCRA's Contractors	Contractors will be provided with NCRA's BMPs and they will be responsible for implementing them. NCRA will inspect rehabilitation, maintenance, repair and construction activities to ensure that their BMPs are being appropriately implemented. NCRA will confirm that the equipment being used and the activities being conducted comply with the local air quality regulations and meet the applicable CARB regulatory requirements. In addition, specific procedures for brushing and spraying will be implemented.	During rehabilitation, repair, maintenance and construction activities.
BIOLOGICAL RESOURCES				
Bakers Creek – Rehabilitation and Construction Activities				
Impact BIO-BC1: If conducted improperly, the transport and placement of clean fill and excavation activities may impact the stream habitat and water quality. The installation of the structure and fill placement will likely require operation of equipment within the creek channel and adjacent banks, which will temporarily disturb the sediments and vegetation. These activities may impact sensitive aquatic resources, and could also adversely affect other organisms and communities in the vicinity of work areas. The Biological Field Report (Appendix E) identifies key species and habitats in the area that should be protected. These activities will result in suspended sediments, and may directly injure organisms, bury or alter habitat features, or block migration of fish and invertebrates. The work activities could cause mortality, harm or disturbance to state- and federally-listed species, if they are present in or near work areas. Migratory passageways for adult or juvenile salmonids, including steelhead, could be temporarily blocked, depending on the final design grade and condition.	**Mitigation BIO-BC1a:** Activities in stream zones shall be conducted in conformance with permits and operations plans required by NCRWQB, CDFG, and other agencies. Work within the stream and riparian habitat areas will be conducted during the appropriate work window (dry season), which will be determined in consultation with CDFG, USFWS, and NOAA Fisheries. Bakers Creek is an intermittent stream, so the work window will likely occur during the summer months when the creek is dry, but regardless, shall be conducted in compliance with specific permit conditions. **Mitigation BIO-BC1b:** A qualified biological monitor shall be present during critical rehabilitation work periods (e.g., grubbing and clearing, culvert installation, pouring concrete, placing rip-rap). If a listed or protected species is encountered, work shall be stopped immediately at that location, the appropriate agency or agencies (USFWS, NOAA Fisheries and/or CDFG) shall be notified.	NCRA RWQCB CDFG USFWS NOAA Fisheries NCRA Contractors	NCRA will coordinate all permitting and agency consultation activities. NCRA will ensure that the appropriate permits and approvals have been obtained and the conditions are met. NCRA will either provide or ensure that a qualified biologist is present during critical rehabilitation work periods to monitor the activity. NCRA's contractors will be provided with NCRA's BMPs and the permit/approval conditions. NCRA will inspect the rehabilitation and construction activities on a routine basis to ensure that the BMPs and permit conditions are being implemented.	During the rehabilitation of the Bakers Creek site.
	Work shall not resume at that location prior to the agencies' approval, or as agreed to in prior consultation with the agencies. All work shall be conducted in compliance with specific permit conditions. **Mitigation BIO-BC1c:** While working in stream zones that harbor federal- or state-listed fish species, NCRA shall comply with all conditions and implement any protective measures, including work windows, determined in consultation with NOAA Fisheries and CDFG, and other agencies as appropriate. All work shall be conducted in compliance with specific permit conditions.			
Impact BIO-BC2: The timing of the rehabilitation work, if in an area not disturbed by noise and during breeding and nesting season (February 15 to September 15), may cause nest abandonment for species covered under the MBTA. Rehabilitation activities could affect raptors and other birds nesting in	**Mitigation BIO-BC2:** Trees and shrubs in the construction zones shall be trimmed or removed between September 16 and February 14 to reduce potential impacts on nesting birds. If vegetation must be removed during the period from February 15 to September 15, a qualified biologist shall conduct pre-construction surveys for nesting birds. If an active nest is found, the bird shall be identified	NCRA USFWS CDFG NCRA Contractors	NCRA will ensure that either the trimming or removal of trees and shrubs is conducted outside of the nesting season or if that is not possible, NCRA will ensure that an qualified biologist conducts a pre-construction (trimming) survey. NCRA will ensure that based on the results of the survey, the appropriate actions are taken as described in the mitigation measure and	During the rehabilitation of the Bakers Creek site.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
vegetation or adjacent to work areas. Trimming or removal of vegetation could destroy or disturb active nests. Equipment noise, vibration, lighting and other human-related disturbance could disrupt nesting, feeding or other life cycle activities, and could cause nest abandonment or nesting failure. Because active nests of most bird species are protected by the federal MBTA and Section 3503 of the California Fish and Game Code, any disturbance could be significant.	to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300 feet for raptors; or (b) 75 feet for other non-special-status bird species. If active nests are closer than those distances to the nearest work site and there is the potential for destruction of a nest or substantial disturbance to nesting birds due to work activities, a plan to monitor nesting birds during construction shall be prepared and submitted to the USFWS and CDFG for review and approval. Disturbance of active nests shall be avoided until it is determined that nesting is complete and the young have fledged. If rehabilitation work is likely to occur during the nesting season of cliff swallows (March 1 to July 31), the area shall be periodically inspected for swallow nests by a qualified monitor prior to the onset of rehabilitation work efforts. As appropriate, nests shall be knocked down by a biologist only prior to being one-third completed. Inspection of structures shall start in late February. All work shall be conducted in compliance with specific permit conditions.		per regulatory agency requirements. NCRA will ensure that their staff/contractors implement NCRA's BMPs. NCRA will inspect the activities on a routine basis to verify compliance.	
Impact BIO-BC3: Use of heavy equipment other than on-rail equipment and the storage of materials and supplies could cause damage to sensitive vegetation and wildlife habitat within temporary work areas. Operation of vehicles and equipment in temporary construction access and staging areas, parking of vehicles and placement of equipment and materials in temporary laydown and storage areas could remove or crush vegetation, damage tree roots, compact soil, or collapse animal burrows. Accidental spill or release of a hazardous material could potentially harm wildlife and impair the recruitment and establishment of on-site vegetation (please refer to Section 3.6, Hazardous Materials). Temporary work areas would be located mostly in ruderal and developed areas, but may overlap small portions of other upland plant communities including oak woodland, mixed scrub, and non-native grassland. Construction-related impacts on common plant communities would be less than significant. However, impacts on wildlife in work areas could be considered significant if they interfere substantially with wildlife movement, impede the use of breeding sites, or conflict with local policies that protect wildlife species and habitats.	**Mitigation BIO-BC3:** Construction access, staging, storage, and parking areas shall be located on ruderal or developed areas. Vehicle travel adjacent to wetlands and riparian areas shall be limited to existing roads and designated access paths. Sensitive natural communities outside of the proposed project work area (i.e., wetlands, waters, riparian zones and oak woodlands) shall be conspicuously marked in the field to minimize impacts on these communities, and work activities shall be limited to outside the marked areas. Workers shall be educated on the potential impacts and measures that will be taken to avoid work in sensitive areas. Qualified biologists shall identify sensitive biological resources and monitor rehabilitation activities to assure successful implementation of NCRA's BMPs. All work shall be conducted in compliance with specific permit conditions.	NCRA US Army COE CDFG RWQCB NCRA Contractors	NCRA will identify wetlands and other waters of the United States which could be impacted in or near the construction area and consult, as necessary, with the regulatory agencies. NCRA will ensure that the appropriate permits and approvals are obtained prior to work activities. NCRA will ensure that a qualified biologist monitors the activities that could potentially cause significant impact on sensitive biological resources. NCRA will ensure that their staff/contractors implement NCRA's BMPs and permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Bakers Creek site.
Impact BIO-BC4: There could be temporary disturbance of wetlands/waters of the United States at the Bakers Creek site. Construction activities could impact wetlands and other waters at the rehabilitation work site. Operation of vehicles and equipment in these areas could adversely affect wetland and stream habitat by disrupting soil and damaging or removing wetland and riparian vegetation. Ground disturbance and other activities within and adjacent to stream zones could result in increased erosion, water turbidity and sediment transport into waterways.	**Mitigation BIO-BC4:** Upon completion of the rehabilitation work at the site, all temporarily disturbed natural areas (if any), including stream banks, shall be returned to original contours and in accordance with the permit conditions. Affected wetlands, stream banks or stream channels shall be stabilized prior to the rainy season and/or prior to reestablishing flow. For wetland areas, the top six inches of native topsoil shall be stockpiled and replaced following work. Wetland and riparian vegetation shall be reestablished as appropriate. All work shall be conducted in compliance with specific permit conditions.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Bakers Creek site.
Impact BIO-BC5: The proposed work at Bakers Creek could result in the introduction or spread of noxious weeds in the vicinity of the rehabilitation area.	**Mitigation BIO-BC5:** During work activities, the following NCRA's BMPs shall be implemented to reduce the spread of exotic invasive plants in the rehabilitation site work areas as follows:	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Bakers Creek site.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Proposed work activities could inadvertently spread existing populations of invasive weeds and/or introduce new species from contaminated sources. Invasive plants could be introduced or spread at any time of year by transfer of seeds or plant fragments on vehicles and heavy equipment; through erosion control practices such as placement of hay bales, seeding or mulching; and during planting of landscaping or reestablishment of natural vegetation within the right-of-way. Because this could conflict with policies to limit the spread of invasive weeds, this impact is potentially significant.	• Avoid vehicle travel through weed-infested areas at the site. • Avoid soil disturbance and the removal of existing vegetation (exotic or native) during construction activities. • Use only certified weed-free straw and mulch or weed-free fiber roll barriers or sediment logs. • Use only certified weed-free native seed mixes and native plants that are appropriate to the pre-existing or adjacent natural habitat for revegetation.			
Impact BIO-BC6: The proposed rehabilitation work at Bakers Creek could result in the loss of individuals or habitat of special-status plant species. Rehabilitation work at Bakers Creek could potentially affect Clara Hunt's milkvetch and/or Colusa layia, a listed special-status species. The Clara Hunt's milkvetch and Colusa layia have the potential to occur in non-native grasslands or oak woodlands similar to those in the Bakers Creek rehabilitation sites. Although surveys conducted in potential habitat for Clara Hunt's milkvetch and Colusa layia did not detect these species, protocol surveys have not been completed at the site.	**Mitigation BIO-BC6:** Prior to rehabilitation, a plant survey shall be conducted in any unaltered vegetated area that will be disturbed, pursuant to protocols established in consultation with appropriate agencies prior to the initiation of work activities. All work shall be conducted in compliance with specific permit conditions.	NCRA USFWS CDFG NCRA Contractors	NCRA will ensure that prior to construction activities, a plant survey has been conducted in any unaltered or previously disturbed vegetated areas that will be impacted by the construction activities. The survey will be conducted by a qualified biologist. NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Bakers Creek site.
Foss Creek – Rehabilitation and Construction Activities				
Impact BIO-FC1: The transport and placement of clean fill material and rip-rap may impact the stream habitat and water quality. The installation of the structure and fill placement will likely require operation of equipment within the creek channel and adjacent banks, which will temporarily disturb the sediments and vegetation. The installation of sheet piles will require the use of a pile driver, which can generate significant noise levels and underwater sound pressure levels. These activities will result in suspended sediments and elevated noise and sound pressure levels, which may directly injure organisms, bury or alter habitat features, or block migration of fish and invertebrates. The work activities could cause mortality, harm or disturbance to state- and federally-listed species, if they are present in or near work areas. Migratory passageways for adult or juvenile salmonids, including steelhead, could be temporarily or permanently blocked, depending on the final design grade and condition.	**Mitigation BIO-FC1a:** Activities in stream zones shall be conducted in conformance with permits and work plans required by NCRWQB, CDFG, and other agencies. Work within the stream and riparian habitat areas will be conducted during the appropriate work window (dry season), which will be determined in consultation with CDFG, USFWS, and NOAA Fisheries. In addition, work shall implement the BMPs identified for these projects. All work shall be conducted in compliance with specific permit conditions. **Mitigation BIO-FC1b:** A qualified biological monitor shall be present during critical rehabilitation work periods (e.g., grubbing and clearing, culvert installation, sheet pile installation, pouring concrete, placing rip-rap). If a listed or protected species is encountered, work shall be stopped immediately at that location, the appropriate agency or agencies (USFWS, NOAA fisheries and/or CDFG) shall be notified. Work shall not resume at that location prior to the agencies' approval, or as agreed to in prior consultation with the agencies. All work shall be conducted in compliance with specific permit conditions. **Mitigation BIO-FC1c:** While working in stream zones that harbor federal- or state-listed fish species, NCRA shall comply with all conditions and implement any protective measures, including work windows, determined in consultation with NOAA Fisheries and CDFG, and other agencies as appropriate. All work shall be conducted in compliance with specific permit conditions. **Mitigation BIO-FC1d:** A vibrating hammer will be used, instead of a drop hammer, to install all sheet piles. The vibration method minimizes noise levels and disturbance to wildlife. This method is also preferred by resource agencies as a means to avoid harmful	NCRA NCRWQCB CDFG USFWS NOAA Fisheries NCRA Contractors	NCRA will coordinate all permitting and agency consultation activities. NCRA will ensure that the appropriate permits and approvals have been obtained and the conditions are met. NCRA will either provide or ensure that a qualified biologist is present during critical rehabilitation work periods to monitor the activity. NCRA's contractors will be provided with NCRA's BMPs and the permit/approval conditions. NCRA will inspect the rehabilitation and construction activities on a routine basis to ensure that the BMPs and permit conditions are being implemented.	During the rehabilitation of the Foss Creek site.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
	effects to fish species that have been observed during the use of drop hammers. **Mitigation BIO-FC1e:** Sheet piles will be located above the mean high water level of the creek.			
Impact BIO-FC2: The timing of the rehabilitation work at the site, if in an area undisturbed by noise and during breeding and nesting season (February 15 to September 15), may cause nest abandonment for species covered under the MBTA. Rehabilitation activities could affect raptors and other birds nesting in vegetation or on bridges in or adjacent to work areas. Trimming or removal of vegetation could destroy or disturb active nests. Equipment noise, vibration, lighting and other human-related disturbance could disrupt nesting, feeding or other life cycle activities, and could cause nest abandonment or nesting failure. Structure-nesting species such as cliff swallows could have their nests disturbed and breeding success compromised. Because active nests of most bird species are protected by the federal MBTA and Section 3503 of the California Fish and Game Code, any disturbance could be significant.	**Mitigation BIO-FC2:** Trees and shrubs in the construction zones shall be trimmed or removed between September 16 and February 14 to reduce potential impacts on nesting birds. If vegetation must be removed during the period from February 15 to September 15, a qualified biologist shall conduct pre-construction surveys for nesting birds. If an active nest is found, the bird shall be identified to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300 feet for raptors; or (b) 75 feet for other non-special-status bird species. If active nests are closer than those distances to the nearest work site and there is the potential for destruction of a nest or substantial disturbance to nesting birds due to work activities, a plan to monitor nesting birds during construction shall be prepared and submitted to the USFWS and CDFG for review and approval. Disturbance of active nests shall be avoided until it is determined that nesting is complete and the young have fledged. If rehabilitation work is likely to occur during the nesting season of cliff swallows (March 1 to July 31), the area shall be periodically inspected for swallow nests by a qualified monitor prior to the onset of rehabilitation work efforts. As appropriate, nests shall be knocked down by a biologist prior to being one-third completed. Inspection of structures shall start in late February. Alternative methods to prevent cliff swallow nesting on structures may be used with prior approval by the CDFG. All work shall be conducted in compliance with specific permit conditions and NCRA's BMPs.	NCRA USFWS CDFG NCRA Contractors	NCRA will ensure that either the trimming or removal of trees and shrubs is conducted outside of the nesting season or if that is not possible, NCRA will ensure that an qualified biologist conducts a pre-construction (trimming) survey. NCRA will ensure that based on the results of the survey, the appropriate actions are taken as described in the mitigation measure and per regulatory agency requirements. NCRA will ensure that their staff/contractors implement NCRA's BMPs. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Foss Creek site.
Impact BIO-FC3: Use of heavy equipment other than on-rail equipment and the storage of materials and supplies could cause damage to sensitive vegetation and wildlife habitat within temporary work areas. Operation of vehicles and equipment in temporary construction access and staging areas, parking of vehicles and placement of equipment and materials in temporary laydown and storage areas could remove or crush vegetation, damage tree roots, compact soil, or collapse animal burrows. Accidental spill or release of a hazardous material could potentially harm wildlife and impair the recruitment and establishment of onsite vegetation (please refer to Section 3.6, Hazardous Materials). Temporary work areas would be located mostly in ruderal and developed areas, but may overlap small portions of other upland plant communities including oak woodland, mixed scrub, and non-native grassland. Construction-related impacts on common upland plant communities would be less than significant. However, impacts on wildlife in work areas could be considered significant if they interfere substantially with wildlife movement, impede the use of breeding sites, or conflict with local policies that protect wildlife species and habitats.	**Mitigation BIO-FC3a:** Construction access, staging, storage, and parking areas shall be located on ruderal or developed lands. Vehicle travel adjacent to wetlands and riparian areas shall be limited to existing roads and designated access paths. Sensitive natural communities (i.e., wetlands, waters, riparian zones and oak woodlands) shall be conspicuously marked in the field to minimize impacts on these communities, and work activities shall be limited to outside the marked areas. Workers shall be educated on the potential impacts and measures that will be taken to avoid them. NCRA has developed BMPs to avoid or minimize these potential impacts. Identification of sensitive biological resources and monitoring by a biologist will assure successful implementation of NCRA's BMPs. All work shall be conducted in compliance with the site specific permits. **Mitigation BIO-FC3b:** Qualified biologists shall monitor rehabilitation activities that could potentially cause significant impacts on sensitive biological resources. All rehabilitation	NCRA US Army COE USFWS CDFG RWQCB NCRA Contractors	NCRA will identify wetlands and other waters of the United States which could be impacted in or near the construction area and consult, as necessary, with the regulatory agencies. NCRA will ensure that the appropriate permits and approvals are obtained prior to work activities. NCRA will ensure that a qualified biologist monitors the activities that could potentially cause significant impact on sensitive biological resources. NCRA will ensure that their staff/contractors implement NCRA's BMPs and permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Foss Creek site.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
	activities shall be conducted in accordance with NCRA's BMPs.			
Impact BIO-FC4: There could be temporary disturbance of wetlands/waters of the United States at the Foss Creek site. Construction activities could impact wetlands and other waters at the rehabilitation work site. Operation of vehicles and equipment in these areas could adversely affect wetland and stream habitat by disrupting soil and damaging or removing wetland and riparian vegetation. Ground disturbance and other activities within and adjacent to stream zones could result in increased erosion, water turbidity and sediment transport into waterways. Oil, gas and other pollutants could also be released into water bodies (please refer to Section 3.6, Hazardous Materials).	**Mitigation BIO-FC4:** Upon completion of the rehabilitation work at the site, all temporarily disturbed natural areas (if any), including stream banks, shall be returned to original contours. Affected wetlands, stream banks or stream channels shall be stabilized prior to the rainy season and/or prior to reestablishing flow. For wetland areas, the top six inches of native topsoil shall be stockpiled and replaced following work. Wetland and riparian vegetation shall be reestablished as appropriate. All work shall be conducted in compliance with specific permit conditions.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Foss Creek site.
Impact BIO-FC5: The proposed work at Foss Creek could result in the introduction or spread of noxious weeds in the project corridor. Proposed work activities at Foss Creek could inadvertently spread existing populations of invasive weeds and/or introduce new species from contaminated sources. Invasive plants could be introduced or spread at any time of year by transfer of seeds or plant fragments on vehicles and heavy equipment; through erosion control practices such as placement of hay bales, seeding or mulching; and during planting of landscaping or reestablishment of natural vegetation within the right-of-way. Because this could conflict with policies to limit the spread of invasive weeds, this impact is potentially significant.	**Mitigation BIO-FC5:** During work activities, the following NCRA BMPs shall be implemented to reduce the spread of exotic invasive plants in the rehabilitation site work areas as follows: • Minimize vehicle travel through weed-infested areas at the site. • Minimize soil disturbance and the removal of existing vegetation (exotic or native) during construction activities. • Use only certified weed-free straw and mulch or weed-free fiber roll barriers or sediment logs. • Use only certified weed-free native seed mixes and native plants that are appropriate to the pre-existing or adjacent natural habitat for revegetation. All work shall be conducted in compliance with specific permit conditions.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Foss Creek site
Impact BIO-FC6: The proposed rehabilitation work at Foss Creek could result in the loss of individuals or habitat of special-status plant species. Rehabilitation work at Foss Creek could potentially affect Clara Hunt's milkvetch and/or Colusa layia, a listed special-status species. The Clara Hunt's milkvetch and Colusa layia have the potential to occur in non-native grasslands or oak woodlands similar to those in the Foss Creek rehabilitation sites. Although surveys conducted in potential habitat for Clara Hunt's milkvetch and Colusa layia did not detect these species, protocol surveys have not been completed at the two sites.	**Mitigation BIO-FC6:** Prior to rehabilitation, a plant survey shall be conducted in any vegetated area that will be disturbed, pursuant to protocols established in consultation with appropriate agencies prior to the initiation of work activities. All work shall be conducted in compliance with specific permit conditions.	NCRA USFWS CDFG NCRA Contractors	NCRA will ensure that prior to construction activities, a plant survey has been conducted in any unaltered or previously disturbed vegetated areas that will be impacted by the construction activities. The survey will be conducted by a qualified biologist. NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the rehabilitation of the Foss Creek site
Black Point Bridge – Rehabilitation and Construction Activities				
Impact BIO-BP1: The timing of the rehabilitation work at the site, if in an area undisturbed by noise and during breeding and nesting season (February 15 to September 15), may cause nest abandonment for species covered under the MBTA. Rehabilitation activities could affect raptors and other birds nesting in vegetation or on bridges in or adjacent to work areas. Equipment noise, vibration, lighting and other human-related disturbance could disrupt nesting, feeding or other life cycle activities, and could cause nest abandonment or nesting failure. Structure-nesting species such as cliff	**Mitigation BIO-BP1:** If an active nest is found on the bridge or in the vicinity of the work site, the bird shall be identified to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300 feet for raptors; or (b) 75 feet for other non-special-status bird species. If active nests are closer than those distances to the nearest work site and there is the potential for destruction of a nest or substantial disturbance to nesting birds due to work activities, a plan to monitor nesting birds during construction shall	NCRA USFWS CDFG NCRA Contractors	NCRA will ensure that either the trimming or removal of trees and shrubs is conducted outside of the nesting season or if that is not possible, NCRA will ensure that an qualified biologist conducts a pre-construction (trimming) survey. NCRA will ensure that based on the results of the survey, the appropriate actions are taken as described in the mitigation measure and per regulatory agency requirements. NCRA will ensure that their staff/contractors implement	During the rehabilitation of the Black Point Bridge.

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MITIGATION MONITORING AND REPORTING PLAN
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Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
swallows could have their nests disturbed and breeding success compromised. Because active nests of most bird species are protected by the federal MBTA and Section 3503 of the California Fish and Game Code, any disturbance could be significant.	be prepared and submitted to the USFWS and CDFG for review and approval. Disturbance of active nests shall be avoided to the extent possible until it is determined that nesting is complete and the young have fledged. If rehabilitation work is likely to occur during the nesting season of cliff swallows (March 1 to July 31), the area shall be periodically inspected for swallow nests by a qualified monitor prior to the onset of rehabilitation work efforts. As appropriate, nests shall be knocked down by a biologist prior to being one-third completed. Inspection of structures shall start in late February. Alternative methods to prevent cliff swallow nesting on the bridge may be used with prior approval by the CDFG.		NCRA's BMPs. NCRA will inspect the activities on a routine basis to verify compliance.	
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact BIO-LS1: The siding from MP 1.0 to MP 2.0 is located in an area occupied primarily by wetlands and open grasslands. The construction activities of the siding for the interchange with the Cal Northern line between MP 1.0 and MP 2.0, could cause an adverse impact to biological resources. Construction of the new siding will be conducted in accordance with NCRA's BMPs, but will impact sensitive habitats due to the filling of 0.2 acres of seasonal wetlands and loss of 0.69 acres of mudflat habitats.	**Mitigation BIO-LS1:** The wetlands and mudflats will be fully evaluated and confirmed in coordination with permitting and resource agencies. Losses of the habitats will be mitigated by creation of an equivalent habitat at a 1:1 ratio, or other compensatory mitigation determined appropriate by the permitting agencies.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the construction of Lombard Siding.
Novato Consent Decree (MP 35.5 – MP 18.7)				
Impact BIO-NCD1: There could be disturbance of wetlands/waters of the United States during construction if additional intersections of the NWP Line requiring quiet zone improvements are identified by the regulatory agencies. Construction activities could impact wetlands and other waters at the quiet zone sites. Operation of vehicles and equipment in these areas could adversely affect wetland and stream habitat by disrupting soil and damaging or removing wetland and riparian vegetation. Ground disturbance and other activities within and adjacent to stream zones could result in increased erosion, water turbidity and sediment transport into waterways.	**Mitigation BIO-NCD1:** Local jurisdictions and state and federal agencies shall be consulted prior to work in wetlands to ascertain any requirements to protect wetlands. Work shall be conducted in compliance with any specific permit requirements, and NCRA's BMPs. Upon completion of the construction work at the site, all temporarily disturbed natural areas (if any), including stream banks, shall be returned to original contours and in accordance with the permit requirements. Affected wetlands, stream banks or stream channels shall be stabilized prior to the rainy season and/or prior to reestablishing flow. For wetland areas, the top six inches of native topsoil shall be stockpiled and replaced following work. Wetland and riparian vegetation shall be reestablished as appropriate.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the construction of the quiet zones and other NCD activities.
Impact BIO-NCD2: Use of heavy equipment other than on-rail equipment and the storage of materials and supplies could cause damage to sensitive vegetation and wildlife habitat within temporary work areas. Operation of vehicles and equipment in temporary construction access and staging areas, parking of vehicles and placement of equipment and materials in temporary laydown and storage areas could remove or crush vegetation, damage tree roots, compact soil, or collapse animal burrows. Temporary work areas would be located mostly in ruderal and developed areas, but may overlap small portions of other upland plant communities including oak woodland, mixed scrub, and non-native grassland. Construction-related impacts on common plant communities would be less than significant. However, impacts on wildlife in work areas could be considered significant if they interfere substantially with wildlife movement, impede the use of breeding sites, or conflict with local policies that protect	**Mitigation BIO-NCD2:** Construction access, staging, storage, and parking areas shall be located on ruderal or developed areas. Vehicle travel adjacent to wetlands and riparian areas shall be limited to existing roads and designated access paths. Sensitive natural communities outside of the proposed project work area (i.e., wetlands, waters, riparian zones and oak woodlands) shall be conspicuously marked in the field to minimize impacts on these communities, and work activities shall be limited to outside the marked areas. Workers shall be educated on the potential impacts and measures that will be taken to avoid work in sensitive areas. Qualified biologists shall identify sensitive biological resources and monitor rehabilitation activities to assure successful implementation of NCRA's BMPs. All work shall be conducted in compliance with specific permit conditions.	NCRA NCRA Contractors	NCRA will ensure that construction activities are located on ruderal or developed lands and that sensitive natural communities outside of the proposed work area are conspicuously marked. NCRA will ensure that the workers are educated on potential impacts and proper work activities. NCRA will ensure that the appropriate permits and approvals are obtained prior to work activities. NCRA will ensure that a qualified biologist monitors the activities that could potentially cause significant impact on sensitive biological resources. NCRA will ensure that their staff/contractors implement NCRA's BMPs and permit/approval conditions. NCRA will inspect the activities on a routine basis to verify compliance.	During the construction of the quiet zones and other NCD activities.

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MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
wildlife species and habitats.				
Impact BIO-NCD3: Additional intersections requiring quiet zone improvements that may be required by regulatory agencies may be located in areas now occupied by wetlands. Some wetlands, particularly those on the railroad right-of-way created as a result of deferred maintenance of drainage swales, may require filling to construct quiet zone improvements.	**Mitigation BIO-NCD3:** The wetlands shall be fully evaluated and confirmed in coordination with permitting and resource agencies. Losses of the habitats will be mitigated by creation of an equivalent habitat at a 1:1 ratio, or other compensatory mitigation determined appropriate by the permitting agencies.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will coordinate any work that may potentially impact wetlands with the appropriate regulatory agencies and if required, NCRA will mitigate the loss of wetland habitats as determined appropriate by the agencies.	During the construction of the quiet zones and other NCD activities.
Impact BIO-NCD4: Safety fencing between MP 29.5 to MP 25.9 may restrict the migration of sensitive species across the railroad right-of-way.	**Mitigation BIO-NCD4:** Plans for the fencing shall be reviewed by a qualified biologist. If it is ascertained that sensitive species are in the area, and that the fence could create a significant impact through the impedance of their migration, appropriate measures shall be incorporated into the fence design to mitigate the impact by allowing unrestricted migration across the right-of-way.	NCRA	NCRA shall work with a qualified biologist to ascertain whether there is a potential impact on the migration of sensitive species and if so, implement a mitigation measure to allow for unrestricted migration.	During the construction of the quiet zones and other NCD activities.
Operations				
Impact BIO-OP1: Initially resuming railroad operations if in an area undisturbed by noise and during the breeding and nesting season, (February 15 to September 15), may cause nest abandonment for bird species covered under the MBTA. Operational activities could affect raptors and other birds nesting in vegetation or on bridges in or adjacent to the rail corridor. The introduction of noise, vibration, and lighting associated with trains running along the line during nesting season could disrupt nesting, feeding or other life cycle activities, which could cause nest abandonment or nesting failure. Additionally, structure-nesting species such as cliff swallows could have their nests disturbed and breeding success compromised. Active nests of most bird species are protected by the federal MBTA and Section 3503 of the California Fish and Game Code.	**Mitigation BIO-OP1:** To reduce potential impacts to breeding and/or nesting birds, the rehabilitation brushing activities shall occur between September 16 and February 14, or a time frame to be developed in coordination with a qualified biologist who shall have identified nest locations of species covered under the MTBA.	NCRA	NCRA will work with a qualified biologist to reduce potential impacts to breeding and/or nesting birds.	During operations.
Impact BIO-OP2: Maintenance and repair activities associated with the operations of the railroad could result in disturbance to stream zones, special-status species and/or nesting birds during railway maintenance activities. Routine and emergency maintenance and repair activities at stream crossings (e.g. repair of flood-damaged crossing structures or slide-prone portions of the railroad grade) could temporarily affect stream zones and associated fish and wildlife species in the vicinity of work areas. These activities could cause ground disturbance in stream channels and banks and could affect water quality by increasing turbidity, sedimentation or discharging oil, gas or other pollutants into watercourses. Use of herbicides for vegetation control, particularly near wetlands and watercourses, could have adverse effects on fish and wildlife species. Individual fish or wildlife, including special-status species, could be harmed or temporarily displaced by these activities. Maintenance vehicles and equipment and trimming of vegetation could disturb nesting birds and other animals that occur within, or move through, the corridor. Nesting birds are protected by federal MBTA and the CFGC, and special-status species are of concern to the resource agencies.	**Mitigation BIO-OP2a**: NCRA has developed BMPs to protect habitat and species which shall be implemented during all maintenance and repair activities (Appendix A). The resource agencies will be consulted to develop additional appropriate protective measures, if necessary. **Mitigation BIO-OP2b**: To minimize impacts to aquatic resources, if herbicides are applied during weed maintenance the activities shall be conducted in accordance with herbicide spraying procedures outlined in the NCRA's BMPs.	NCRA US Army COE USFWS CDFG RWQCB NCRA Contractors	NCRA will ensure that their BMPs are appropriate and that they are properly implemented by their staff/contractors.	During operations.

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NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Impact BIO-OP3: Bridge maintenance activities within the water (for example, pile splicing, repairs to drifting piles, or pile replacement) may impact sensitive fish species and other sensitive wildlife resources. Maintenance work activities that could cause excessive underwater noise impacts, such as pile driving, could harm or disturb fishes including steelhead, Chinook and coho salmon, and Sacramento split tail. These activities would be temporary and confined to a relatively small area, and would potentially affect only a small number of individuals of these species. Maintenance activities could alter river flow or hinder fish passage.	**Mitigation BIO-OP3a:** All work shall be conducted in compliance with specific permit conditions and NCRA's BMPs. **Mitigation BIO-OP3b:** A vibrating hammer will be used to install any piles necessary for rehabilitation activities. A vibrating hammer, when compared to drop hammers or other methods of pile installation, has been demonstrated to minimize noise levels and underwater sound pressure levels. In the event that any other work activities cause excessive noise that could harm fish species, protective measures shall be developed in coordination with CDFG and NOAA Fisheries so that noise levels are either reduced or the impacts are avoided or minimized in some other manner. NCRA's BMPs will also be implemented to avoid or minimize potential impacts. All work shall be conducted in compliance with specific permit conditions.	NCRA US Army COE USFWS CDFG NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will use vibrating hammers to install any piles necessary for rehabilitation/repair activities.	During operations.
CULTURAL RESOURCES				
Bakers Creek – Rehabilitation and Construction Activities				
Impact CR-BC1: During rehabilitation activities at Bakers Creek, which involves the replacement of the existing culvert with a concrete arch structure and back filled with new material to reconstruct the embankment to prior conditions, a previously unidentified cultural resource may be found during excavation.	**Mitigation CR-BC1:** If a cultural resource is identified during rehabilitation activities, all work shall be stopped and a qualified specialist with knowledge in the specific cultural resource shall be present to monitor the site. Workers shall be trained to identify cultural resources in accordance with state agency approved BMPs as outlined in the agency approved operations plans required by the Environmental Consent Decree.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will ensure that their staff/contractors are trained to identify cultural resources and if any are identified NCRA shall stop work and bring in a qualified specialist.	During the rehabilitation activities at Bakers Creek.
Foss Creek – Rehabilitation and Construction Activities				
Impact CR-FC1: During rehabilitation activities of the Foss Creek bank, involving the construction of a retaining wall system to prevent future erosion, a previously unidentified cultural resource may be found during excavation.	**Mitigation CR-FC1:** If a cultural resource is identified during rehabilitation activities, all work shall be stopped and a qualified specialist with knowledge in the specific cultural resource shall be present to monitor the site. Workers shall be trained to identify cultural resources in accordance with state agency approved BMPs as outlined in the agency approved operations plans required by the Environmental Consent Decree.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will ensure that their staff/contractors are trained to identify cultural resources and if any are identified NCRA shall stop work and bring in a qualified specialist.	During the rehabilitation activities at Foss Creek.
Black Point Bridge – Rehabilitation and Construction Activities				
Impact CR-BP1: Rehabilitation of the Black Point Bridge may cause a substantial adverse change in the significance of this historical resource via the proposed mechanical and electrical system improvements to update its operation from a manual swing mechanism to mechanical automation.	**Mitigation CR-BP1:** Plans for automation shall be submitted to the SHPO to ensure consistency with the Secretary of Interior's Standards for the Treatment of Historic Properties.	NCRA SHPO NCRA Contractors	NCRA shall submit their plans to the SHPO and conduct the activities in accordance with the SHPO's requirements.	During the rehabilitation of the Black Point Bridge.
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact CR-LS1: During construction of the new siding at MP 1.0 – MP 2.0, near Lombard, a previously unidentified cultural resource may be discovered.	**Mitigation CR-LS1:** If a cultural resource is identified during construction activities, all work shall be stopped and a qualified specialist with knowledge in the specific cultural resource shall be present to monitor the site. Workers shall be trained to identify	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction activities at Lombard Siding.

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Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
	cultural resources in accordance with state agency approved BMPs as outlined in the agency approved operations plans required by the Environmental Consent Decree.		NCRA will ensure that their staff/contractors are trained to identify cultural resources and if any are identified NCRA shall stop work and bring in a qualified specialist.	
Novato Consent Decree (MP 35.5 – MP 18.7)				
Impact CR-NCD1: During construction of quiet zone, a previously unidentified cultural resource may be discovered.	**Mitigation CR-NCD1:** If a cultural resource is identified during construction activities, all work shall be stopped and a qualified specialist with knowledge in the specific cultural resource shall be present to monitor the site. Workers shall be trained to identify cultural resources in accordance with state agency approved BMPs as outlined in the agency approved operations plans required by the Consent Decree.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will ensure that their staff/contractors are trained to identify cultural resources and if any are identified NCRA shall stop work and bring in a qualified specialist.	During the rehabilitation and construction activities associated with the NCD.
Operations				
N/A				
GEOLOGY, SOILS, AND SEISMICITY				
Bakers Creek – Rehabilitation and Construction Activities				
Impact GEO-BC1: Fill material may be released to Bakers Creek if not placed and managed properly during construction, leading to siltation at the site and downstream from the site.	**Mitigation GEO-BC1a:** Operations plans and BMPs for construction and the management of earthen materials shall be implemented during the rehabilitation activities. These BMPs include storm water control measures such as silt fences, contractor training for work in sensitive areas, and project controls to prevent the spill of excess soil from the embankment as it is being constructed. **Mitigation GEO-BC1b:** Planning and construction activities shall be conducted in coordination with the appropriate permitting agencies, and adhere to permitting requirements.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation activities at Bakers Creek.
Foss Creek – Rehabilitation and Construction Activities				
Impact GEO-FC1: Fill material may be released to Foss Creek if not placed and managed properly during rehabilitation activities, leading to siltation at the site and downstream from the site.	**Mitigation GEO-FC1a:** Agency approved operations plans and BMPs for construction and the management of earthen materials shall be implemented during the rehabilitation activities. These BMPs shall include storm water control measures such as silt fences, contractor training for work in sensitive areas, and project controls to prevent the spill of excess soil from the embankment as it is being constructed. **Mitigation GEO-FC1b:** Planning and construction activities shall be conducted in coordination with the appropriate permitting agencies, and adhere to permitting requirements.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation activities at Foss Creek.
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact GEO-LS1: If not controlled, conducted in dry weather, or improperly engineered, grading operations and the resulting new siding may leave the site to be susceptible to erosion from surface runoff.	**Mitigation GEO-LS1a:** Agency approved operations plans and BMPs for construction and the management of earthen materials shall be implemented during the rehabilitation activities. These BMPs shall include storm water control measures such as silt	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction activities at Lombard Siding.

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Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
	fences, contractor training for work in sensitive areas, and project controls to prevent the spill of excess soil from the embankment as it is being constructed. **Mitigation GEO-LS1b:** Planning and construction activities shall be conducted in coordination with the appropriate permitting agencies, and adhere to permitting requirements.			
Novato Consent Decree – Rehabilitation and Construction Activities				
N/A				
Operations				
Impact GEO-OP1: Parts of the rail line are susceptible to erosion from surface runoff, particularly sloping areas adjacent to drainage swales, creeks and rivers that feed the Russian, Napa, and Petaluma Rivers. The rail line is most susceptible to impacts where it is located against hill slopes and runoff flows to the tracks. If the rail embankment has not been graded properly or the drainage system (ditches and culverts) has not been properly engineered or maintained, water can pond and run off the slope, causing severe erosion. Embankment fill slopes leading to bridge crossings are more susceptible to long-term erosion. Portions of the alignment in northern Marin County and southern Sonoma County cross marshlands, and are adjacent to creeks and bridge crossings. In general, these areas are stable; however, flooding caused by high storm runoff coupled with high tides can cause localized erosion and loss of fill beneath the rail bed. Debris that accumulates against bridge piles in creeks may impede flow and dam the creek. This may cause water to rise to the level of the embankment, overtop, and severely erode the rail line. In addition, portions of the proposed project may be subject to landslides and slope movement that could cause damage to the rail line and bridges. The hill areas north of Cloverdale are susceptible to landslides and slope movement. These slopes are inherently unstable due to weak underlying materials, or due to over steepening or loading of existing stable slopes. Along the rail line, several areas have been identified with these conditions including the slopes immediately adjacent to tunnels along the line, which presently exhibit rockfalls and shallow slumping.	**Mitigation GEO-OP1:** Drainage ditches, culverts, embankments, and the entire rail line shall be regularly inspected and maintained and immediately after significant storms. Inspections shall be performed in accordance with AREMA standards, FRA regulations, and NCRA operation plans.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractor's inspection and maintenance procedures/plan are in accordance with AREMA, FRA and agency approved operation plans. NCRA will ensure that the inspection and maintenance activities are appropriately implemented. NCRA shall conduct routine inspects to confirm that the appropriate inspection and maintenance activities are being conducted.	During operations.
Impact GEO-OP2: The rail line and bridges are susceptible to significant ground shaking and liquefaction from earthquakes that could damage the line. In addition, the rail line could be damaged by displacement where active faults cross the line along the Lombard to Novato segment and in Bakers Creek (Figure 3.4-2). Potential impacts vary based on a number of factors including distance to the epicenter, magnitude of the earthquake, duration of ground shaking, nature of the underlying soils, and the construction of the structures.	**Mitigation GEO-OP2:** Operations shall be stopped and the rail line and bridges shall be immediately inspected after a significant earthquake. Inspections shall be performed in accordance with AREMA standards, FRA regulations, and the NCRA operation plans.	NCRA NCRA Contractors	NCRA will ensure that operations are stopped and the line inspected after a significant earthquake. NCRA will ensure that their staff/contractor's inspection and maintenance procedures/plan are in accordance with AREMA, FRA and agency approved operation plans. NCRA will ensure that the inspection and maintenance activities are appropriately implemented. NCRA shall conduct routine inspects to confirm that the appropriate inspection and maintenance activities are being conducted.	During operations.

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Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Impact GEO-OP3: Fill material may be released to streams, creeks, and rivers if not placed and managed properly during repair of culverts or embankments that may be damaged during earthquakes or storms, leading to siltation at the site and downstream from the site.	**Mitigation GEO-OP3a:** Agency approved operations plans and BMPs for maintenance activities and the management of earthen materials shall be implemented during the rehabilitation activities. These BMPs shall include storm water control measured such as silt fences, contractor training for work in sensitive areas, and project controls to prevent the spill of excess soil from the embankment as it is being constructed. **Mitigation GEO-OP3b:** Routine maintenance and repair activities shall be conducted in coordination with the appropriate permitting agencies, and adhere to permitting requirements.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will ensure that their staff/contractors conduct the appropriate inspection and maintenance activities in accordance with the regulatory agency requirements.	During operations.
GROWTH INDUCING IMPACTS				
Rehabilitation and Construction Activities				
N/A				
Operations				
N/A				
HAZARDOUS MATERIALS				
Bakers Creek – Rehabilitation and Construction Activities				
Impact HM-BC1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.	**Mitigation HM-BC1:** NCRA's BMPs for the management of hazardous materials and waste shall be implemented during the rehabilitation activities. If fill material is required, it shall be derived from a permitted quarry or certified as clean fill.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Bakers Creek.
Foss Creek – Rehabilitation and Construction Activities				
Impact HM-FC1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.	**Mitigation HM-FC1:** NCRA's BMPs for the management of hazardous materials and waste shall be implemented during the rehabilitation activities. If fill material is required, it shall be derived from a permitted quarry or certified as clean fill.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Foss Creek.
Black Point Bridge – Rehabilitation and Construction Activities				
Impact HM-BP1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.	**Mitigation HM-BP1:** NCRA's BMPs for the management of hazardous materials and waste shall be implemented during the rehabilitation activities.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Black Point Bridge.
Impact HM-BP2: Rehabilitation activities (paint removal) at Black Point Bridge may impact fish and wildlife by introducing lead-based paint into the Petaluma River.	**Mitigation HM-BP2:** Unless tested and shown to be free of lead-based paint, paint removal shall be conducted in accordance with the Cal/OSHA Construction Standard (which lists prohibited activities and proper work practices). The CDFG shall be consulted in order to obtain and comply with any permitting requirements. Engineering controls that will prevent LBP from being released to the environment shall be implemented.	NCRA Cal/OSHA CDFG NCRA Contractors RWQCB USFWS	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA shall consult with CDFG in order to comply with any permitting requirements.	During the rehabilitation of Black Point Bridge.

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Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact HM-LS1: Construction of the siding from MP 1.0 to MP 2.0 will include minor grading, placement of track ballast and clean fill, placement of 5,300 feet of new track, extending a culvert, reestablishing drainage ditches, widening an existing timber deck bridge, the embankment, and constructing culverts. There is the potential that hazardous materials and waste could be mismanaged during the construction of the new siding at Lombard.	**Mitigation HM-LS1:** NCRA's BMPs for the management of hazardous materials and waste shall be implemented during the construction activities. If fill material is required, it shall be derived from a permitted quarry or certified as clean fill.	NCRA NCRA Contractors DTSC	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction of the Lombard Siding.
Novato Consent Decree (MP 35.5 – MP 18.7)				
Impact HM-NCD1: There is the potential that hazardous materials and waste could be mismanaged during the rehabilitation activities and potentially impact the surrounding resources.	**Mitigation HM-NCD1:** NCRA's BMPs for the management of hazardous materials and waste shall be implemented during the rehabilitation activities.	NCRA NCRA Contractors DTSC	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction activities associated with the NCD.
Operations				
Impact HM-OP1: Spills and releases may occur during fueling and light running maintenance and repair activities.	**Mitigation HM-OP1:** NCRA's BMPs shall be implemented and shall include safe pre-determined fueling areas, spills and overtopping prevention procedures, and requirements for secondary containment such as drip pans or equivalent impervious ground covering.	NCRA NCRA Contractors DTSC	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. NCRA will notify DTSC in the event of a spill.	During operations.
Impact HM-OP2: Spraying herbicides along the rail line for weed abatement may cause impacts on and off the railroad right-of-way.	**Mitigation HM-OP2:** NCRA's BMPs shall be implemented. These BMPs shall include selection of a licensed and experienced spraying contractor, use of herbicides authorized for use by the local permitting agencies, the use of alternative brush control measures as feasible, prohibition of spraying within 20 feet of a water course, and compliance with a general operating permit (waste discharge requirements) as required by the NCRWQCB.	NCRA NCRA Contractors RWQCB	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
Impact HM-OP3: There is the potential that hazardous materials and waste could be mismanaged during routine maintenance and repair activities such as bridge, culvert, grade crossing signal, or track maintenance.	**Mitigation HM-OP3:** Maintenance activities shall be conducted in accordance with NCRA's BMPs and applicable permits.	NCRA NCRA Contractors DTSC	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
~~LAND USE AND PLANNING~~				
Rehabilitation and Construction Activities				
N/A				
Operations				
N/A				
NOISE				
Rehabilitation and Construction Activities				
N/A				

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Operations				
Train Noise				
Impact N-OP1: Airborne train noise generated by rail operations will exceed FTA/FRA and local jurisdictional impact criteria where houses are present immediately adjacent to the rail right-of-way. Noise exposure generated by proposed project freight train operations is expressed in terms of the noise exposure contour information presented in Appendix H. Based on this data, the proposed project would be expected to produce at least a moderate level of impact at noise-sensitive uses directly adjacent to the tracks. No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.	None	N/A	N/A	N/A
Warning Horn Noise				
Impact N-OP2: Warning horn noise generated by rail operations will exceed FTA/FRA and local jurisdictional impact criteria at vehicle crossings. The proposed project-related noise impact increases substantially near grade crossings due to the use of train warning horns. Along some sections of the line, there is the potential for severe impact contours near residential uses that are within approximately 700 feet of the tracks (Category 2). The application of quiet zones is not included as a part of this proposed project except within a 6.3 mile stretch of trail/road roughly between MP 28.5 and MP 21.9. The potential application of quiet zones along portions of the proposed project corridor would help to reduce the number of people potentially impacted by the rain warning horn. However, quiet zones would not mitigate noise exposure to a less than significant level. Noise exposure produced by freight train events without the warning horn would still produce a moderate noise exposure impact at many residential uses within approximately 375 feet of the tracks, with severe impacts within approximately 150 feet of the tracks in some sections. The removal of warning horns cannot be considered as a possible mitigation since that would significantly increase the impact to safety at many crossings and would violate FRA safety regulations. Neither NCRA nor its operator is willing to accept the liability from decreased safety associated with the removal of warning horns, and the cost to construct quiet zones exceeds project funding. No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.	None	N/A	N/A	N/A
Freight Train Vibration				
Impact N-OP3: Groundborne vibration generated by rail operations will	None	N/A	N/A	N/A

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
impact exceed FTA/FRA impact criteria along some parts of the rail line. It is expected that adjacent uses with high sensitivity to groundborne vibration (Category 1) could be impacted by the proposed project train operations if they are within 225 feet of the tracks. Likewise, residential uses (Category 2) could be impacted by vibration produced by the proposed project freight trains within 100 feet of the tracks, and institutional uses (Category 3) could be impacted if they are within 70 feet of the tracks. For the proposed project, it is believed that a significant number of residential uses lie within 100 feet of the rail tracks, and may be impacted by long-term operations of the proposed project freight trains. No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, the project-related impact regarding groundborne vibration from long-term freight train operations is considered significant and unavoidable.				
Impact N-OP4: Groundborne vibration generated by rail operations may impact historic structures such as train depots located within many of the towns and cities along the rail line.	**Mitigation N-OP4:** The SHPO shall be consulted and recommendations shall be implemented if it is found to have a significant impact on historic structures.	NCRA SHPO NCRA Contractors	NCRA shall consult with to identify potential concerns with groundborne vibrations and historical resources. NCRA shall implement the requirements identified by the SHPO.	During operations.
Impact N-OP5: Routine repair activities such as bridge, grade crossing signals, and track maintenance could introduce groundborne vibration into the surrounding areas. Based on the reference levels for equipment and a reduction of -6 VdB per doubling of distance from the construction equipment source(s), daytime construction vibration levels could impact residential structures (Category III) at distances of no more than 90 feet from the source(s).	**Mitigation N-OP5:** Ongoing maintenance activities will be short-term and temporary and conducted in accordance with NCRA's BMPs. For situations where residences are within 90 feet of the maintenance activities, alternative techniques will be used to minimize groundborne vibration, if feasible.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
PUBLIC FACILITIES AND SAFETY				
Rehabilitation and Construction Activities				
N/A				
Operations				
Impact PFS-OP1: The proposed project could result in the creation of a hazardous condition (i.e. pedestrian/train conflicts), with regard to safety of the public and schools. There are 47 schools located within ½ mile of the project area, including 9 schools located within 500 feet. The proximity of these schools to the rail line presents a potential for rail-related accidents involving school children.	**Mitigation PFS-OP1:** In order to educate the communities with school children within close proximity to the rail line, NCRA and its operator shall work with Operation Lifesaver to accomplish this task. Operation Lifesaver is a nationwide, non-profit information safety program dedicated to educating the public on how to reduce collisions, injuries and fatalities at at-grade rail crossings. This is a free service to create awareness, especially to children, of the hazards that may occur on railroad property and at at-grade crossings. In addition, standard safety measures shall be employed including fencing and other physical safety structures, signage, and other physical impediments designed to promote safety and minimize pedestrian/train accidents.	NCRA NCRA Contractors	NCRA will ensure that communities with school children within close proximity to the rail line will be educated as to the safety concerns and precautionary measures. NCRA will employ standard safety measures to promote safety.	During operations.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Impact PFS-OP2: The proposed project could result in at-grade crossing collisions.	**Mitigation PFS-OP2:** All at-grade crossings shall have the FRA-required safety guards as required by regulations. The crossing safety devices shall be routinely inspected and maintained in accordance with FRA regulations. Horns will be used as required to increase awareness of an approaching train. Train lights will be used at night time to increase visual awareness.	NCRA NCRA Contractors	NCRA will ensure that the agency approved safety devices have been installed at at-grade crossings. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
Impact PFS-OP3: A train derailment or flying debris could impact people using bike or pedestrian paths along the railroad.	**Mitigation PFS-OP3a:** The procedures identified in the NCRA Trail Projects on the NWP Line Rights-of-Way: Designs, Construction, Safety, Operations and Maintenance Guidelines" shall be implemented. These guidelines require that any public agency requesting a trail along the rail shall submit feasibility, safety studies and environmental compliance. **Mitigation PFS-OP3b:** NCRA's operator shall comply with all applicable CPUC and FRA regulations which enumerate rules, instructions, and training to promulgate safe operation.	NCRA Public agencies NCRA Contractors	NCRA will ensure that the procedures identified in their trail guidelines are implemented. NCRA will ensure that their operator follow all applicable CPUC and FRA regulations. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
Impact PFS-OP4: If it is determined that the freight trains need to be operated at night, the proposed project could impact the residences directly adjacent to the tracks due to the locomotive headlights, causing a disturbance in sleep patterns. Locomotive headlights are considered necessary for safety reasons and are required by FRA regulations. The impact associated with locomotive headlights would be of a short duration due to the rapid passing of the train along the track. No mitigation measures that would reduce the impact to a less than significant level are known or recommended at this time. Therefore, this impact is considered significant and unavoidable.	None	N/A	N/A	N/A
TRANSPORTATION				
Rehabilitation and Construction Activities				
Bakers Creek – Rehabilitation and Construction Activities				
N/A				
Foss Creek – Rehabilitation and Construction Activities				
N/A				
Black Point Bridge – Rehabilitation and Construction Activities				
N/A				
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
N/A				
Novato Consent Decree (MP 35.5 – MP 18.7)				

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Impact T-NCD1: Traffic delays may occur during the construction of quiet zone improvements roughly between MP 28.5 and MP 21.9.	**Mitigation T-NCD1:** The appropriate construction permits shall be obtained from the City of Novato. As part of the permit approval process, a traffic control plan shall be prepared and implemented. Construction activities shall be conducted outside of peak commute hours.	NCRA City of Novato NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During rehabilitation and construction activities associated with the NCD.
Operations				
Impact T-OP1. Traffic queue lengths at the intersections shown in Table 3.10-7 could exceed the available storage area (roadway space available for vehicles to wait) in the opening year of NCRA freight operations, causing traffic to back up across the at-grade crossing upstream from the traffic signal.	**Mitigation T-OP1:** In cooperation with local jurisdictions, interconnects between traffic signals and train crossing signals shall be installed to preempt normal signal operations and allow queues to clear before the train crosses.	NCRA Local Jurisdictions NCRA Contractors	NCRA will ensure that the appropriate interconnects between traffic signals and train crossing signals are installed.	During operations.
Impact T-OP2: Road blockages due to NCRA freight operations could interfere with movement of emergency service vehicles near the rail line. In response to concerns about the implications of potential emergency vehicle delays at grade-crossings for the SMART project, SMART interviewed operations professionals with other agencies in the Bay Area that provide passenger/commuter or freight rail service were interviewed. Persons contacted included: Robert Doty, Director of Rail Transportation at Caltrain, Brian Schmidt, Director of Rail Services at Altamont Commuter Express (ACE), David Kutrosky, Deputy Director of Finance and Planning with the Capitol Corridor, and Bill Capps, Service Planning Manager with the Valley Transportation Authority (VTA). All four agency representatives stated that emergency vehicle delays created by rail service had not presented significant issues or problems in the jurisdictions through which they operate. All four also confirmed that there is currently no mechanism that would allow trains to yield to emergency vehicles at grade crossings. These agency representatives, however, did suggest that a key step to minimize the possibility of delay due to passenger train service was to ensure, through station design, that trains "fit" and do not block existing streets when they dwell at stations. For freight service it is assumed that trains would not be stopping at sidings that block crossing streets.	**Mitigation T-OP2:** The emergency services operations that would be affected by the proposed project shall be provided with an emergency hotline to NCRA's operator's dispatcher so that trains can be stopped or held back in the event of an emergency.	NCRA Local Jurisdictions NCRA Contractors	NCRA will ensure that the appropriate communication with emergency services is implemented.	During operations.
With respect to emergency vehicles dispatched from fire stations, the larger cities along the proposed project corridor right-of-way, including Novato, Petaluma, Rohnert Park, and Santa Rosa, all have multiple (ranging from three to eight) fire stations with at least one on each side of the railroad tracks. This distributed approach to fire service coverage, and in some cases paramedic services as well, minimizes the probability of these emergency responders needing to cross tracks and potentially encountering a grade-crossing delay.				
WATER RESOURCES				
Bakers Creek – Rehabilitation and Construction Activities				
Impact WR-BC1: During construction for rehabilitating the railway at the Bakers Creek site, construction activities will require the transport, placement of fill, and structural features that could potentially result in	**Mitigation WR-BC1a:** The proposed project shall comply with the NPDES permit process which requires project applicants to file a NOI and prepare and submit a construction SWPPP to the	NCRA RWQCB	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement	During the rehabilitation of Bakers Creek.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
erosion, increased sedimentation and possibly alterations to stream flows.	RWQCB. The SWPPP will contain a detailed mitigation plan containing BMPs for erosion and sediment control. Typical BMPs may include the use of silt fencing, temporary or permanent retention or detention basins, check dams, buffer strips adjacent to streams, and other similar devices or methods. **Mitigation WR-BC1b:** The proposed project shall comply with all requirements necessary for a Streambed Alteration Agreement from the California Department of Fish and Game. **Mitigation WR-BC1c:** The proposed project design for this site shall adhere to the guidelines for fish passage set forth by the California Department of Fish and Game and the National Marine Fisheries Service. These agencies shall be consulted with prior to finalization of the design to assure success and minimize potential impacts. **Mitigation WR-BC1d:** The proposed project shall comply with the WDRs issued by the RWQCBs.	CDFG National Marine Fisheries USFWS NCRA Contractors	NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	
Impact WR-BC2: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.	**Mitigation WR-BC2:** Construction activities shall be restricted to the approved work window (dry season) as designated by the regulatory agencies. NCRA shall implement procedures, BMPs, and monitoring programs as required by the regulatory agencies.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Bakers Creek.
Foss Creek – Rehabilitation and Construction Activities				
Impact WR-FC1: During construction for rehabilitating the railway at the Foss Creek site, construction activities will require the transport, placement of fill, and placement of structural features that could potentially result in erosion, increased sedimentation and possibly alterations to stream flows.	**Mitigation WR-FC1a:** The proposed project shall comply with the NPDES permit process which requires project applicants to file a NOI and prepare and submit a construction SWPPP to the RWQCB. The SWPPP will contain a detailed mitigation plan containing BMPs for erosion and sediment control. Typical BMPs may include the use of silt fencing, temporary or permanent retention or detention basins, check dams, buffer strips adjacent to streams, and other similar devices or methods. **Mitigation WR-FC1b:** The proposed project shall comply with all requirements necessary for a Streambed Alteration Agreement from the California Department of Fish and Game and the WDRs from the RWQCB. **Mitigation WR-FC1c:** The proposed project design for this site shall adhere to the guidelines for fish passage set forth by the CDFG and the NMFS. These agencies shall be consulted with prior to finalization of the design to assure success and minimization of potential impacts. **Mitigation WR-FC1d:** The proposed project shall comply with the WDRs issued by the RWQCBs.	NCRA RWQCB CDFG National Marine Fisheries USFWS NCRA Contractors USACE	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Foss Creek.

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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Impact WR-FC2: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.	**Mitigation WR-FC2:** Construction activities shall be restricted to the approved work window (dry season) as designated by the regulatory agencies. NCRA shall implement procedures, agency approved BMPs, and monitoring programs as required by regulatory agencies.	NCRA NCRA Contractors	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation of Foss Creek.
Black Point Bridge – Rehabilitation and Construction Activities				
N/A				
Lombard Siding (MP 1.0 – MP 2.0) – Rehabilitation and Construction Activities				
Impact WR-LS1: The siding from MP 1.0 to MP 2.0 is located in an area that is partially occupied by wetlands. Construction of the new siding and ongoing maintenance activities related to the operations of the railroad will be conducted in accordance with NCRA's BMPs, but will impact sensitive habitats due to the filling of 0.2 acres of seasonal wetlands and loss of 0.69 acres of mudflat habitats.	**Mitigation WR-LS1:** The wetlands and mudflats will be fully evaluated and confirmed in coordination with permitting and resource agencies. Losses of the habitats will be mitigated by creation of an equivalent habitat at a 1:1 ratio, or other compensatory mitigation determined appropriate by the permitting agencies.	NCRA US Army COE RWQCB CDFG USFWS NCRA Contractors	NCRA shall consult with the appropriate regulatory agencies in regards to the potential impact to wetlands and losses of wetland habituate will be mitigated as determined appropriate by the agencies.	During the rehabilitation and construction of Lombard Siding.
Impact WR-LS2: During construction of the siding from MP 1.0 to MP 2.0, construction activities will require the transport, placement of fill, and placement of structural features that could potentially result in erosion and increased sedimentation.	**Mitigation WR-LS2a:** The proposed project shall comply with the NPDES permit process which requires project applicants to file a NOI and prepare and submit a construction SWPPP to the RWQCB. The SWPPP will contain a detailed mitigation plan containing BMPs for erosion and sediment control. Typical BMPs may include the use of silt fencing, temporary or permanent retention or detention basins, check dams, buffer strips adjacent to streams, and other similar devices or methods. **Mitigation WR-LS2b:** The proposed project shall comply with all requirements necessary from the CDFG and the WDRs from the RWQCB.	NCRA RWQCB CDFG NCRA Contractors	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction of Lombard Siding.
Impact WR-LS3: Rehabilitation activities could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During construction, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into wetlands.	**Mitigation WR-LS3:** NCRA shall implement procedures, agency approved BMPs, and monitoring programs as required by the regulatory agencies.	NCRA RWQCB CDFG USFWS NCRA Contractors	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction of Lombard Siding.
Novato Consent Decree (MP 35.5 – MP 18.7)				
Impact WR-NCD1: There could be disturbance of wetlands/waters of the United States during construction of quiet zone improvements if additional intersections of the NWP Line requiring quiet zone improvements are identified by the regulatory agencies. Construction activities could impact wetlands and other waters at the quiet zone sites. Operation of vehicles and equipment in these areas could adversely affect wetland and stream habitat by disrupting soil and damaging or removing wetland and riparian vegetation. Ground disturbance and other activities within and adjacent to stream zones could result in increased erosion, water turbidity and sediment transport into waterways.	**Mitigation WR-NCD1:** Local jurisdictions and state and federal agencies shall be consulted prior to work to ascertain any requirements to protect water resources. Work shall be conducted in compliance with any specific permit requirements, and the NCRA BMPs. Upon completion of the construction work at the site, all temporarily disturbed natural areas (if any), including stream banks, shall be returned to original contours and in accordance with the permit requirements. Affected wetlands, stream banks or stream channels shall be stabilized prior to the rainy season and/or prior to reestablishing flow.	NCRA US Army COE RWQCB CDFG USFWS NCRA Contractors	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During the rehabilitation and construction activities associated with the NCD.

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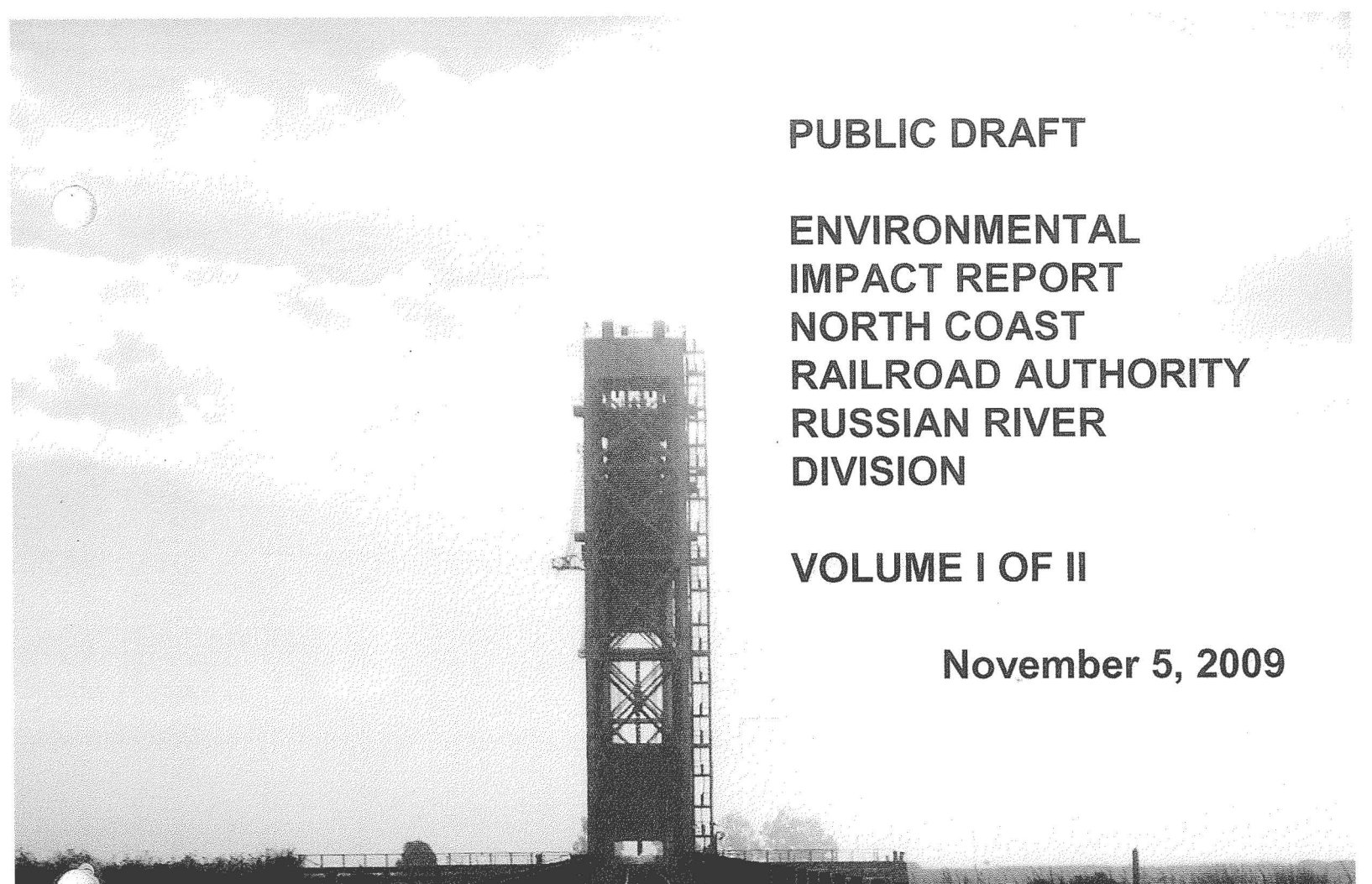
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TABLE 4-1
MITIGATION MONITORING AND REPORTING PLAN
NCRA RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT

Potential Impact	Mitigation Measure	Responsibility for Implementation & Overseeing Agencies	Method for Compliance	Timing of Compliance
Operations				
Impact WR-OP1: Water crossings could become clogged with debris that could reduce drainage capacity and cause structural failure of culverts or bridges. This debris could impede water flow within a designated 100-year flood plain. Inadequate drainage could also cause excessive erosion that could compromise the railroad embankment in the vicinity of the crossings.	**Mitigation WR-OP1:** NCRA's BMPs, Operations Plans and monitoring programs shall be implemented. These plans and procedures outline routine maintenance of the rail line which shall include regular inspection and clearing of debris at stream crossings. Routine inspection and debris removal will help prevent clogging and deterioration of drainage facilities. Maintaining adequate drainage will reduce the risk of flooding that can occur when surface water accumulates behind clogged culverts and/or bridges, resulting in a long-term beneficial effect. Proper maintenance will also prevent damage to bridge and water control structures, and help prevent erosion of the railroad embankment and adjacent upland areas.	NCRA NCRA Contractors RWQCB	NCRA will ensure that their staff/contractors implement NCRA's BMPs, Operating Plans, monitoring programs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
Impact WR-OP2: Routine maintenance activities could temporarily increase surface erosion, sedimentation and stream flow alterations due to temporary work performed in the water.	**Mitigation WR-OP2a:** Routine maintenance activities shall comply with any applicable NPDES permit process requirements. If applicable, a NOI and construction SWPPP shall be prepared and submitted to the RWQCB. The SWPPP will contain a detailed mitigation plan containing BMPs for erosion and sediment control. **Mitigation WR-OP2b:** Routine maintenance activities shall adhere to the guidelines for fish passage set forth by the CDFG and the NMFS. When working in water, these agencies shall be consulted with prior to finalization of the design to assure success and minimization of potential impacts. **Mitigation WR- OP2c:** Routine maintenance activities shall comply with any applicable WDRs issued by the RWQCBs.	NCRA RWQCB CDFG NMFS USFWS NCRA Contractors	NCRA will consult with the appropriate regulatory agencies and obtain the necessary permits and approvals. NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance.	During operations.
Impact WR-OP3: Routine maintenance activities occurring in water at bridges or culverts could cause adverse impacts on surface waters through the release of hydrocarbons and similar pollutants. During maintenance activities, the operation of equipment and vehicles in close proximity to surface water bodies could result in accidental discharges of oil or other contaminants into streams.	**Mitigation WR-OP3:** Accidental spills from routine maintenance activities shall be avoided by implementing NCRA's BMPs and Operations Plans. The BMPs and/or plans incorporate exclusion zones adjacent to streams and other bodies of water, and specific procedures for spill containment and cleanup in the event of an accident. Protocols shall be followed for oversight and inspection of construction activities to assure compliance with the operations plans.	NCRA NCRA Contractors RWQCB	NCRA will ensure that their staff/contractors implement NCRA's BMPs and the permit/approval conditions. NCRA will inspect the activities on a regular basis to verify compliance. The RWQCB will be notified in the event of a release to soil, surface water, or groundwater.	During operations.

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ENVIRONMENTAL IMPACT REPORT NORTH COAST RAILROAD AUTHORITY RUSSIAN RIVER DIVISION

VOLUME I OF II

November 5, 2009

Prepared by:

KLEINFELDER
Bright People. Right Solutions.

2240 Northpoint Parkway
Santa Rosa, California 95407
(707) 571-1883

Prepared for:

North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, California 95482
(707) 463-3280

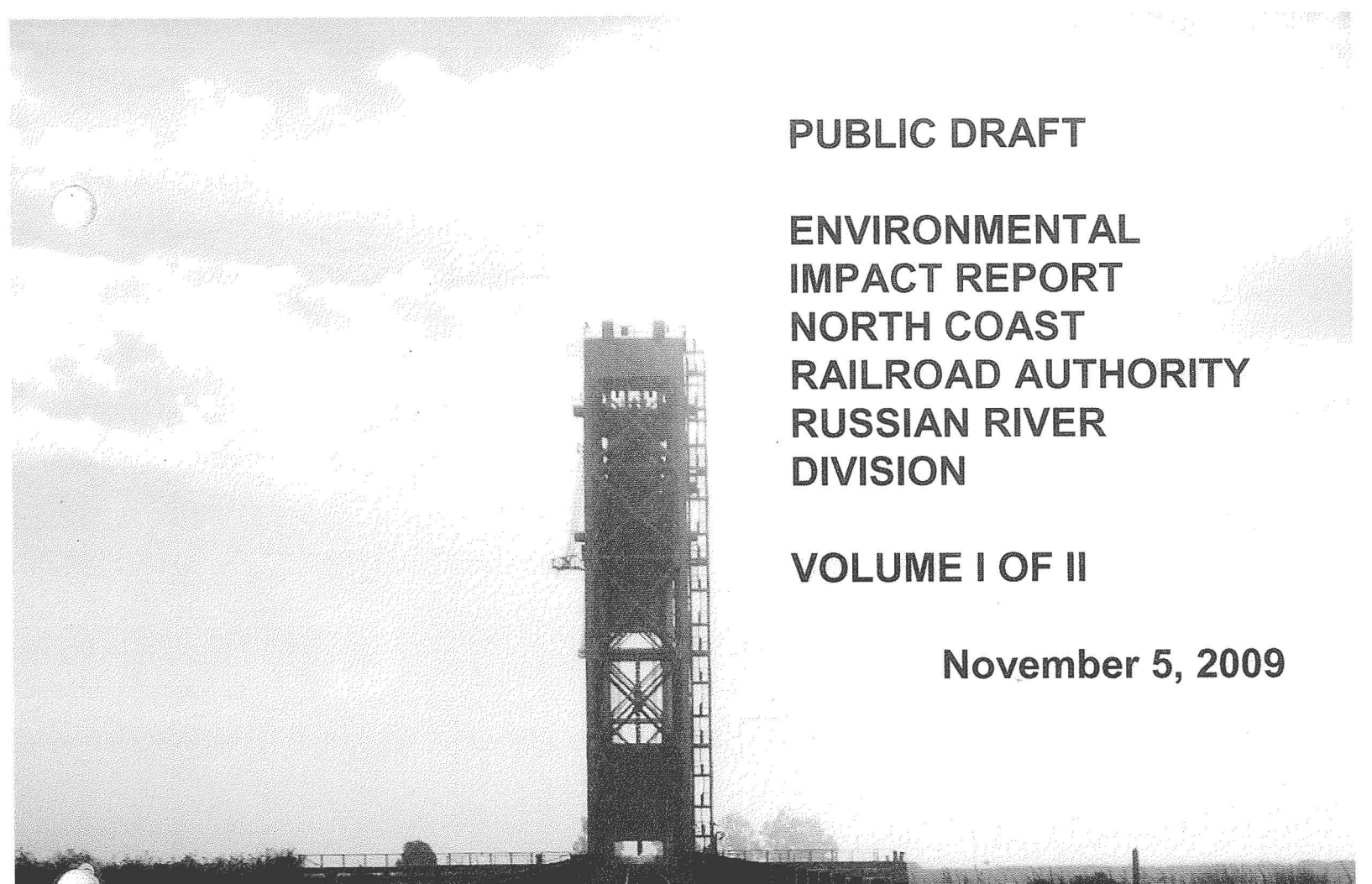
decision dated September 7, 2007. However, rehabilitation of the line is required before trains may safely resume operations on the line. Rehabilitation activities are necessary to bring the rail line into conformance with FRA Class 2/3 Standards, and to address safety issues identified in FRA Emergency Order No. 21. The rehabilitation activities from Lombard to Windsor (MP 62.9) are considered a separate project from the proposed project and are covered under a Notice of Exemption filed June 2007. NCRA has submitted a request for federal funding for the proposed project; however, it is unknown whether or not the request will be approved and if it is approved, what portion, if any, of the applied-for project will be approved, and if and when the monies would be allocated. Therefore, it is currently assumed that there will be no federal funding for the proposed project. If and when federal funding was to become available, the appropriate NEPA evaluation would be conducted.

This DEIR will be considered by the NCRA Board, and certification of this Environmental Impact Report by the NCRA Board will satisfy Section IV. (D) of the agreement entitled, "Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease dated September 2006," with NWP Co. and will, if the project is approved, result in the operation of freight commerce on the line. A separate Agreement has been negotiated by NCRA that requires the operator to comply with the mitigation measures contained in this document, as the mitigation measures apply to the operator.

NCRA and, to the extent applicable to the rail lines it operates, its operator will be required to be in compliance with an Environmental Consent Decree (ECD) that was signed by the North Coast Regional Water Quality Control Board (NCRWQCB), Department of Toxic Substance Control (DTSC), and DFG.

NCRA and, to the extent applicable to the rail lines it operates, its operator will also be required to be in compliance with a Consent Decree issued by the Superior Court of the State of California on November 3, 2008 (Novato Consent Decree). The Novato Consent Decree requires that approximately 17 miles of the track, between MP 35.5 and MP 18.7, be continuous welded track, that from MP 29.5 to 25.9 fencing be constructed on either side of the track, and that quiet zones and landscaping be established within the city and its sphere of influence, roughly between MP 28.5 and MP 21.9 to minimize noise and glare from operations. In addition restrictions on

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KLEINFELDER
Bright People. Right Solutions.

2240 Northpoint Parkway
Santa Rosa, California 95407
(707) 571-1883

Prepared for:

North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, California 95482
(707) 463-3280

decision dated September 7, 2007. However, rehabilitation of the line is required before trains may safely resume operations on the line. Rehabilitation activities are necessary to bring the rail line into conformance with FRA Class 2/3 Standards, and to address safety issues identified in FRA Emergency Order No. 21. The rehabilitation activities from Lombard to Windsor (MP 62.9) are considered a separate project from the proposed project and are covered under a Notice of Exemption filed June 2007. NCRA has submitted a request for federal funding for the proposed project; however, it is unknown whether or not the request will be approved and if it is approved, what portion, if any, of the applied-for project will be approved, and if and when the monies would be allocated. Therefore, it is currently assumed that there will be no federal funding for the proposed project. If and when federal funding was to become available, the appropriate NEPA evaluation would be conducted.

This DEIR will be considered by the NCRA Board, and certification of this Environmental Impact Report by the NCRA Board will satisfy Section IV. (D) of the agreement entitled, "Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease dated September 2006," with NWP Co. and will, if the project is approved, result in the operation of freight commerce on the line. A separate Agreement has been negotiated by NCRA that requires the operator to comply with the mitigation measures contained in this document, as the mitigation measures apply to the operator.

NCRA and, to the extent applicable to the rail lines it operates, its operator will be required to be in compliance with an Environmental Consent Decree (ECD) that was signed by the North Coast Regional Water Quality Control Board (NCRWQCB), Department of Toxic Substance Control (DTSC), and DFG.

NCRA and, to the extent applicable to the rail lines it operates, its operator will also be required to be in compliance with a Consent Decree issued by the Superior Court of the State of California on November 3, 2008 (Novato Consent Decree). The Novato Consent Decree requires that approximately 17 miles of the track, between MP 35.5 and MP 18.7, be continuous welded track, that from MP 29.5 to 25.9 fencing be constructed on either side of the track, and that quiet zones and landscaping be established within the city and its sphere of influence, roughly between MP 28.5 and MP 21.9 to minimize noise and glare from operations. In addition restrictions on

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INITIAL STUDY
NORTH COAST RAILROAD AUTHORITY
RUSSIAN RIVER DIVISION
FREIGHT RAIL PROJECT

Prepared for:

Prepared by:

KLEINFELDER

5015 Shoreham Place
San Diego, California 92122
(858) 320-2000

May 2007

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ACRONYMS AND ABBREVIATIONS

BMPs	best management practices
BCDC	Bay Conservation and Development Commission
CD	Consent Decree
CE	Categorical Exemption
CEQA	California Environmental Quality Act
CPUC	California Public Utilities Commission
CWA	Clean Water Act
DFG	Department of Fish and Game
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
ERD	Eel River Division
FRA	Federal Railroad Administration
IS	Initial Study
LOMA	Locomotive Operations and Maintenance Area
NCRA	North Coast Railroad Authority
NCRWQCB	North Coast Regional Water Quality Control Board
NBI	North Bay, Inc.
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NWP	Northwestern Pacific Railroad
NWPRA	Northwestern Pacific Railroad Authority
OHP	Office of Historic Preservation
RRD	Russian River Division
RWQCB	Regional Water Quality Control Board
SLC	California State Lands Commission
SMART	Sonoma-Marin Area Rail Transit
SPCC	spill prevention, control, and countermeasures plan
SWPPP	Storm water pollution and prevention plan
UBC	Uniform Building Code
USACE	US Army Corps of Engineers
USFWS	US Fish and Wildlife Service
WMP	waste management plan

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1.0 INTRODUCTION AND OVERVIEW

This Initial Study (IS) has been prepared by Kleinfelder on behalf of the North Coast Railroad Authority (NCRA), pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15063. NCRA has proposed this project to resume freight rail service from Willits, Mendocino County to Lombard, Napa County. In order to address potential impacts associated with the proposed project, the following IS has been prepared.

The IS contains the following: required approvals; project description; the potential environmental impacts associated with the project; and mitigation measures to reduce impacts to less than significant levels. In summary, potential significant environmental impacts associated with the project have been identified, and therefore, an Environmental Impact Report (EIR) will be prepared under CEQA.

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. The rail corridor, commonly known as the Northwestern Pacific Railroad (NWP), generally parallels US 101 running north-south in Mendocino, Sonoma and Marin counties. In Novato, Marin County, the rail corridor turns east and runs parallel to California Highways 37 and 121 to Lombard, Solano County.

Mendocino, Sonoma, Marin, Napa and Solano counties are located on the west coast of California north of San Francisco. In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include the Cities of Willits and Ukiah. In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes Novato. The Napa County portion of the project does not traverse any city boundaries and is completely in unincorporated County lands.

This IS was prepared in compliance with the CEQA of 1970 (as amended) and the CEQA Guidelines.

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2.0 PROJECT DESCRIPTION

The North Coast Railroad Authority (NCRA) is proposing to resume rail service over the Russian River Division (RRD) of the Northwestern Pacific Railroad (NWP). The NWP is an existing railroad that has provided rail service dating back to the early 1900's. The RRD of the NWP is approximately 142 miles long extending from Willits in Mendocino County, California to Lombard, Napa County, California. This rail corridor runs parallel to U.S. Highway 101 corridor through Mendocino, Sonoma, and Marin counties to Novato, California. At Ignacio, south of Novato, the rail corridor runs east/west parallel to CA Highways 37 and 121 near the north shore of San Pablo Bay, to Lombard, north of the city of American Canyon, where the NWP connects to the currently operating California Northern Railroad.

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act, Government Code Sections 93000, *et seq*. The Act was intended to ensure continuation of railroad service in Northwestern California and envisioned a railroad playing a significant role in the transportation infrastructure serving a vital part of the State that suffers from restricted access and limited transport options. In 1992, the state purchased the Eel River Division (ERD) of the NWP. In 1996, NCRA purchased the segment of the railroad line from Willits to Healdsburg, including a perpetual easement to operate rail freight service between Healdsburg and Lombard.

Currently, the NWP Line from Willits to Healdsburg is owned by NCRA, and from Healdsburg to Lombard is owned by the Sonoma-Marin Area Rail Transit (SMART) District. NCRA has a perpetual freight service easement over SMART right-of-way, and SMART has a perpetual passenger service easement over the portion of the right-of-way owned by NCRA between Healdsburg and Cloverdale. SMART's enabling legislation (Assembly Bill (AB) 2224) provides that the District must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties." Coordination of SMART's passenger rail service and NCRA's freight service is governed by an existing Operating Agreement, which generally provides that freight service shall be subordinate to passenger rail service. Prior to the institution of commuter service a coordination agreement will be negotiated with SMART to address dispatching trains and related issues.

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2.1 PROJECT OBJECTIVE, PURPOSE AND NEED

This section summarizes the project objectives, purpose, and need; describes the history of development of the proposed project and existing characteristics of the project corridor; provides a description of the project's operational components; and establishes the basis for the environmental analysis.

NWP Co., NCRA's selected rail operator, proposes to resume the operations of freight service in the rail corridor from Willits to Lombard for transport of general freight to serve the communities in the rail corridor. In this rail corridor, NWP Co. could also transport solid waste from communities in Mendocino and Sonoma County to landfills beyond the four-county area. This area has historically been serviced by the railroad and this project will reestablish reliable and cost effective service to the businesses and public utility entities within the service area, and resumes service to former customers whose businesses have been adversely impacted by the lack of service.

The need for a renewed reliable freight service in Mendocino, Sonoma, Marin, and Napa Counties is apparent by the rapidly growing congestion and truck traffic along U.S. Highway 101 from Willits to Novato, and on CA Highway 37 that connects U.S. Highway 101 in Novato to Interstate Highway 80 in Solano County. The capacity of the highway system to accommodate quick and cost-effective commercial truck traffic has not kept pace with the growth of travel demand in this area, and this trend is expected to continue in the future in spite of several major highway improvements projects that are currently in progress.

The need for a cost-efficient, alternative method of transportation to deliver commercial goods and freight in the area is supported by:

- Capacity constraints on existing systems, particularly U.S. and CA Highways 101, 121, 37, and 12 that result in travel delays and congestion. The rail service would remove a portion of the current commercial truck traffic on the roadways thus reducing traffic congestion (one train could replace as many as four hundred commercial diesel trucks).
- Increasing unreliability and safety concerns of existing travel modes due to congestion, inclement weather, and accidents. A reduction in the number of

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commercial trucks on the local roadways will result in increased safety on the roads.

- The absence of four-lane highways and freeways connecting U.S. Highway 101 with Interstate Highway 80.

- By removing a portion of the current commercial truck traffic on the roadways, rail service would decrease diesel emissions from trucks, resulting in a net improvement in air quality and reduction in greenhouse gas emissions. Movement of freight on rail is measurably more efficient. One ton of goods can be moved 414 miles with one gallon of fuel.

The purpose of the proposed project is to provide efficient, reliable, and cost-effective rail service in Mendocino, Sonoma, Marin, and Napa counties. The following project objectives have been identified to achieve this goal:

- Provide an alternative transportation option to trucking for commercial merchandise and freight across the four-County area.
- Provide an alternative transportation option to trucking for hauling solid waste across the four-county area.
- Provide an alternative cost-effective option to the disposal of solid waste in local landfills.
- Fulfill the State mandate to provide the continuation of railroad service to Northwestern California and help alleviate the growing concerns for efficient goods movement.

2.2 PROJECT LOCATION

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. Mendocino, Sonoma, Marin and Napa counties are located on the west coast of California north of San Francisco. In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include Willits and Ukiah. In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes Novato. Freight rail service will not affect any incorporated jurisdiction in Napa County.

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A map of the proposed project corridor is shown in Figure 2-1.

2.3 OVERVIEW OF NWP HISTORY AND FACILITIES

2.3.1 History of the NWP Facilities (Russian River and Eel River Divisions)

The NWP was created in 1907 through the consolidation of six separate railroad companies held by the Santa Fe and Southern Pacific railroads.

Prior to 1907, rail service from Eureka to San Francisco was not possible because of the 106-mile gap within the Eel River canyon. In January 1907, the Southern Pacific and the Santa Fe formed the jointly-owned NWP, and agreed to build the last segment of the line. The articles of incorporation stipulated that the two companies would take turns managing the line in alternate years. Eight years later, in October, 1914 the Eel River section was completed and the cities of Eureka and San Francisco celebrated the achievement with a gold spike ceremony at Cain Rock, four miles south of Alderpoint.

In 1984, ownership of the NWP was split at Willits between two organizations. The Southern Pacific Railroad operated the RRD, while the ERD between Willits and Arcata was sold to the Eureka Southern Railroad. Between 1984 and 1996, the ERD of the NWP and the RRD of the NWP were operated separately as two distinct and economically independent rail lines.

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act to ensure continuation of railroad service in Northwestern California. Although it was chartered by a state mandate, only the acquisition of the then ERD was funded by the State as no operating funding was provided at the time of acquisition.

In 1992, NCRA purchased the ERD. A separate transaction in 1996 added the portion of the RRD between Healdsburg (Sonoma County) and Willits to NCRA's holdings. In 1993, NCRA; the Golden Gate Bridge, Highway, and Transportation District (Bridge District); and Marin County set up a joint-powers authority called the Northwestern Pacific Railroad Authority (NWPRA). This public-private partnership took over the ownership of rail facilities and tracks along the RRD between Healdsburg and Lombard

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(Napa County) where the railroad then connects to the national rail network through the California Northern Railroad.

Freight service and related maintenance of this portion of the NWP became the responsibility of NCRA under an agreement with NWPRA dated August 19, 1996. Until 1998, freight service operated twice daily along the NWP, carrying mainly natural resource products. Both the Russian River and Eel River Divisions became inoperable as a result of damage sustained during the winter storms of 1997-1998.

Once NCRA completed essential disaster-related repairs to the RRD, commercial freight service resumed between Lombard and Penngrove, Sonoma County, in January 2001. However, service was discontinued in September 2001 because the operator lacked capital to continue operations. Subsequently, NCRA identified additional repairs, and maintenance and infrastructure improvements that would be necessary to restore facilities on the RRD. Meanwhile, the repair of the ERD continued to be delayed due to the lack of funding required for extensive repairs.

In 1997 the Sonoma County Transportation Authority and Marin Planning Agency conducted a study that recommended that a commission be formed to guide the design and implementation of passenger train service. In 1998 the Counties of Sonoma and Marin formed the SMART Commission to carry out this direction. On January 1, 2003 the Sonoma-Marin Area Rail District was created with the passage of California State Assembly Bill 2224. The district consolidated the existing SMART Commission, NWPRA, and the Golden Gate Bridge, Highway and Transportation District Authority and assets over the rail corridor into a single rail district.

The NWP from Healdsburg to Lombard is owned by the SMART District. NCRA has a perpetual freight service easement over SMART right-of-way, and SMART has a perpetual passenger service easement over the portion of the right-of-way owned by NCRA between Healdsburg and Cloverdale. AB 2224 provides that SMART must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties."

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2.3.2 Current Status and Operational Issues

The rail line is an operating railroad by the Surface Transportation Board (STB), and it will be operated by NWP Co. However, rehabilitation of the line is required before trains may safely resume operations on the line. Rehabilitation activities are necessary to bring the rail line into conformance with FRA Class 2/3 standards, and to address safety issues identified in FRA Emergency Order No. 21. The rehabilitation activities are being funded by the State and investments by the operator.

As NCRA's rail operator, NWP Co. will be required to be in compliance with a Consent Decree that was signed by the North Coast Regional Water Quality Control Board (NCRWQCB), Department of Toxic Substance Control (DTSC), and Department of Fish and Game (DFG). The Consent Decree, among other things, requires that NCRA prepare and implement several workplans to clean up existing waste (currently scattered rail ties), conduct all rail operations in accordance with State environmental laws, and to handle, manage, store, transport, and dispose of hazardous materials and waste in a manner that is protective of human health and the environment.

2.3.3 Existing Facilities of the Russian River Division

Description of the Rail Corridor Alignment

The NCRA rail corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. From Willits the line runs southward generally following Highway 101 through the towns of Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, and Novato. South of Novato the line runs eastward near the shore of San Pablo Bay, over the Petaluma River, past Black Point, past the old station at Shellville, over the Napa River, and terminates in Lombard north of the city of American Canyon.

Mainline Track, Sidings, & Spur Tracks

The RRD consists of one mainline track, several sidings, and many spur tracks. The sidings are strategically placed along the mainline for train meets (train passing) and temporary storage. It is anticipated that these sidings will be used for the same purposes during the proposed operations. The spur tracks are generally privately

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owned and are located along the line at shippers' and receivers' facilities. Many of these spurs still service rail customers. Additional private spur tracks may be constructed to serve future rail customers.

Rail Yards, Stations and Maintenance Facilities

Along the rail line are a number of former railroad stations, maintenance and switching yard at Willits, and a storage facility at Cloverdale.

Stations

The majority of the railroad stations are planned to be renovated by SMART, in the future, to be used in conjunction with their proposed commuter rail service. NWP Co. does not plan to use any of these stations for operations.

Willits Yard

The former Willits Yard is located in the northern part of the town of Willits. For much of the railroad's history this site was the primary location for major repairs and maintenance of rail equipment, engines, and refueling operations. At one time, the Yard had several structures for administrative purposes, a rail depot, a roundhouse for engine repair, and two Bunker-C above ground storage tanks.

The RRD will not use the Willits Yard for major repairs or maintenance. The operator will contract with existing modern facilities outside the RRD right of way for major repair and maintenance. The Willits Yard will be used for train switching, storage, and perhaps for light repairs and light maintenance.

The Willits Yard was also a major switching station for the line. The Yard includes several yard tracks, three of which are over a mile in length.

Cloverdale Depot and Maintenance Facility

Two modern facilities are present along the line east of downtown Cloverdale. The first is a modern passenger train depot that includes a small office. Just north of the depot is a modern maintenance building used primarily for equipment storage and minor repairs and servicing of NCRA maintenance-of-way equipment. NWP Co. plans to use this facility for similar purposes.

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Grade Crossings, Tunnels and Bridges

There are 104 wood, asphalt, gravel, or concrete road crossings along the rail line between Willits and Lombard. Several of these have been repaired or upgraded in recent years.

Signals and gates are present at major crossings and intersections, and these are currently being repaired or replaced to meet FRA and CPUC standards, and to be compatible with possible future upgrades by SMART. Depending upon the volume of traffic and type of road, the crossings will have various warning devices. Railroad locomotive horns will blow at crossings to be in compliance with FRA safety regulation requirements.

There are 121 bridges and 5 tunnels located between Willits and Lombard. Most of the bridges are small wood trestle structures that span drainage channels or creeks feeding the Russian River, Petaluma River, and San Pablo Bay. Several steel bridges are present as well: the Russian River bridge at Healdsburg, the Haystack Landing bridge crossing the Petaluma River in Petaluma, the Black Point bridge crossing the Petaluma River near Black Point east of Novato, the Wingo Bridge crossing an inlet creek in the former town of Wingo, and the Brazos vertical lift bridge crossing the southern Napa River.

2.4 PROPOSED OPERATIONS

2.4.1 Frequency and Size of Trains

The proposed project will include general railroad freight service (merchandise to and from customers along the line) and hauling of solid waste. The following description of train size and volume is based on an analysis by NWP Co., the operator of the rail line. Figure 2-2 provides a diagram of the total train movements associated with both merchandise freight traffic and solid waste hauling.

Merchandise Freight Traffic

For the purpose of the EIR, it is assumed the maximum, or high scenario estimates for freight carloads would occur. Therefore, for the purposes of this analysis, the operator will run two trains per day between Redwood Valley and Lombard six days a week,

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each pulling 25 cars (1,750 feet in length) and two trains per day between Willits and Redwood Valley six days per week, each pulling 10 cars (700 feet in length). Figure 2-2 provides a diagram of the proposed train movements associated with the normal freight traffic. Each train will be pulled by two 10-year old SD40 diesel locomotives which will be in compliance with air quality regulations. The hours of operation will be 24 hours per day, and the time of runs will depend on scheduling and operational requirements. Speeds will be between 25 and 40 miles per hour (mph).

Hauling Solid Waste

NWP Co. anticipates that it could haul waste from several communities along the line for disposal outside of the project area. A train would collect waste at an intermodal solid waste transfer facility, constructed as a separate project. The construction and operation of an intermodal facility would not be a NWP Co. project; therefore the specific details of that project is outside of NWP control. However, a likely transfer point would be located south of the City of Petaluma and the Haystack Landing Bridge, between MP 33.6 and MP 36.6. The construction and operation of an intermodal facility will be addressed as a separate project under potential cumulative impacts.

It is expected that two trains per day would haul a maximum of 60 cars (3,600 feet in length) loaded with highway trailers at varying speeds up to 40 mph using two new SD70 MAC locomotives from Petaluma to Lombard where the cars would be interchanged to and from the California Northern Railroad. Figure 2-2 provides a diagram of the proposed train movements associated with the solid waste hauling.

2.4.2 Facilities

Use of Existing NCRA Facilities Located Adjacent to the Railroad

It is planned that NWP Co. will use some of the existing areas located within their potential rail customers' facilities for the parking of engines and rail cars, switching, and light running maintenance and fueling of diesel engines and support equipment. When necessary, the support equipment for the railroad will be upgraded or revitalized to assure reliability and compliance with current regulations.

When fueling along the line is necessary, it will be conducted by transferring fuel directly from a tanker truck to the railroad diesel locomotives. No above ground or underground

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storage tanks will be constructed. Tanker trucks will access the line along access roads that are present throughout the line. Fueling will be conducted in compliance with the Consent Decree, and in conformance with NCRA's Best Management Practices (BMPs).

Light running maintenance includes minor servicing activities such as brake repair, minor engine repair, oil changes, and other scheduled servicing tasks. Servicing activities will involve storage and handling of relatively small amounts of petroleum-based hazardous materials, particularly oil, waste oil, grease, and small amounts of diesel fuel. These materials will be stored, handled, and disposed of in accordance with Federal and State regulations, and an environmental Consent Decree (see Chapter 3.5-Hazardous Materials). Anticipated work plans include a waste management plan (WMP), storm water pollution and prevention plan (SWPPP), and a spill contingency plan.

Locomotives and other heavy equipment will be transported to offsite railroad maintenance facilities for routine and major scheduled and non-scheduled repairs and servicing

New Facilities

Major scheduled and non-scheduled repairs and servicing will be conducted off the project site; therefore, no additional maintenance yards or fueling stations will need to be constructed. It is anticipated that various new privately owned spur tracks and sidings may be constructed depending on the actual customer base and when SMART begins operations. The SMART project includes additional sidings to handle train meets. This document is written assuming that NCRA begins freight service before SMART begins passenger service.

2.5 PROPOSED REHABILITATION ACTIVITES

NCRA is performing rehabilitation of its track, signals, embankments, and bridges in order to raise the line to the required safety standards. A Categorical Exemption under CEQA has been circulated to allow routine rehabilitation and repairs of the rail line within the rail right-of-way, including signal upgrades, bridge and culvert repair, new rails and roadbed improvements. One bridge which requires repair and two other repair

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sites where severe erosion within creeks have occurred may cause a significant impact and therefore will be analyzed in this EIR. The three repair sites are summarized below.

2.5.1 Black Point Bridge

The Black Point Bridge is a steel through truss swing span bridge built in 1911 across the Petaluma River at Black Point, east of the city of Novato. In its open position, the bridge is parallel to the River allowing ships and barges to navigate between pile-supported fenders on either side of the River. When a train needs to cross the River, the bridge rotates over the River and connects the rail line by a motor-driven center pivot.

Planned repairs to the bridge include splicing piles, repairing drifting piles, replacing bracing and caps, repairing concrete at the east landing pier, and replacing the mechanical and electrical systems of the swing span. The work will be conducted *in situ* using a barge that will be docked against the bridge.

2.5.2 Bakers Creek

At Bakers Creek, North of Redwood Valley, the line is built on an embankment fill about 50 feet high. During a very intense rain storm in the winter of 2005-2006, the culverts under the fill became plugged or could not effectively pass the large quantity of runoff. As a result, water dammed behind the embankment, causing the embankment to fail.

The plans and permits for repair of the embankment will not be finalized until consultation with the DFG, the NCRWQCB, and other agencies are completed. For the purpose of this EIR, it is anticipated that the repair of the embankment will occur off-winter when Bakers Creek is dry. Clean imported fill material will be transported by rail, and a new embankment will be constructed in kind, including the installation of a new culvert. Because failure of the embankment introduced silt into Bakers Creek, it is likely that some form of stream restoration under permit will be required.

2.5.3 Foss Creek

Foss Creek is a small feeder creek that flows into the Russian River north of Healdsburg. At one location where it runs sub-parallel to the rail line, the creek abandoned its course for about 30 feet of its length, shifted about 10 feet to the east, and scoured the railroad embankment. As in the case of Baker Creek, the plans and permits for repair of the embankment will not be finalized until appropriate consultation

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with the regulatory agencies is completed. It is anticipated that the repair will require permitted restoration of the creek to its original course and character, importation of clean fill material by rail, reconstruction of the embankment and rail line, and the placement of scour protection- likely rip rap- along the base of the embankment to prevent scour during high flows.

2.5.4 Emergency Repairs

Certain emergency repairs have been or will be conducted on the rail line to protect public safety, the environment and prevent further loss of property. These emergency repair activities have been or will be conducted as a separate project and are not included in this EIR. The appropriate CEQA documentation and permitting has been or will be prepared for the emergency repairs.

2.6 CUMULATIVE BASELINE

CEQA requires that impacts of cumulative projects be considered in the EIR. The following describes the projects that will be considered in the cumulative baseline that are existing, proposed, approved or reasonably foreseeable.

2.6.1 SMART Project

The SMART program consists of a regional passenger service that will provide commuter train service using the same tracks between Cloverdale and Novato as the proposed project. The SMART project has undergone environmental review under CEQA.

Unlike the NCRA Project the SMART Project proposes new infrastructure outside the existing footprint of the NWP and represents expanded capacity of NWP. It includes construction or renovation of 14 rail stations, passing sidings, a rail maintenance facility, and a bicycle/pedestrian pathway within or adjacent to the rail corridor. The proposed project would provide weekday passenger rail service including four daily round trips between Cloverdale and Novato, two daily round trips between Healdsburg and Novato, three daily round trips between Windsor and Novato, two daily round trips between Petaluma and Novato, and two daily round trips between Healdsburg and Petaluma.

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The SMART EIR addressed potential cumulative impacts associated with the operation of the NCRA freight services. However, it should be noted that the proposed NCRA freight services have been refined since the last estimate used in the SMART EIR. In 2006 and before NCRA had an operator agreement with NWP Co. the freight service estimate was three to six 12-car trains per week.

2.6.2 Eel River Canyon and North-end Operations

The potential for operating the railroad north of Willits to Samoa is currently under review. This portion of the NWP is an economically independent project from the NCRA RRD project being addressed in this EIR.

Extensive repairs from landslides and upgrade of the rail line in the Eel River Canyon will be required, and relatively few customers are present along the line. If this is operational in the future, it is estimated, based on economically reasonable expectations in the foreseeable future, that activity generated north of Willits will add to the Russian River Division six to fourteen additional train movements per day.

The NWP conducted a capacity scenario for the entire rail line to assess the maximum number of trains and cars that could be possible if running at full capacity. According to the analysis, the effective capacity of a total of sixteen freight trains daily of the NWP Line is determined by the mountainous segment between the north switch at the siding at Redwood Valley at MP 122.2 and the Willits Yard tracks at MP 140.2.

2.6.3 Intermodal Solid Waste Transfer Facility

If Sonoma County works with NWP Co. to haul Sonoma County waste, it is likely that NWP Co. would receive the waste by truck at an intermodal facility located south of Petaluma (MP 33.6 to MP 36.6). The rail portion of the intermodal yard would be built on private property as a spur and operated by NWP Co. The intermodal facility would be operated by others as a separate project. The rail portion would consist of two new spur tracks off of the existing NWP Line.

2.7 INTENDED USE OF THE ENVIRONMENTAL IMPACT REPORT

The NCRA, as lead agency, will prepare a draft Environmental Impact Report (DEIR) to provide the public, regulatory agencies and other interested parties an analysis of the

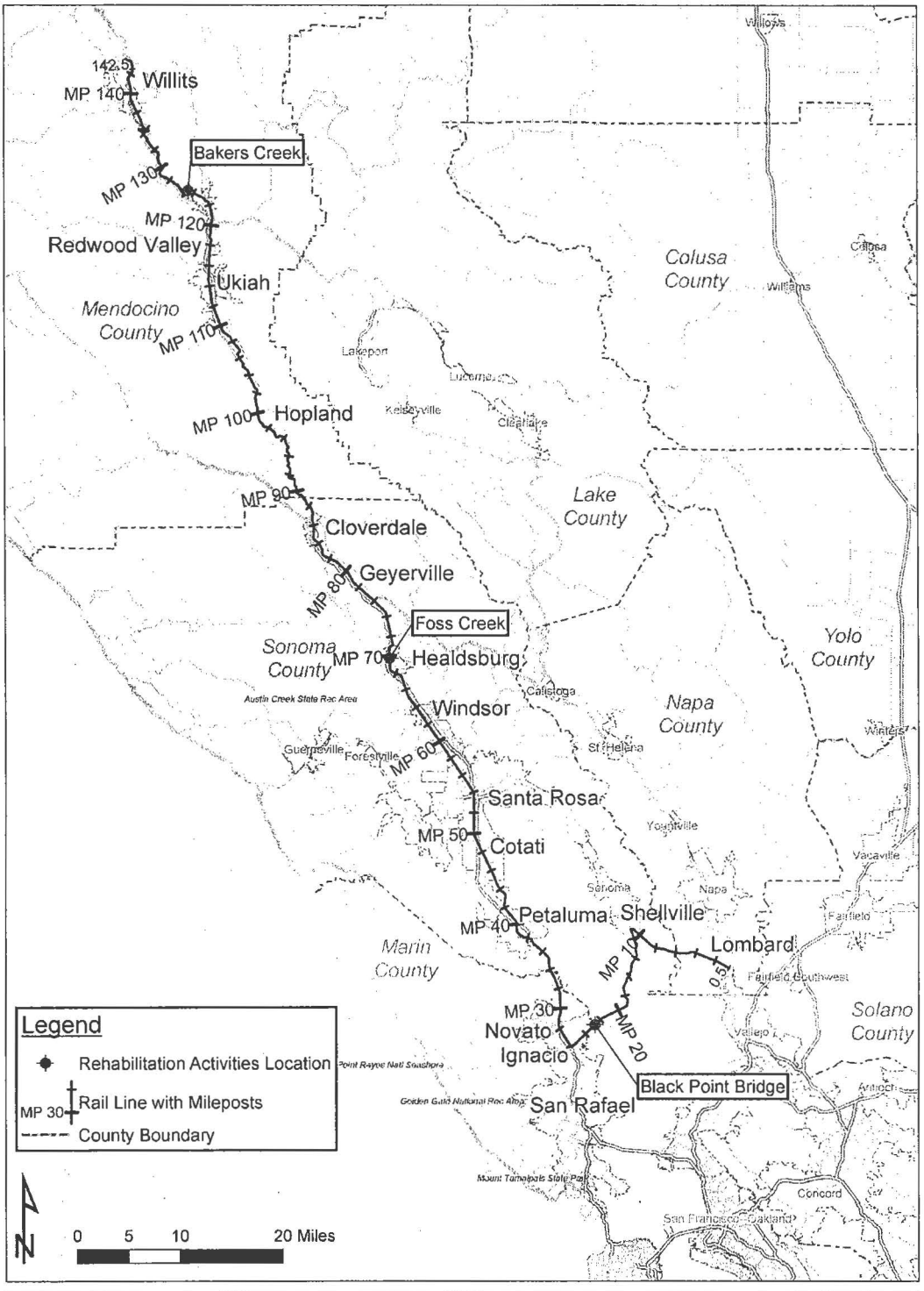
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potential environmental impacts of the operation of the RRD and certain identified rehabilitation activities. The DEIR will be prepared in accordance with the California Environmental Quality Act (CEQA), the State Environmental Impact Report Guidelines and California Administrative Code, Title 14.

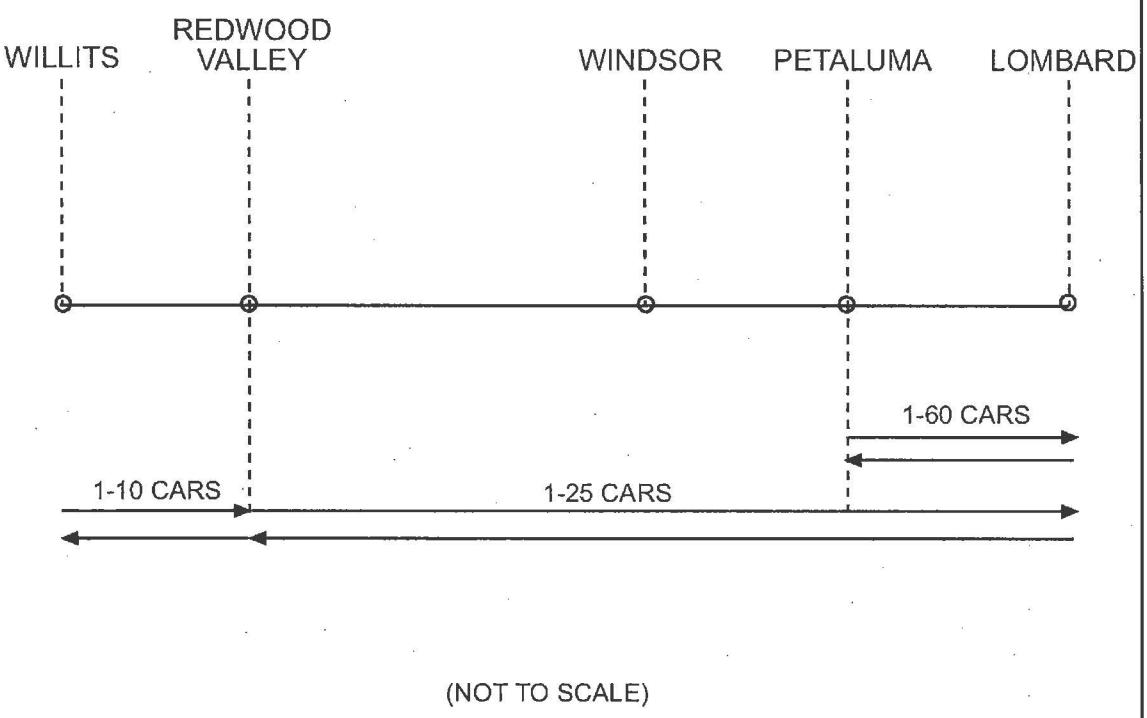
The rehabilitation activities that will be identified in the DEIR will require consultation with and potentially permits from some of the following regulatory agencies:

- California Department of Fish and Game
- U.S. Fish and Wildlife Services
- U.S. Army Corp of Engineers
- Air Quality Districts
- Regional Water Quality Control Board
- Bay Conservation and Development Commission
- National Marine Fisheries Service
- Office of Historic Preservation
- California State Lands Commission
- Local cities and counties

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KLEINFELDER 5015 SHOREHAM PLACE SAN DIEGO, CA 92122 PHONE: 858-320-2000 FAX: 858-320-2001	PROJECT LOCATION	DRAWN: 05/15/2007	REVISION: C
		DRAFTED BY:	GT/BT
		CHECKED BY:	BE
APPROVED BY Bradley Erskine	NORTH COAST RAILROAD AUTHORITY RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT	PLATE:	Figure 2 - 1
	PROJECT NO: 78207 / FILE NAME: EIR_project_location_1.mxd		



(NOT TO SCALE)

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DRAFTED BY: S CALLAHAN	FILE NO: Fig2_2.fh11
PROJECT NO: 78207	DATE: 05-14-07

NUMBER OF FREIGHT TRAINS AND THEIR CARS AT VARIOUS LOCATIONS ALONG THE RAIL CORRIDOR

FIGURE NO.
2-2

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3.0 ENVIRONMENTAL CHECKLIST FORM

1. Project Title:	North Coast Railroad Authority Russian River Division Freight Rail Project
2. Lead Agency Name and Address:	North Coast Railroad Authority
3. Contact Person and Phone Number:	North Coast Railroad Authority Attention: Mitch Stogner 419 Talmage Road, Suite M Ukiah, California, 95482 (707) 463-3280
4. Project Location:	Mendocino, Sonoma, Marin and Napa counties
5. Project Sponsor's Name and Address:	See No. 2, Lead Agency, above
6. General Plan Designation:	N/A
7. Zoning:	N/A
8. Description of Project:	Resume freight rail service from Willits, Mendocino County to Lombard, Solano County.
9. Surrounding Land Uses and Setting:	Rural, agricultural, suburban
10. Other public agencies who may be involved in reviewing and approving aspects of the freight operations or who may require consultation and permits for rehabilitation at Bakers Creek, Foss Creek, and Black Point Bridge include:	• USACE • USFWS • Air Quality Districts • BCDC • NMFS • OHP • CSLC • DTSC • DFG • RWQCB • Mendocino, Sonoma, Marin, and Napa Counties • Cities of Ukiah, Willits, Cloverdale, Healdsburg, Windsor, Santa Rosa, Petaluma, and Novato

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3.1 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology / Soils
☒ Hazards & Hazardous Materials	☒ Hydrology / Water Quality	☒ Land Use / Planning
☐ Mineral Resources	☒ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☒ Transportation / Traffic
☐ Utilities / Service Systems	☒ Mandatory Findings of Significance	

DETERMINATION: (To be completed by Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☒ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

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3.2 POTENTIAL ENVIRONMENTAL IMPACTS

This section describes the environmental consequences, including direct, indirect, and cumulative impacts, of the Proposed Action, as well as recommended best management practices and/or mitigation measures.

A direct environmental impact is one that is immediately caused by the alternative and that occurs at or near the time and place of the action. Indirect impacts are caused by the alternative but may occur some time later or at some distance. Indirect impacts may, for example, include induced changes in the pattern of land use or population density or growth rate and their related effects on natural systems or other social systems. Cumulative impacts occur in combination with other actions or projects that are occurring or are projected to occur within the region of the Proposed Action.

To provide a clear classification of impacts, this Initial Study defines five types of impacts, including:

- **Significant Impact.** A significant impact includes effects that exceed established or defined thresholds. For example, noise levels that exceed local noise level standards would be considered a significant adverse impact.
- **Potentially Significant Impact.** A potentially significant impact includes effects that may be significant but there is insufficient information to verify the magnitude of the effect. For example, to determine vehicular noise impacts for a new development from a nearby roadway requires information on traffic volume, topography, building location and orientation, construction material, window types and treatment, and height and mass of any structure between the residents and the vehicles. Lack of information relating to these details precludes a definitive conclusion as to whether interior noise levels meet or exceed local or state noise standards.
- **Less Than Significant Impact.** A less than significant impact includes effects that are perceptible, but do not exceed established or defined thresholds. For example, alterations in the development intensity of a site would be noticeable but would not necessarily represent a significant change in land use compatibility, especially if the Proposed Action is consistent with local development standards.

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- **Less Than Significant Impact with Mitigation.** A less than significant impact with mitigation indicates that the effects of a significant or potentially significant impact have been reduced below established thresholds through the implementation of specific mitigation measures. For example, implementation of best management practices (BMPs) for stormwater runoff—including silt fences, infiltration galleries and vehicle maintenance—may reduce potential water quality impacts to less than significant.
- **No Impact.** A Proposed Action with no impact will have no perceptible effect on the resources in question.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.1 Aesthetics				
Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

Discussion

a,b,c) Rail service previously operated on the existing rail line for more than 100 years and is a long - established visual feature in the landscape. Therefore, resumption of freight rail operations would not induce additional visual disruptions to nearby receptors. No additional impact is anticipated and aesthetics will not be addressed in the EIR.

d) The proposed project would not introduce any new sources of light and glare into the area. Maintenance and storage needs for the rail line would utilize existing facilities. No expansion of these facilities is necessary to accommodate the freight service; therefore, no new lighting would be required for expansion or security purposes. No impact is anticipated and aesthetics will not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.2 Agriculture Resources

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒

Discussion

a,b,c) Agricultural activities occur within the vicinity of the project site. The proposed project site is entirely located within an existing railroad right-of-way except for some rehabilitation activities that may be required at Bakers Creek. No alterations or expansions of right-of-way boundaries will be required. Train operations and routine maintenance would not impact any agricultural resources in the vicinity. No conversions of farmland or conflicts with zoning or the Williamson Act would result from project implementation. Herbicide spraying adjacent to agricultural areas will be conducted in conformance with BMP's outlined in the Herbicide Spraying Plan that was prepared per the requirements of the North Coast Regional Water Quality Control Board. No impacts are anticipated and impacts to agriculture will not be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.3 Air Quality

Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☒	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☒	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☒	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☒	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☒	☐	☐	☐

Discussion

a) The proposed project will generate emissions during operations. An air quality analysis will be conducted as a portion of the EIR that will determine whether the proposed project will conflict with any air quality management plans.

b) The air quality analysis for the proposed project will address the emissions associated with the proposed project and address any potential air quality violations.

c) The air quality analysis will analyze the cumulative air quality impacts of this project together with the cumulative baseline. This baseline will include other rail proposals and other projects in the region.

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d,e) Use of diesel locomotives and other equipment may expose sensitive receptors to PM-10 and 2.5, as well as generate odors. This will be evaluated in the air quality analysis of the EIR.

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3.2.4 Biological Resources

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS?	☒*	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFG or USFWS?	☒*	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☒*	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☒*	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☒*	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan?	☒*	☐	☐	☐

**** Potentially significant impacts are restricted to rehabilitation activities at Black Point Bridge, Bakers Creek, and Foss Creek. Potential impacts associated with the operation of the railroad are considered less than significant with mitigation. See Discussion.***

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Discussion

a,d) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially result in a substantial adverse effect, directly or through habitat modifications, on species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS. The project at these sites may also have potential to substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. Potential impacts associated with the operations of the railroad will be mitigated by implementing appropriate BMPs to a less than significant level. These issues will be addressed in the EIR.

b,e,f) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations or by the CDFG or USFWS. Additionally, the project at these sites may also potentially conflict with local policies or ordinances protecting biological resources, or with the provisions of adopted Habitat Conservation or Natural Community Conservation Plans, as well as other approved local, regional, or state habitat conservation plans. Potential impacts associated with the operations of the railroad will be mitigated by implementing appropriate BMPs to a less than significant level. These issues will be addressed in the EIR.

c) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the CWA, through direct removal, filling, hydrological interruption, or other means. Potential impacts associated with the operations of the railroad will be mitigated by implementing appropriate BMPs to a less than significant level. These issues will be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.5 Cultural Resources

Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☒	☐	☐
b) Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?	☐	☒	☐	☐
c) Directly or indirectly destroy a unique paleonotological resource or site or unique geologic feature?	☐	☒	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☒	☐	☐

Discussion

a,b,c,d) Preliminary review of previous studies of the project corridor has identified that historic, archeological, and unique paleontological or geologic resources may be present along the rail corridor. It is not known if there are any human graves at the Bakers Creek and Foss Creek rehabilitation sites. It is therefore determined that a cultural resource records search be conducted for the entire right-of-way and off right-of-way use areas to determine what resources are historically significant. As such, potential impacts to Cultural Resources will be addressed in the EIR.

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3.2.6 Geology and Soils

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☒	☐	☐	☐
ii) Strong seismic ground shaking?	☒	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☒	☐	☐
iv) Landslides?	☐	☒	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☒	☐	☐
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☒	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (UBC) (1997), creating substantial risks to life or property?	☒	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒

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Discussion

a,b,c,d) The proposed project is located in an area that is seismically active and has experienced strong quake activity in the past. As such, geological and soil conditions will be addressed in the EIR.

e) No septic tanks or wastewater disposal systems are included with the proposed project design and therefore no impacts are anticipated and no further analysis is required.

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3.2.7 Hazards and Hazardous Materials

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☒	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☒	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☒	☐

Discussion

a,b,c) It is not currently known to what extent the proposed project would transport, use, emit or handle hazardous materials. Operations for the proposed project could potentially result in a potentially significant impact due to an upset or accidental release of diesel fuel in the case of a derailment. Therefore, these issues will be addressed in the EIR.

d) It is currently not known if the proposed project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. This issue will be addressed in the EIR.

e,f) The operations of the railroad will not involve the management of significant quantities of hazardous materials and the potential impacts to airports is considered less than significant and no further analysis is required.

g) Except for rehabilitation activities at Bakers Creek, the proposed project would be limited to the existing NWP right-of-way and would not require the alteration of any public roadways. The proposed project would also be limited to the restoration of previously existing railroad facilities would not impair the implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Potential impact is anticipated to be-less-than-significant and no further analysis is required.

h) The proposed project is rehabilitation and operation of existing railroad facilities and would not introduce elements that would expose people or structures to significant risks involving wildland fires beyond previously

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existing conditions. Potential impact is anticipated to be less than significant and no further analysis is required.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
3.2.8 Hydrology and Water Quality				
Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☒	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion of siltation on- or off-site?	☐	☒	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	☐	☒	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☒	☐	☐
f) Otherwise substantially degrade water quality?	☐	☒	☐	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☒	☐	☐
j) Inundation of seiche, tsunami, or mudflow?	☐	☐	☐	☒

Discussion

a,c,d,e,f) Rehabilitation and maintenance operations could potentially result in significant impacts from erosion and siltation in waterways or create or contribute runoff water that would exceed the capacity of existing or planned stormwater systems, or provide additional sources of polluted runoff. Without mitigation, grading, excavation and rehabilitation activities could contribute to minimal soil erosion and a subsequent degradation in water quality. Implementation of standard erosion control techniques during project maintenance activities (would reduce potential water quality impacts to less-than-significant levels. These issues will be addressed in the EIR.

b) The proposed project would not utilize groundwater or interfere substantially with groundwater recharge. No impact on groundwater is anticipated and no further analysis is required.

g,h) The rail line is an existing site feature. The proposed project would not place housing or structures that would impede or redirect flow within a 100-year flood hazard area. No impact is anticipated and no further analysis is required.

i) The proposed project does not include elements that would expose people or structures to significant risks involving flooding or dam failure. No impact is anticipated and no further analysis is required.

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j) The proposed project is the restoration of an existing railroad line that has been in existence for over 100 years. The proposed project would not place new development that would subject to seiches, tsunamis, or mudflows. No impact is anticipated and no further analysis is required.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.9 Land Use and Planning

Would the project:

a) Physically divide an established community?	☐	☐	☒	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☒	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☒	☐	☐	☐

Discussion

a) The proposed freight rail service restoration project contains no new elements that would potentially divide an established community. Impact to established communities is anticipated to be less-than-significant and no further analysis is required. Potential traffic-related impacts at railroad crossings will be addressed in the Transportation/Traffic section of the EIR.

b,c) It is not presently known if the proposed project would conflict with any applicable land use plan, habitat conservation plan, natural community conservation plan, or regulation that was adopted for the purpose of avoiding or mitigating an environmental effect. These issues will be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.10 Mineral Resources

Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Discussion

a,b) Project implementation would not result in the loss of availability of mineral resources of local or State importance. No impacts are anticipated and impacts to mineral resources will not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.11 Noise				
Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☒	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☒	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐

Discussion

a,b,c,d) It is currently not known if project-generated noise or vibration levels would exceed any established standards, expose persons to excessive temporary or permanent noise/vibration levels. These issues will be addressed in the EIR.

e,f) The proposed project is located within the vicinity of several local airports. Therefore, the issue will be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.12 Population and Housing

Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

Discussion

a,b,c) The proposed freight rail service would neither induce substantial population growth nor displace any housing units, and would not displace any people. With the exception of the three rehabilitation projects at Bakers Creek, Foss Creek, and Black Point Bridge, the project is essentially the resumption of an existing railroad line and is not adding new infrastructure. Therefore, it is not anticipated to stimulate population growth beyond what previous freight rail operations may already have incurred. No impacts on population or housing are anticipated as a result of the proposed project and this issue area will not be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.13 Public Services

Would the project:

a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:

Fire protection?	☐	☐	☒	☐
Police protection?	☐	☐	☒	☐
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

Discussion

a) Implementation of the proposed freight rail service would not involve the alteration of government facilities, nor would it require new or additional public services. The proposed project would potentially increase demand for fire and police protection in the case of a derailment. However, the unlikelihood of a train derailment would not increase fire and police protection to a potentially significant level. In addition, the reduction in diesel trucks along US 101 would potentially create a net positive benefit for fire and police protection. Freight rail safety will be addressed in the EIR. However, potentially adverse impacts associated with public services and governmental facilities are anticipated to be less than significant and public services will not be analyzed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.14 Recreation

Would the project:

a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☐	☒

Discussion

a,b) The proposed project will not permanently encroach upon nor result in an increased use of existing neighborhood or regional parks, or other recreation facilities. The implementation of freight rail service does not include recreational facilities or contain elements that would require the expansion of recreational facilities. No impact is anticipated and recreation will not be analyzed in the EIR.

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3.2.15 Transportation / Traffic

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☒	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☒	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☒	☐	☐
f) Result in inadequate parking capacity?	☐	☐	☐	☒
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☒	☐	☐

Discussion

a,b) Project construction and operation may result in an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system, and may result in exceeding a level-of-service standards. These issues will be addressed in the EIR.

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c) Project implementation will be limited to resuming freight rail operations and would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks. No impact is anticipated and no further analysis is necessary.

d) The proposed project would repair the track to its previous safe condition at Bakers Creek and Foss Creek; would repair the bridge at Black Point, and resume operations of the existing line. These activities would not introduce new design features that could increase hazards. Project designers will include measures that will correct potential hazards that may exist within the existing facility, which would result in safer conditions than currently present. No impact is anticipated and no further analysis is required.

e) The proposed project could result in potentially inadequate emergency access due to traffic at rail crossings. These issues will be addressed in the EIR.

g) The proposed project could potentially conflict with adopted policies, plans, or programs supporting alternative transportation and this issue will be addressed in the EIR.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
3.2.16 Utilities and Service Systems				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable RWQCB?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☒	☐

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Discussion

a) The proposed project would not require wastewater treatment capabilities and therefore would not exceed the requirements of the RWQCB. No impact is anticipated and this will not be addressed in the EIR.

b,e) The proposed project would not require water supply or wastewater treatment capabilities and therefore would not result in the exceedence of system capacities or require the construction of new facilities. No impact is anticipated and this will not be addressed in the EIR.

c) The proposed project would not require or result in the construction of new storm drainage facilities or require the expansion of existing facilities. No impact is anticipated and this will not be addressed in the EIR.

d) The proposed project would not require a water supply and no new or expanded entitlements would be needed. No impact is anticipated and this will not be addressed in the EIR.

f,g) The proposed restoration of freight rail service would generate limited amounts of solid waste during construction and normal operations. These materials, however, would not be of sufficient quantity to require a significant increase in need for landfill services, and would not exceed federal, State, and local statutes and regulations related to solid waste. (The hauling of solid waste will be in compliance with all federal, state and local regulations and these issues will be addressed in the transportation and hazards sections of the EIR.) Less than significant impact is anticipated and this would not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.17 Mandatory Findings of Significance				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☒	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulative considerable? ("Cumulative considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☒	☐	☐
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☒	☐	☐	☐

Discussion

a,b,c) Aspects of the proposed project, whether they be associated with the operations of the railroad or the rehabilitation activities at Bakers Creek, Foss Creek and Black Point Bridge, would have potentially significant environmental impacts that MAY adversely affect plants, wildlife, and human beings. These potential impacts are identified in this IS and are recommended for further analysis. Potential impacts that have been determined to result in less than significant impact or no impact, will not require further analysis. Human beings would primarily be affected by increased noise levels, air quality, traffic, and potential conflicts with local plans or policies. Plants and wildlife would be affected by certain rehabilitiation activities and some aspects of railroad operations. To

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appropriately address these impacts, it is therefore recommended that an EIR be prepared for this project. This project may be cumulatively considerable including noise, traffic and air quality.

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4.0 REPORT PREPARATION

4.1 LEAD AGENCY

The North Coast Railroad Authority is the lead agency under CEQA for the preparation of the RRD Freight Rail Service Project.

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

Staff Contact: Dave Anderson
Phone (707) 463-3280

4.2 REPORT PREPARERS

4.2.1 CEQA Initial Study

Kleinfelder
5015 Shoreham Place
San Diego, California 92122

Project Staff: Maya Rohr (Project Manager)
Bradley Erskine
Robert Motschall
Sean Kinghorn
Jennifer Gomez
Richard Sykes
Kris Allen
Steven Siegel
Bill Mumbleau

4.2.2 Project engineering

Tim Cobb (Project Manager)
HNTB
1330 Broadway
Oakland, CA 94612

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5.0 REFERENCES

Federal Emergency Management Agency - U.S. Department of Homeland Security. *Final Programmatic Environmental Assessment: South End Alternative.* North Coast Railroad Authority. FEMA-1203-DR-CA. March 2004.

Sonoma-Marin Area Rail Transit District; Parsons - Brinckerhoff - Quade & Douglas, Inc. *Sonoma-Marin Area Rail Transit Project Draft Environmental Impact Report.* SCH # 2002112033. November 2005.

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INITIAL STUDY
NORTH COAST RAILROAD AUTHORITY
RUSSIAN RIVER DIVISION
FREIGHT RAIL PROJECT

Prepared for:

Prepared by:

KLEINFELDER

5015 Shoreham Place
San Diego, California 92122
(858) 320-2000

July 2007

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ACRONYMS AND ABBREVIATIONS

BMPs	best management practices
BCDC	Bay Conservation and Development Commission
CD	Consent Decree
CE	Categorical Exemption
CEQA	California Environmental Quality Act
CPUC	California Public Utilities Commission
CWA	Clean Water Act
DFG	Department of Fish and Game
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
ERD	Eel River Division
FRA	Federal Railroad Administration
IS	Initial Study
LOMA	Locomotive Operations and Maintenance Area
NCRA	North Coast Railroad Authority
NCRWQCB	North Coast Regional Water Quality Control Board
NBI	North Bay, Inc.
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NWP	Northwestern Pacific Railroad
NWPRA	Northwestern Pacific Railroad Authority
OHP	Office of Historic Preservation
RRD	Russian River Division
RWQCB	Regional Water Quality Control Board
SLC	California State Lands Commission
SMART	Sonoma-Marin Area Rail Transit
SPCC	spill prevention, control, and countermeasures plan
SWPPP	Storm water pollution and prevention plan
UBC	Uniform Building Code
USACE	US Army Corps of Engineers
USFWS	US Fish and Wildlife Service
WMP	waste management plan

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1.0 INTRODUCTION AND OVERVIEW

This Initial Study has been prepared by Kleinfelder on behalf of the North Coast Railroad Authority (NCRA), pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15063. NCRA has proposed this project to resume freight rail service from Willits, Mendocino County to Lombard, Napa County. The following Initial Study has been prepared in order to address potential impacts associated with the proposed project, which includes operations and features supporting operations.

The Initial Study contains the following: project description; the potential environmental impacts associated with the project; and mitigation measures to reduce impacts to less than significant levels. In summary, potential significant environmental impacts associated with the project have been identified, and therefore, an Environmental Impact Report (EIR) will be prepared under CEQA.

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. The rail corridor, commonly known as the Northwestern Pacific Railroad (NWP), generally parallels US 101 running north-south in Mendocino, Sonoma and Marin counties. In Novato, Marin County, the rail corridor turns east and runs along California Highways 37 and 121 to Lombard, Napa County. Freight service will not extend south of the US 101 interchange with California Highway 37. Additionally, this project does not propose nor authorize freight service north of Willits.

Mendocino, Sonoma, Marin, and Napa counties are located on the west coast of California north of San Francisco. In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include the Cities of Willits and Ukiah. In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include the Cities of Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes the City of Novato. The Napa County portion of the project does not traverse any city boundaries and is completely in unincorporated County lands.

This Initial Study was prepared in compliance with the CEQA of 1970 (as amended) and the CEQA Guidelines.

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AR 03471

2.0 PROJECT DESCRIPTION

The North Coast Railroad Authority (NCRA) is proposing to resume rail service over the Russian River Division (RRD) of the Northwestern Pacific Railroad (NWP). The NWP is an existing railroad that has provided rail service dating back to the early 1900's. The RRD of the NWP is approximately 142 miles long extending from Willits in Mendocino County, California to Lombard, Napa County, California. This rail corridor runs parallel to U.S. Highway 101 corridor through Mendocino, Sonoma, and Marin counties to Novato, California. At Ignacio, south of Novato, the rail corridor runs east/west along CA Highways 37 and 121 near the north shore of San Pablo Bay, to Lombard, north of the City of American Canyon, where the NWP connects to the currently operating California Northern Railroad. .

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act, Government Code Sections 93000, *et seq*. The Act was intended to ensure continuation of railroad service in Northwestern California and envisioned a railroad playing a significant role in the transportation infrastructure serving a vital part of the State that suffers from restricted access and limited transport options. In 1992, the state purchased the Eel River Division (ERD) of the NWP. In 1996, NCRA purchased the segment of the railroad line from Willits to Healdsburg, including a perpetual easement to operate rail freight service between Healdsburg and Lombard.

Currently, the NWP Line from Willits to Healdsburg is owned by NCRA, and from Healdsburg to Lombard is owned by the Sonoma-Marin Area Rail Transit (SMART) District. NCRA has a perpetual freight service easement over SMART right-of-way, and SMART has a perpetual passenger service easement over the portion of the right-of-way owned by NCRA between Healdsburg and Cloverdale. SMART's enabling legislation (Assembly Bill (AB) 2224) provides that the District must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties." Coordination of SMART's passenger rail service and NCRA's freight service is governed by an existing Operating Agreement, which generally provides that freight service shall be subordinate to passenger rail service. Prior to the institution of commuter service a coordination agreement will be negotiated with SMART to address dispatching trains and related issues.

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2.1 PROJECT OBJECTIVE, PURPOSE AND NEED

This section summarizes the project objectives, purpose, and need; describes the history of development of the proposed project and existing characteristics of the project corridor; provides a description of the project's operational components; and establishes the basis for the environmental analysis.

NWP Co., NCRA's selected rail operator, proposes to resume the operations of freight service in the rail corridor from Willits to Lombard for transport of general freight to serve the communities in the rail corridor. In this rail corridor, NWP Co. could also transport solid waste to landfills beyond the four-county area, replacing the truck hauling currently used for this service. The project does not propose the transport of hazardous waste, dangerous, highly flammable or explosive material. This area has historically been serviced by the railroad and this project will reestablish reliable and cost effective service to the businesses and public utility entities within the service area, and resumes service to former customers whose businesses have been adversely impacted by the lack of service.

The need for a renewed reliable freight service in Mendocino, Sonoma, Marin, and Napa Counties is apparent by the rapidly growing congestion and truck traffic along U.S. Highway 101 from Willits to Novato, and on CA Highway 37 that connects U.S. Highway 101 in Novato to Interstate Highway 80 in Solano County. The capacity of the highway system to accommodate quick and cost-effective commercial truck traffic has not kept pace with the growth of travel demand in this area, and this trend is expected to continue in the future in spite of several major highway improvement projects that are currently in progress. Reestablishing the rail service will help reduce the truck traffic on the local highways and community roads.

The need for a cost-efficient, alternative method of transportation to deliver commercial goods and freight in the area is supported by:

- Capacity constraints on existing systems, particularly U.S. and CA Highways 101, 121, 37, and 12 that result in travel delays and congestion. The rail service would remove a portion of the current commercial truck traffic on the roadways thus reducing traffic congestion "Depending on the density of the commodity, one railcar may move the same weight or volume as four or five trucks." Freight-Rail

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Bottom Line Report, American Association of State Highway and Transportation Officials, January 2003, p. 26)

- Increasing unreliability and safety concerns of existing travel modes due to congestion, inclement weather, and accidents. A reduction in the number of commercial trucks on the local roadways will result in increased safety on the roads.
- The absence of four-lane highways and freeways connecting U.S. Highway 101 with Interstate Highway 80.
- By removing a portion of the current commercial (freight including solid waste) truck traffic on the roadways, rail service would decrease diesel emissions from trucks, resulting in a net improvement in air quality and reduction in greenhouse gas emissions. Movement of freight on rail is measurably more efficient. One ton of goods can be moved more than 400 miles with one gallon of fuel according to the Association of American Railroads' Railroad Facts, 2003 Edition.

The purpose of the proposed project is to provide efficient, reliable, and cost-effective rail service in Mendocino, Sonoma, Marin, and Napa counties. The following project objectives have been identified to achieve this goal:

- Provide an alternative transportation option to trucking for commercial freight across the four-County area.
- Provide an alternative transportation option to trucking for hauling solid waste across the four-county area.
- Provide an alternative cost-effective option to the disposal of solid waste in local landfills.
- Fulfill the State mandate to provide the continuation of railroad service to Northwestern California and help alleviate the growing concerns for efficient goods movement.

2.2 PROJECT LOCATION

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. Mendocino, Sonoma, Marin and Napa counties are located on the west coast of California north of

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San Francisco. In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include Willits and Ukiah. In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes Novato. Freight rail service will not pass through any incorporated jurisdiction in Napa County.

A map of the proposed project corridor is shown in Figure 2-1.

2.3 OVERVIEW OF NWP HISTORY AND FACILITIES

2.3.1 History of the NWP Facilities (Russian River and Eel River Divisions)

The NWP was created in 1907 through the consolidation of six separate railroad companies held by the Santa Fe and Southern Pacific railroads.

Prior to 1907, rail service from Eureka to San Francisco was not possible because of the 106-mile gap within the Eel River canyon. In January 1907, the Southern Pacific and the Santa Fe formed the jointly-owned NWP, and agreed to build the last segment of the line. The articles of incorporation stipulated that the two companies would take turns managing the line in alternate years. Eight years later, in October, 1914 the Eel River section was completed and the cities of Eureka and San Francisco celebrated the achievement with a gold spike ceremony at Cain Rock, four miles south of Alderpoint.

In 1984, ownership of the NWP was split at Willits between two organizations. The Southern Pacific Railroad operated the RRD, while the ERD between Willits and Arcata was sold to the Eureka Southern Railroad. Between 1984 and 1996, the ERD of the NWP and the RRD of the NWP were operated separately as two distinct and economically independent rail lines serving their respective regions.

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act to ensure continuation of railroad service in Northwestern California. Although it was chartered by a state mandate, only the acquisition of the then ERD was funded by the State and no operating funding was provided at the time of acquisition.

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In 1992, NCRA purchased the ERD. A separate transaction in 1996 added the portion of the RRD between Healdsburg (Sonoma County) and Willits to NCRA's holdings. In 1993, NCRA; the Golden Gate Bridge, Highway, and Transportation District (Bridge District); and Marin County set up a joint-powers authority called the Northwestern Pacific Railroad Authority (NWPRA). This public-private partnership took over the ownership of rail facilities and tracks along the RRD between Healdsburg and Lombard (Napa County) where the railroad then connects to the national rail network through the California Northern Railroad.

Freight service and related maintenance of this portion of the NWP became the responsibility of NCRA under an agreement with NWPRA dated August 19, 1996. Until 1998, freight service operated twice daily along the NWP, carrying mainly natural resource products. Both the Russian River and Eel River Divisions became inoperable as a result of damage sustained during the winter storms of 1997-1998.

Once NCRA completed essential disaster-related repairs to the RRD, commercial freight service resumed between Lombard and Penngrove, Sonoma County, in January 2001. However, service was temporarily discontinued in September 2001 because the operator lacked capital to continue operations. Subsequently, NCRA identified additional repairs, and maintenance and infrastructure improvements that would be necessary to restore facilities on the RRD. Meanwhile, the repair of the ERD continued to be delayed due to the lack of funding required for extensive repairs.

In 1997, the Sonoma County Transportation Authority and Marin Planning Agency conducted a study that recommended that a commission be formed to guide the design and implementation of passenger train service. In 1998 the Counties of Sonoma and Marin formed the SMART Commission to carry out this direction. On January 1, 2003 the Sonoma-Marin Area Rail District was created with the passage of California State Assembly Bill 2224. The district consolidated the existing SMART Commission, NWPRA, and the Golden Gate Bridge, Highway and Transportation District Authority and assets over the rail corridor into a single rail district. The ERD is not part of this rail district.

The NWP from Healdsburg to Lombard is owned by the SMART District. NCRA has a perpetual freight service easement over SMART right-of-way between Healdsburg and Lombard, and SMART has a perpetual passenger service easement over the portion of

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the right-of-way owned by NCRA between Healdsburg and Cloverdale. AB 2224 provides that SMART must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties."

2.3.2 Current Status and Operational Issues

The rail line is an operating railroad per the Surface Transportation Board (STB), and it will be operated by NWP Co. However, rehabilitation of the line is required before trains may safely resume operations on the line. Rehabilitation activities are necessary to bring the rail line into conformance with FRA Class 2/3 standards, and to address safety issues identified in FRA Emergency Order No. 21. The rehabilitation activities are being funded by the State and investments by the operator.

As NCRA's rail operator, NWP Co. will be required to be in compliance with a Consent Decree that was signed by the North Coast Regional Water Quality Control Board (NCRWQCB), Department of Toxic Substance Control (DTSC), and Department of Fish and Game (DFG). The Consent Decree, among other things, requires that NCRA prepare and implement plans to clean up existing waste (currently scattered rail ties), conduct all rail operations in accordance with State environmental laws, and to handle, manage, store, transport, and dispose of hazardous materials and waste in a manner that is protective of human health and the environment.

2.3.3 Existing Facilities of the Russian River Division

Description of the Rail Corridor Alignment

The NCRA rail corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. From Willits the line runs southward generally following Highway 101 through the towns of Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, and Novato. South of Novato, at Highway 37, the line runs eastward near the shore of San Pablo Bay, over the Petaluma River, past Black Point, past the old station at Shellville, over the Napa River, and terminates in Lombard north of the city of American Canyon. Freight service will not extend south of Highway 37 along the Highway 101 corridor. Additionally, this project does not propose nor authorize freight service north of Willits.

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Mainline Track, Sidings, & Spur Tracks

The RRD consists of one mainline track and sidings and the sidings are strategically placed along the mainline for train meets (train passing) and temporary storage. It is anticipated that these sidings will be used for the same purposes during the proposed operations.

Rail Yards, Stations and Maintenance Facilities

Along the rail line are a number of former railroad stations, a maintenance and switching yard at Willits, and a storage facility at Cloverdale.

Stations

The majority of the railroad stations are planned to be renovated by SMART, in the future, to be used in conjunction with their proposed passenger rail service. NWP Co. does not plan to use any of these stations for operations.

Willits Yard

The former Willits Yard is located in the northern part of the town of Willits. For much of the railroad's history this site was the primary location for major repairs and maintenance of rail equipment, engines, and refueling operations. At one time, the Yard had several structures for administrative purposes, a rail depot, a roundhouse for engine repair, and two Bunker-C above ground storage tanks.

The RRD will not use the Willits Yard for major repairs or maintenance. The operator will contract with existing modern facilities outside the RRD right of way for major repair and maintenance. The Willits Yard will be used for train switching, storage, and for light repairs and light maintenance.

The Willits Yard was also a major switching station for the line. The Yard includes several yard tracks, three of which are over a mile in length.

Cloverdale Depot and Maintenance Facility

Two modern facilities are present along the line east of downtown Cloverdale. The first is a modern passenger train depot that includes a small office. Just north of the depot is a modern maintenance building used primarily for equipment storage and minor repairs

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and servicing of NCRA maintenance-of-way equipment. NWP Co. plans to use this facility for similar purposes.

Grade Crossings, Tunnels and Bridges

There are 104 wood, asphalt, gravel, or concrete road crossings along the rail line between Willits and Lombard. Several of these have been repaired or upgraded in recent years.

Signals and gates are present at major crossings and intersections, and these are currently being repaired or replaced to meet FRA and CPUC standards, and to be compatible with possible future upgrades by SMART. Depending upon the volume of traffic and type of road, the crossings will have various warning devices. Railroad locomotive horns will blow at crossings to be in compliance with FRA safety regulation requirements.

There are 121 bridges and 5 tunnels located between Willits and Lombard. Most of the bridges are small wood trestle structures that span drainage channels or creeks feeding the Russian River, Petaluma River, and San Pablo Bay. Several steel bridges are present as well: the Russian River bridge at Healdsburg, the Haystack Landing bridge crossing the Petaluma River in Petaluma, the Black Point bridge crossing the Petaluma River near Black Point east of Novato, the Wingo Bridge crossing an inlet creek in the former town of Wingo, and the Brazos vertical lift bridge crossing the southern Napa River. See Section 2.5 for details on proposed bridge rehabilitation.

2.4 PROPOSED OPERATIONS

2.4.1 Frequency and Size of Trains

The proposed project will include general railroad freight service (to and from customers along the line) and potential hauling of solid waste.

The start up phase of reestablishing freight service operation is anticipated to begin in April 2008 and will consist of three round trips per week (three north bound and three south bound). The number of cars per train is estimated to be fifteen cars.

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As the freight service becomes established, it is anticipated that the economics of the region could support an increase in the number of trains to two round trips per day (two north bound and two south bound), six days a week. The number of cars per train is estimated to be 25 cars for one round trip and 60 cars for the other round trip. The 60-car train would go from Willits to Lombard. The other trains would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard.

Reestablishing freight service in the region may involve the addition of a train providing solid waste hauling services for the area. Although speculative at this point, the train could run from Santa Rosa to the Cal Northern connection at Lombard. The solid waste services could involve one round trip per day (one north bound and one south bound), six days a week. The number of cars per train is estimated to be 60 cars. The railroad operator could load and unload highway trailers that contain solid waste on railroad flat cars using sidings and ramps. Although this potential is speculative, the impacts are being analyzed at this time so that the possible impacts can be considered.

The train size and volumes are based on an analysis by NWP Co., the operator of the rail line. Figure 2-2 provides a diagram of the total train movements associated with both general freight traffic and potential solid waste hauling once rail service is recontinued. Figure 2-2 shows the train movements that will be analyzed in the EIR.

2.4.2 Facilities

Use of Existing NCRA Facilities Located Adjacent to the Railroad

It is planned that NWP Co. will use some of the existing areas located within their potential rail customers' facilities for the parking of engines and rail cars, switching, and light running maintenance and fueling of diesel engines and support equipment. When necessary, the support equipment for the railroad will be upgraded or revitalized to assure reliability and compliance with current regulations.

When fueling along the line is necessary, it will be conducted by transferring fuel directly from a tanker truck to the railroad diesel locomotives. No above ground or underground storage tanks will be constructed. Tanker trucks will access the line along access roads that are present throughout the line. Fueling will be conducted in compliance with State

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and Federal laws, the Consent Decree, and in conformance with NCRA's Best Management Practices (BMPs).

Light running maintenance includes minor servicing activities such as brake repair, minor engine repair, oil changes, and other scheduled servicing tasks. Servicing activities will involve storage and handling of relatively small amounts of petroleum-based hazardous materials, particularly oil, waste oil, grease, and small amounts of diesel fuel. These materials will be stored, handled, and disposed of in accordance with Federal and State regulations, and an environmental Consent Decree (see Chapter 3.5-Hazardous Materials). Anticipated work plans include a waste management plan (WMP), storm water pollution and prevention plan (SWPPP), and a spill contingency plan.

Locomotives and other heavy equipment will be transported to offsite railroad maintenance facilities for routine and major scheduled and non-scheduled repairs and servicing

New Facilities

Major scheduled and non-scheduled repairs and servicing will be conducted off the project site in existing facilities; therefore, no additional maintenance yards or fueling stations will need to be constructed. Additional sidings are not necessary prior to the start-up of freight service except for the construction of a one mile siding between MP 1 and MP 2 to allow interchange with the Cal Northern line near Lombard. A new embankment will be constructed requiring up to 4 feet of material, a concrete box will be installed for drainage purposes, and rail and ties will be added. It is anticipated that the addition will require permits for the importation of clean fill material by rail, construction of the embankment and rail line, and placement of the drainage box. This document is written assuming that NCRA begins freight service before SMART begins passenger service. If the SMART project is approved and funded, additional sidings to handle train meets would be necessary and are contemplated by SMART and its EIR.

2.5 PROPOSED REHABILITATION ACTIVITES

NCRA is performing rehabilitation of its track, signals, embankments, and bridges in order to raise the line to the required safety standards. A Categorical Exemption under CEQA was approved to allow routine rehabilitation and repairs of the rail line within the

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rail right-of-way, including signal upgrades, bridge and culvert repair, new rails and roadbed improvements. One bridge which requires repair and two other repair sites where severe erosion within creeks have occurred may cause a significant impact and therefore will be analyzed in this EIR. The three repair sites are summarized below.

2.5.1 Black Point Bridge

The Black Point Bridge is a steel through truss swing span bridge built in 1911 across the Petaluma River at Black Point, east of the city of Novato. In its open position, the bridge is parallel to the River allowing ships and barges to navigate between pile-supported fenders on either side of the River. When a train needs to cross the River, the bridge rotates over the River and connects the rail line by a motor-driven center pivot.

Planned repairs to the bridge include splicing piles, repairing drifting piles, replacing bracing and caps, repairing concrete at the east landing pier, and replacing the mechanical and electrical systems of the swing span. The work will be conducted *in situ* using a barge that will be docked against the bridge.

2.5.2 Bakers Creek

At Bakers Creek, North of Redwood Valley, the line is built on an embankment fill about 50 feet high. During a very intense rain storm in the winter of 2005-2006, the culverts under the fill became plugged or could not effectively pass the large quantity of runoff. As a result, water dammed behind the embankment, causing the embankment to fail.

Engineered plans for repair of the embankment will not be finalized until consultation with the DFG, the NCRWQCB, and other agencies are completed. For the purpose of this EIR, it is assumed that the repair of the embankment will occur off-winter when Bakers Creek is dry. Clean imported fill material will be transported by rail, and a new embankment will be constructed in kind, including the installation of a new culvert. Because failure of the embankment introduced silt into Bakers Creek, it is likely that some form of stream restoration permit or agreement will be required.

2.5.3 Foss Creek

Foss Creek is a small feeder creek that flows into the Russian River north of Healdsburg. At one location where it runs sub-parallel to the rail line, the creek abandoned its course for about 30 feet of its length, shifted about 10 feet to the east,

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and scoured the railroad embankment. As in the case of Baker Creek, the final engineered plans for repair of the embankment will not be finalized until appropriate consultation with the regulatory agencies is completed. It is assumed that the repair will require permitted restoration of the creek to its original course and character, importation of clean fill material by rail, reconstruction of the embankment and rail line, and the placement of scour protection- likely rip rap- along the base of the embankment to prevent scour during high flows.

2.6 CUMULATIVE BASELINE

CEQA requires that impacts of cumulative projects be considered in the EIR. The project may have environmental effects that are individually limited, but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects. The identification of probable future projects will be based on the standards of practicality and reasonableness. Probable future projects include unapproved projects that are undergoing environmental review at the time that the NOP is submitted.

The EIR will identify cumulative projects, including probable future projects that are undergoing environmental review at the time that the NOP is filed for the NCRA RRD freight rail project and include an evaluation of the impacts of the identified cumulative projects.

2.7 INTENDED USE OF THE ENVIRONMENTAL IMPACT REPORT

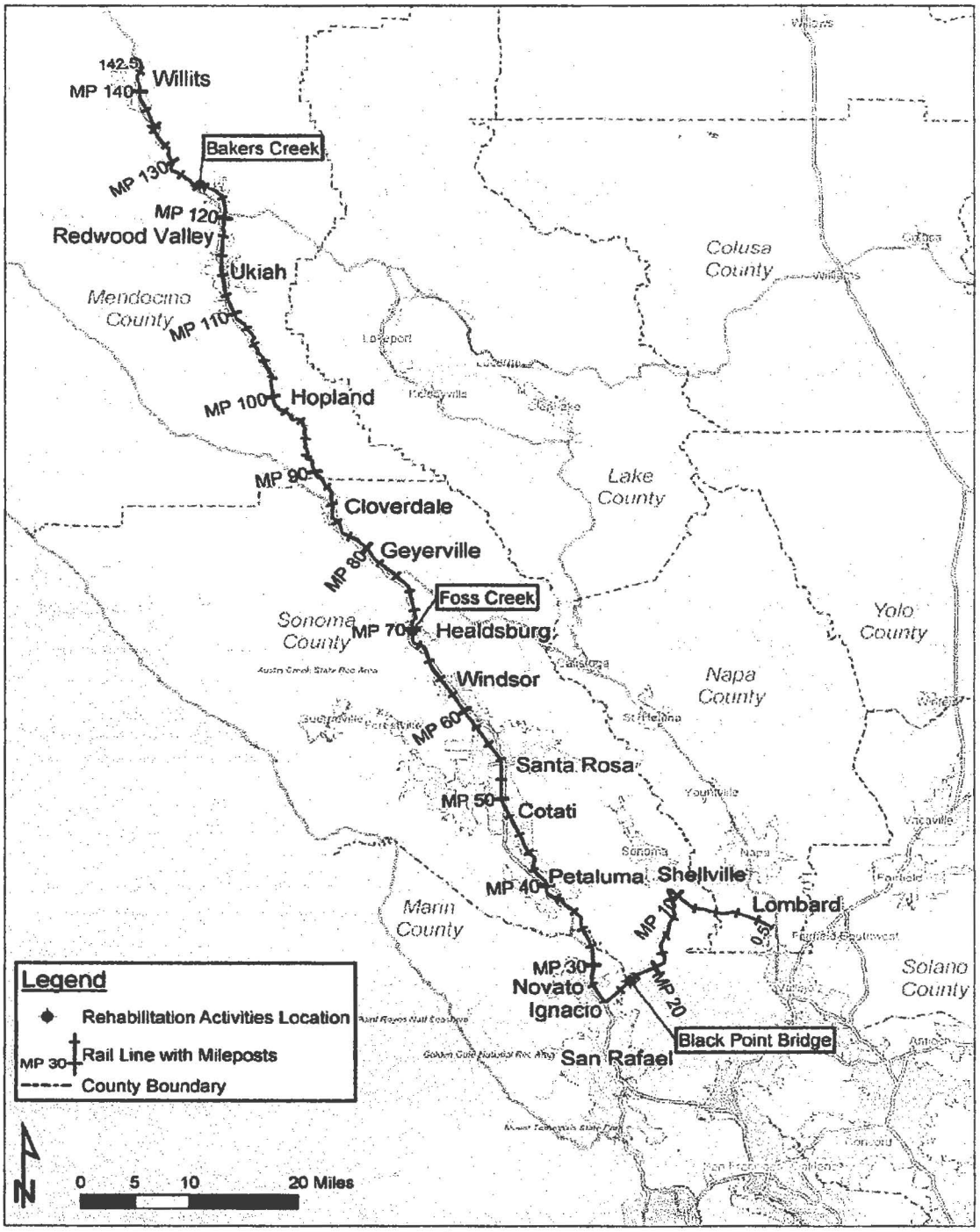
The NCRA, as lead agency, will prepare a draft Environmental Impact Report (DEIR) to provide the public, regulatory agencies and other interested parties an analysis of the potential environmental impacts of the operation of the RRD and certain identified rehabilitation activities. The DEIR will be prepared in accordance with the California Environmental Quality Act (CEQA), the State Environmental Impact Report Guidelines and California Administrative Code, Title 14.

The rehabilitation activities that will be identified in the DEIR will require consultation with and potentially permits from some of the following regulatory agencies:

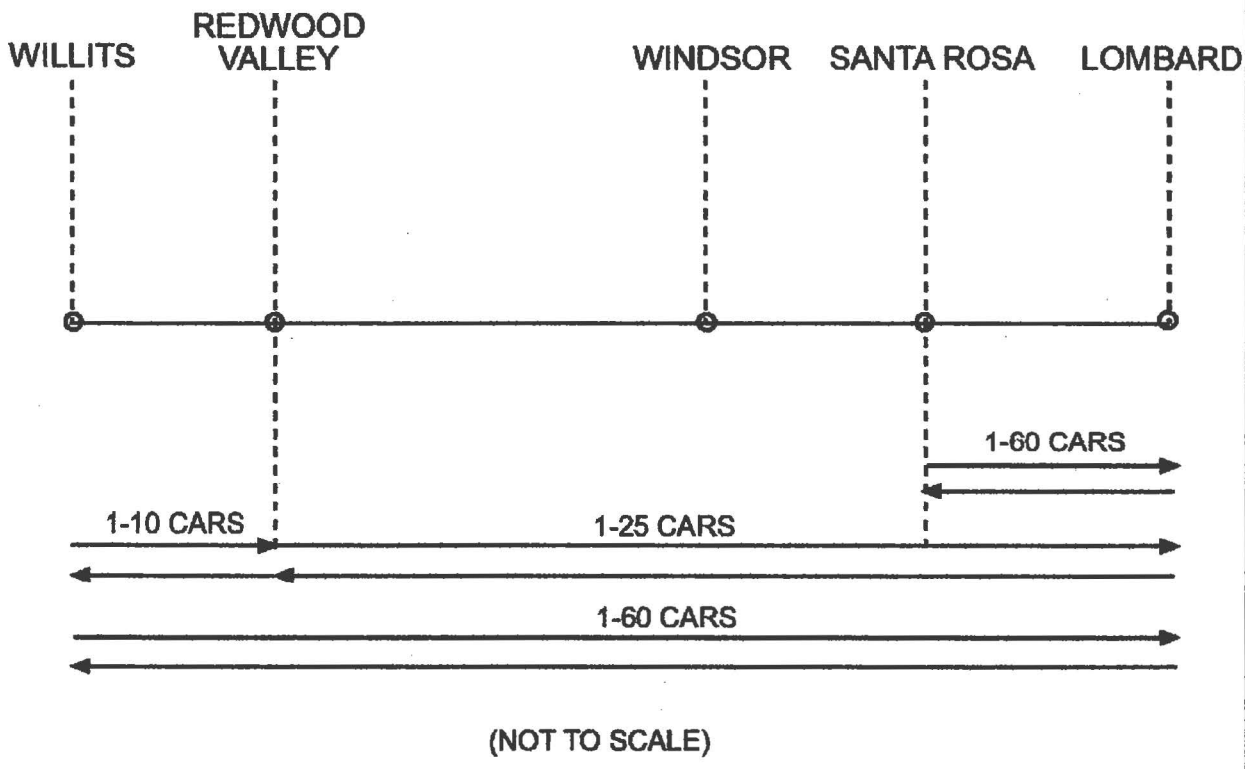
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- California Department of Fish and Game
- U.S. Fish and Wildlife Services
- U.S. Army Corp of Engineers
- Air Quality Districts
- Regional Water Quality Control Board
- Bay Conservation and Development Commission
- National Marine Fisheries Service
- Office of Historic Preservation
- California State Lands Commission
- Local cities and counties

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KLEINFELDER 5015 SHOREHAM PLACE SAN DIEGO, CA 92122 PHONE: 858-320-2000 FAX: 858-320-2001	PROJECT LOCATION	DRAWN: 05/15/2007 / REVISION: C
APPROVED BY: Bradley Erskine	NORTH COAST RAILROAD AUTHORITY RUSSIAN RIVER DIVISION FREIGHT RAIL PROJECT	DRAFTED BY: GT/BT CHECKED BY: BE PLATE: Figure 2 - 1
	PROJECT NO: 78207 / FILE NAME: EIR_project_location_1.mxd	



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NUMBER OF FREIGHT TRAINS AND THEIR CARS AT VARIOUS LOCATIONS ALONG THE RAIL CORRIDOR

FIGURE NO. 2-2

DRAFTED BY: S CALLAHAN	FILE NO: Fig2_2.fh11
PROJECT NO: 78207	DATE: 07-10-07

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3.0 ENVIRONMENTAL CHECKLIST FORM

1. Project Title:	North Coast Railroad Authority Russian River Division Freight Rail Project
2. Lead Agency Name and Address:	North Coast Railroad Authority
3. Contact Person and Phone Number:	North Coast Railroad Authority Attention: Mitch Stogner 419 Talmage Road, Suite M Ukiah, California, 95482 (707) 463-3280
4. Project Location:	Mendocino, Sonoma, Marin and Napa counties
5. Project Sponsor's Name and Address:	See No. 2, Lead Agency, above
6. General Plan Designation:	N/A
7. Zoning:	N/A
8. Description of Project:	Resume freight rail service from Willits, Mendocino County to Lombard, Solano County.
9. Surrounding Land Uses and Setting:	Rural, agricultural, suburban
10. Other public agencies who may be involved in reviewing and approving aspects of the freight operations or who may require consultation and permits for rehabilitation at Bakers Creek, Foss Creek, and Black Point Bridge include:	• USACE • USFWS • Air Quality Districts • BCDC • NMFS • OHP • CSLC • DTSC • DFG • RWQCB • Mendocino, Sonoma, Marin, and Napa Counties • Cities of Ukiah, Willits, Cloverdale, Healdsburg, Windsor, Santa Rosa, Petaluma, and Novato

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3.1 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology / Soils
☒ Hazards & Hazardous Materials	☒ Hydrology / Water Quality	☒ Land Use / Planning
☐ Mineral Resources	☒ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☒ Transportation / Traffic
☐ Utilities / Service Systems	☒ Mandatory Findings of Significance	

DETERMINATION: (To be completed by Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☒ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

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3.2 POTENTIAL ENVIRONMENTAL IMPACTS

This section describes the environmental consequences, including direct, indirect, and cumulative impacts, of the Proposed Action, as well as recommended best management practices and/or mitigation measures.

A direct environmental impact is one that is immediately caused by the project and that occurs at or near the time and place of the action. Indirect impacts are caused by the project but may occur some time later or at some distance. Indirect impacts may, for example, include induced changes in the pattern of land use or population density or growth rate and their related effects on natural systems or other social systems. They may also include secondary impacts associated with mitigation measures. Cumulative impacts occur in combination with other actions or projects that are occurring or are projected to occur within the region of the Proposed Action.

To provide a clear classification of impacts, this Initial Study defines five types of impacts, including:

- **Significant Impact.** A significant impact includes effects that exceed established or defined thresholds. For example, noise levels that exceed local noise level standards would be considered a significant adverse impact.
- **Potentially Significant Impact.** A potentially significant impact includes effects that may be significant but there is insufficient information to verify the magnitude of the effect. For example, to determine vehicular noise impacts for a new development from a nearby roadway requires information on traffic volume, topography, building location and orientation, construction material, window types and treatment, and height and mass of any structure between the residents and the vehicles. Lack of information relating to these details precludes a definitive conclusion as to whether interior noise levels meet or exceed local or state noise standards.
- **Less Than Significant Impact.** A less than significant impact includes effects that are perceptible, but do not exceed established or defined thresholds. For example, alterations in the development intensity of a site would be noticeable but would not necessarily represent a significant change in land use compatibility, especially if the Proposed Action is consistent with local development standards.

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- **Less Than Significant Impact with Mitigation.** A less than significant impact with mitigation indicates that the effects of a significant or potentially significant impact have been reduced below established thresholds through the implementation of specific mitigation measures. For example, implementation of best management practices (BMPs) for stormwater runoff—including silt fences, infiltration galleries and vehicle maintenance—may reduce potential water quality impacts to less than significant.
- **No Impact.** A Proposed Action with no impact will have no perceptible effect on the resources in question.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.1 Aesthetics

Would the project:

a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

Discussion

a,b,c) Rail service previously operated on the existing rail line for more than 100 years and is a long established visual feature in the landscape. Therefore, resumption of freight rail operations would not induce additional visual disruptions to nearby receptors. No additional impact is anticipated and aesthetics will not be addressed in the EIR.

d) The proposed project would not introduce any new sources of light and glare into the area. Maintenance and storage needs for the rail line would utilize existing facilities. No expansion of these facilities is necessary to accommodate the freight service; therefore, no new lighting would be required for expansion or security purposes. No impact is anticipated and aesthetics will not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.2 Agriculture Resources

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒

Discussion

a,b,c) Agricultural activities occur within the vicinity of the project site. The proposed project site is entirely located within an existing railroad right-of-way except for some rehabilitation activities that may be required at Bakers Creek. No alterations or expansions of right-of-way boundaries will be required. Train operations and routine maintenance would not impact any agricultural resources in the vicinity. No conversions of farmland or conflicts with zoning or the Williamson Act would result from project implementation. Herbicide spraying adjacent to agricultural areas will be conducted in conformance with BMP's outlined in the Herbicide Spraying Plan that was prepared per the requirements of the North Coast Regional Water Quality Control Board. No impacts are anticipated and impacts to agriculture will not be addressed in the EIR.

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3.2.3 Air Quality

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☒	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☒	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☒	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☒	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☒	☐	☐	☐

Discussion

a) The proposed project will generate emissions during operations. An air quality analysis will be conducted as a portion of the EIR that will determine whether the proposed project will conflict with any air quality management plans.

b) The air quality analysis for the proposed project will address the emissions associated with the proposed project and address any potential air quality violations.

c) The air quality analysis will analyze the cumulative air quality impacts of this project together with the cumulative baseline. This baseline will include other rail proposals, other projects in the region and existing truck emissions.

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d,e) Use of diesel locomotives and other equipment may expose sensitive receptors to PM-10 and 2.5, as well as generate odors. This will be evaluated in the air quality analysis of the EIR.

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3.2.4 Biological Resources

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS?	☒*	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFG or USFWS?	☒*	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☒*	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☒*	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☒*	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan?	☒*	☐	☐	☐

**** Potentially significant impacts are restricted to rehabilitation activities at Black Point Bridge, Bakers Creek, and Foss Creek. Potential impacts associated with the operation of the railroad are considered less than significant with mitigation. See Discussion.***

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Discussion

a,d) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially result in a substantial adverse effect, directly or through habitat modifications, on species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS. The project at these sites may also have potential to substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. These issues will be addressed in the EIR.

b, f) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations or by the CDFG or USFWS. Additionally, the project at these sites may also potentially conflict with local policies or ordinances protecting biological resources, or with the provisions of adopted Habitat Conservation or Natural Community Conservation Plans, as well as other approved local, regional, or state habitat conservation plans. These issues will be addressed in the EIR.

c, e) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could have a substantial adverse effect on Federally protected wetlands as defined by Section 404 of the CWA, through direct removal, filling, hydrological interruption, or other means. Additionally, the project at these sites may also potentially conflict with local policies or ordinances protecting biological resources, or with the provisions of adopted Habitat Conservation or Natural Community Conservation Plans, as well as other approved local, regional, or state habitat conservation plans. Potential impacts associated with the operations of the railroad will be mitigated by implementing appropriate BMPs to a less than significant level. These issues will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.5 Cultural Resources				
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☒	☐	☐
b) Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?	☐	☒	☐	☐
c) Directly or indirectly destroy a unique paleonotological resource or site or unique geologic feature?	☐	☒	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☒	☐	☐

Discussion

a,b,c,d) Preliminary review of previous studies of the project corridor has identified that historic, archeological, and unique paleontological or geologic resources may be present along the rail corridor. It is not known if there are any cultural resources at the Bakers Creek and Foss Creek rehabilitation sites. It is therefore determined that a cultural resource records search be conducted for the entire right-of-way and off right-of-way use areas to determine what resources are historically significant. As such, potential impacts to Cultural Resources will be addressed in the EIR.

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3.2.6 Geology and Soils

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☒	☐	☐	☐
ii) Strong seismic ground shaking?	☒	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☒	☐	☐
iv) Landslides?	☐	☒	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☒	☐	☐
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☒	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (UBC) (1997), creating substantial risks to life or property?	☒	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒

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Discussion

a,b,c,d) The proposed project is located in an area that is seismically active and has experienced strong quake activity in the past. As such, geological and soil conditions will be addressed in the EIR.

e) No septic tanks or wastewater disposal systems are included with the proposed project design and therefore no impacts are anticipated and no further analysis is required.

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*

3.2.7 Hazards and Hazardous Materials

Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☒	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☒	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐

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	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☒	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☒	☐

Discussion

a,b,c) The operator does not intend to haul any hazardous waste, dangerous, highly flammable or explosive materials. Operations for the proposed project could potentially result in a potentially significant impact due to an upset or accidental release of diesel fuel in the case of a derailment. Therefore, these issues will be addressed in the EIR.

d) It is currently not known if the proposed project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. This issue will be addressed in the EIR.

e,f) The operations of the railroad will not involve the management of significant quantities of hazardous materials and the potential impacts to airports is considered less than significant and no further analysis is required.

g) Except for rehabilitation activities at Bakers Creek, the proposed project would be limited to the existing NWP right-of-way and would not require the alteration of any public roadways. The proposed project would also be limited to the restoration of previously existing railroad facilities and would not impair the implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Potential impact is anticipated to be-less-than-significant and no further analysis is required. h)The proposed project is rehabilitation and operation of existing railroad facilities and would not introduce elements that would expose people or structures to significant risks involving wildland fires beyond previously existing conditions.

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Potential impact is anticipated to be less than significant and no further analysis is required.

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3.2.8 Hydrology and Water Quality

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☒	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion of siltation on or off-site?	☐	☐	☒	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	☐	☐	☒	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
f) Otherwise substantially degrade water quality?	☐	☐	☒	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☒	☐	☐
j) Inundation of seiche, tsunami, or mudflow?	☐	☐	☐	☒

Discussion

a,c,d,e,f) Rehabilitation and maintenance operations could potentially result in significant impacts from erosion and siltation in waterways. Because the project is rehabilitation of an existing facility, improvements will not contribute runoff water that would exceed the capacity of existing or planned stormwater systems. Without mitigation, grading, excavation and rehabilitation activities could contribute to minimal soil erosion and a subsequent degradation in water quality. It is expected that implementation of standard erosion control techniques during project maintenance activities would reduce potential water quality impacts to less-than-significant levels. These issues will be addressed in the EIR.

b) The proposed project would not utilize groundwater or interfere substantially with groundwater recharge. No impact on groundwater is anticipated and no further analysis is required.

g,h) The rail line is an existing site feature. The proposed project would not place housing or structures that would impede or redirect flow within a 100-year flood hazard area. No impact is anticipated and no further analysis is required.

i) The proposed project does not include elements that would expose people or structures to significant risks involving flooding or dam failure. No impact is anticipated and no further analysis is required.

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j) The proposed project is the restoration of an existing railroad line that has been in existence for over 100 years. The proposed project would not place new development that would be subject to seiches, tsunamis, or mudflows. No impact is anticipated and no further analysis is required.

AR 03505

3.2.9 Land Use and Planning

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Physically divide an established community?	☐	☐	☒	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☒	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☒	☐	☐	☐

Discussion

a) The proposed freight rail service restoration project contains no new elements that would potentially divide an established community. Impact to established communities is anticipated to be less-than-significant and no further analysis is required. Potential traffic-related impacts at railroad crossings will be addressed in the Transportation/Traffic section of the EIR.

b,c) It is not presently known if the proposed project would conflict with any applicable land use plan, habitat conservation plan, natural community conservation plan, or regulation that was adopted for the purpose of avoiding or mitigating an environmental effect. These issues will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.10 Mineral Resources

Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Discussion

a,b) Project implementation would not result in the loss of availability of mineral resources of local or State importance. No impacts are anticipated and impacts to mineral resources will not be addressed in the EIR.

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3.2.11 Noise

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☒	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☒	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐

Discussion

a,b,c,d) It is currently not known if project-generated noise or vibration levels would exceed any established standards, expose persons to excessive temporary or permanent noise/vibration levels. These issues will be addressed in the EIR.

e,f) The proposed project is located within the vicinity of several local airports. Therefore, the issue will be addressed in the EIR.

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3.2.12 Population and Housing

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☒	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

Discussion

a,b,c) The proposed freight rail service would neither induce substantial population growth nor displace any housing units, and would not displace any people. With the exception of the three rehabilitation projects at Bakers Creek, Foss Creek, and Black Point Bridge, the project is essentially the resumption of an existing railroad line and is not adding new infrastructure. Therefore, it is not anticipated to stimulate population growth beyond what previous freight rail operations may already have incurred. No impacts on population or housing are anticipated as a result of the proposed project and this issue area will not be addressed in the EIR.

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3.2.13 Public Services

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☒	☐
Police protection?	☐	☐	☒	☐
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

Discussion

a) Implementation of the proposed freight rail service would not involve the alteration of government facilities, nor would it require new or additional public services. The proposed project would potentially increase demand for fire and police protection in the case of a derailment. However, the unlikelihood of a train derailment would not increase fire and police protection to a potentially significant level. In addition, the reduction in diesel trucks along US 101 would potentially create a net positive benefit for fire and police protection. Freight rail safety will be addressed in the EIR. However, potentially adverse impacts associated with public services and governmental facilities are anticipated to be less than significant and public services will not be analyzed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.14 Recreation

Would the project:

a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☐	☒

Discussion

a,b) The proposed project will not permanently encroach upon nor result in an increased use of existing neighborhood or regional parks, or other recreation facilities. The implementation of freight rail service does not include recreational facilities or contain elements that would require the expansion of recreational facilities. No impact is anticipated and recreation will not be analyzed in the EIR.

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3.2.15 Transportation / Traffic

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☒	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☒	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☒	☐	☐
f) Result in inadequate parking capacity?	☐	☐	☐	☒
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☒	☐	☐

Discussion

a,b) Project construction and operation may result in an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system, and may result in exceeding a level-of-service standards. These issues will be addressed in the EIR.

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c) Project implementation will be limited to resuming freight rail operations and would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks. No impact is anticipated and no further analysis is necessary.

d) The proposed project would repair the track to its previous safe condition at Bakers Creek and Foss Creek; would repair the bridge at Black Point, and resume operations of the existing line. These activities would not introduce new design features that could increase hazards. Project designers will include measures that will correct potential hazards that may exist within the existing facility, which would result in safer conditions than currently present. No impact is anticipated and no further analysis is required.

e) The proposed project could result in potentially inadequate emergency access due to traffic at rail crossings. These issues will be addressed in the EIR.

g) The proposed project could potentially conflict with adopted policies, plans, or programs supporting alternative transportation and this issue will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.16 Utilities and Service Systems				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable RWQCB?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☒	☐

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Discussion

a) The proposed project would not require wastewater treatment capabilities and therefore would not exceed the requirements of the RWQCB. No impact is anticipated and this will not be addressed in the EIR.

b,e) The proposed project would not require water supply or wastewater treatment capabilities and therefore would not result in the exceedence of system capacities or require the construction of new facilities. No impact is anticipated and this will not be addressed in the EIR.

c) The proposed project would not require or result in the construction of new storm drainage facilities or require the expansion of existing facilities. No impact is anticipated and this will not be addressed in the EIR.

d) The proposed project would not require a water supply and no new or expanded entitlements would be needed. No impact is anticipated and this will not be addressed in the EIR.

f,g) The proposed restoration of freight rail service would generate limited amounts of solid waste during construction and normal operations. These materials, however, would not be of sufficient quantity to require a significant increase in need for landfill services, and would not exceed federal, State, and local statutes and regulations related to solid waste. The hauling of solid waste will be in compliance with all federal, state and local regulations and these issues will be addressed in the transportation and hazards sections of the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.17 Mandatory Findings of Significance				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☒	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulative considerable? ("Cumulative considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☒	☐	☐
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☒	☐	☐	☐

Discussion

a,b,c) Aspects of the proposed project, whether they be associated with the operations of the railroad or the rehabilitation activities at Bakers Creek, Foss Creek and Black Point Bridge, would have potentially significant environmental impacts that MAY adversely affect plants, wildlife, and human beings. These potential impacts are identified in this Initial Study and are recommended for further analysis. Potential impacts that have been determined to result in less than significant impact or no impact will not require further analysis. Human beings would primarily be affected by increased noise levels, air quality, traffic, and potential conflicts with local plans or policies. Plants and wildlife would be affected by certain rehabilitation activities and some aspects of railroad operations. To appropriately address

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these impacts, it is therefore recommended that an EIR be prepared for this project. This project may be cumulatively considerable including noise, traffic and air quality.

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4.0 REPORT PREPARATION

4.1 LEAD AGENCY

The North Coast Railroad Authority is the lead agency under CEQA for the preparation of the RRD Freight Rail Service Project.

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

Staff Contact: Dave Anderson
Phone (707) 463-3280

4.2 REPORT PREPARERS

4.2.1 CEQA Initial Study

Kleinfelder
5015 Shoreham Place
San Diego, California 92122

Project Staff: Maya Rohr (Project Manager)
Bradley Erskine
Robert Motschall
Sean Kinghorn
Jennifer Gomez
Richard Sykes
Kris Allen
Steven Siegel
Bill Mumbleau

4.2.2 Project engineering

Tim Cobb (Project Manager)
HNTB
1330 Broadway
Oakland, CA 94612

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5.0 REFERENCES

Federal Emergency Management Agency - U.S. Department of Homeland Security. *Final Programmatic Environmental Assessment: South End Alternative.* North Coast Railroad Authority. FEMA-1203-DR-CA. March 2004.

Sonoma-Marin Area Rail Transit District; Parsons - Brinckerhoff - Quade & Douglas, Inc. *Sonoma-Marin Area Rail Transit Project Draft Environmental Impact Report.* SCH # 2002112033. November 2005.

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EMERGENCY ORDER
No. 14

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Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0094 on April 7, 1990, to Midland Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1990.

Robert G. Lineberry,

Associate Administrator for Investment.

[FR Doc. 90-13836 Filed 6-13-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0387]

Sundance Venture Partners, L.P.; Issuance of Small Business Investment Company License

On September 27, 1989, a notice was published in the Federal Register (54 FR 39620) stating that an application had been filed by Sundance Venture Partners, L.P. 3000 Sand Hill Road, Building 4 # 130, Menlo Park, California 94025 with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies. (13 CFR 107.102 (1989)), for a license to operate as a small business investment company.

Interested parties were given until the close of business October 27, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0387 on April 23, 1990, to Sundance Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 4, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-13839 Filed 6-13-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14]

Eureka Southern Railroad Co., Inc.; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels issuance of this Emergency Order prohibiting passenger service and hazardous material transportation on a line of track owned by the Eureka Southern Railroad Company Inc. between Willits and Eureka, California (milepost 142.5 to milepost 284.1).

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. The Eureka Southern Railroad Company Inc. is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438, as amended. Under 45 U.S.C. 432(a), FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury." This order may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation."

FRA's track safety regulations (49 CFR part 213) prescribe minimum safety requirements for railroad track. There are six classifications of track defining maximum speed and minimum maintenance requirements. For example, Class 6 allows the highest speed and, correspondingly, requires adherence to the most stringent standards. By designating track as a certain class, a railroad commits to maintaining that track to the standards established in part 213 for that class. However, if the segment of track does not at least meet the requirements of Class 1, it may be designated as "excepted" track under § 213.4 (*i.e.*, track not maintained to meet the standards set for Class 1 in subparts B, C, D, and E) so long as, among other things, no passenger service is operated over that segment § 213.4(e)(2)).

On the Willits to Eureka line, the Eureka Southern currently operates two passenger excursion trains per week and conducts daily freight operations that include approximately four tank cars of liquefied petroleum gas per month. Liquefied petroleum gas is a regulated hazardous material under 49 CFR parts 171-179.

The Eureka Southern Railroad's line of track between Willits, California, and Eureka, California, clearly fails to meet Class 1 standards, the lowest class of track over which passenger traffic is permitted by FRA regulation.

During the week of April 16, 1990, FRA carefully inspected the track in question and found 271 instances of noncompliance with the standards for Class 1 track, which were immediately reported to the railroad. Eight of these defects were recommended for civil penalties. The defects included 25 locations of insufficient ballast, 28 locations of defective or inadequate crossties, and 72 locations where wide gage was measured. These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support wide gage can develop. Track gage is defined as the distance between the inside faces of the rail heads. Gage that is wider than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping between the rails.

On May 4, 1990, the California Public Utilities Commission authorized the Eureka Southern to operate an excursion train between Willits and Eureka, conditioned on the railroad's compliance with all applicable FRA standards.

As a result, FRA conducted a second track inspection from May 19 to 25, 1990, of 68.5 miles of the 141.6 miles between Willits and Eureka. This inspection revealed 259 instances of noncompliance, including 91 locations of wide gage, numerous defective poor crossties, and 25 center cracked joint bars. Eleven of the defects were recommended for civil penalties; nine of these had been reported to the railroad during FRA's April inspection but not repaired.

Prior FRA inspections in 1987, 1988, and 1990 disclosed many critical defects that evidenced a continued failure by the Eureka Southern to adequately maintain its track. In 1989 the railroad experienced two derailments reportable to FRA under 49 CFR Part 225 that were caused by track defects on the Willits to Eureka line. These track caused accidents resulted in $45,500 in track and equipment damage. The railroad's consistent failure to comply with the standards for the lowest class of track on which passenger service is authorized has convinced FRA that continued operation of passenger trains over this line poses an urgent and unacceptable threat to public safety.

AR 04079

FRA's April and May inspections also found many points of the Willits to Eureka line seriously damaged by erosion or embankment slippage caused by rain and the Eel River, along which much of the track runs. This erosion and embankment slip has washed out or removed sections of the subgrade and related ballast supporting the river-side rail of the track. If a train were to derail at this point it could easily roll down a steep ravine into the Eel River. In addition, rock and land slides blocked the track in two locations during the May inspection.

FRA is gravely concerned with the conditions found at Tunnel 40 on this line. Tunnel 40 is heavily damaged from movement of the surrounding earth ("overburden"). Both walls of the tunnel have buckled with the west wall pushed inward 21 inches. The ceiling has wide cracks and evidence of water damage. The overburden at the south portal of the tunnel shows clear signs of slippage, and FRA's May inspection found additional movement since April.

If the conditions at Tunnel 40 continue to deteriorate, FRA may take further steps to assure public safety.

Order

I find that, given the unsafe track conditions on the Willits to Eureka line, the transportation of passengers would create an emergency involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 delegated to me by the Secretary of Transportation (49 CFR 1.49(m)), it is ordered:

1. That the Eureka Southern Railroad Company Inc. shall not conduct or permit the operation of any passenger service of any kind over the line of track between Willits and Eureka, California, (milepost 142.5 to milepost 284.1) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR part 213.

2. That the Eureka Southern Railroad Company Inc. shall not conduct or permit the transportation of any material that is required to be placarded as hazardous under 49 CFR parts 171–179 over the line of track between Willits and Eureka, California (mileposts 142.5 to milepost 284.1) unless and until either (i) that track is maintained to FRA class 1 standards, or (ii) that track is designated "excepted" as provided in 49 CFR 213.4 and only if such transport of hazardous materials complies with § 213.4(e)(3).

Relief

Relief from this order may be obtained by:

1. Properly designating the Willits to Eureka line, or portion of that line, as excepted track under § 213.4 and indicating in writing to the FRA Administrator, with a copy to Regional Director Harry T. Paton. All conditions for such a designation must be met and adhered to by the Eureka Southern. FRA will respond in writing within seven days and, if FRA is satisfied that this condition has been fully met, that response will lift the order as it pertains to hazardous materials transportation from the entire Willits-to-Eureka line or a designated portion; or

2. Informing in writing the FRA Administrator, with a copy to Regional Director Paton, that the Willits to Eureka line, or portions of the line, are in compliance with Class 1 standards. Within twenty-eight days, or less if the railroad provides the use of a "hy-rail" vehicle, of receipt of this notice, FRA will inspect the line, or certified portion, and within seven days of such inspection will inform the railroad in writing whether this order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to bring the track into compliance.

Penalties

Each train movement in violation of this Order shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438, as amended.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code.

Issued in Washington, DC, June 7, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-13737 Filed 6-13-90; 8:45 am]

BILLING CODE 4910-06-M

[FRA Emergency Order No. 13]

New York & Lake Erie Railroad; Industrial Development Agency of Cattaraugus County; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order prohibiting passenger service and hazardous materials transportation on a segment of the New York and Lake Erie Main Line (Main Line) owned by the Industrial Development Agency of cattaraugus County (Development Agency) and operated by the New York and Lake Erie Railroad (NYLE) between Gowanda, New York, milepost 32.9, and Cherry Creek, New York, milepost 48.2.

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. *See* 49 CFR 1.49. The New York and Lake Erie Railroad is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970 (Safety Act), 45 U.S.C. 421, 431(e), 438, as amended. The Development Authority is a "person" subject to the Safety Act's enforcement provisions. *See* 45 U.S.C. 438. Under section 203(a) of the Safety Act, FRA is authorized to issue emergency orders where an unsafe condition or practice or a combination thereof, creates "an emergency situation involving a hazard of death or injury." This order may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation."

FRA's track safety regulations (49 CFR part 213) prescribe minimum safety requirements for railroad track. There are six classifications of track defining maximum speed and minimum maintenance requirements. For example, class 6 allows the highest speed and, correspondingly, requires adherence to the most stringent standards. By designating track as a certain class, a railroad commits to maintaining that track to the standards established in part 213 for that class. However, if the segment of track does not at least meet the requirements of Class 1, it may be designated as "excepted" track under § 213.4 (*i.e.*, track not maintained to meet the standards set for Class 1 in subparts B, C, D and E) so long as, among other things, no "passenger service" is operated over that segment (§ 213.4(e) (2)).

The New York and Lake Erie Railroad's line of track between Gowanda, New York and Cherry Creek, New York, clearly fails to meet Class 1 standards, the lowest class of track over which passenger traffic is permitted. As of May 1990, however, the NYLE has been running daily passenger service, with one round trip excursion per weekday and two round trip excursions each Saturday and Sunday. (Freight traffic is anticipated to be 700 cars during 1990).

Since June of 1989, FRA and New York State personnel have performed five detailed inspections of this track, most recently on May 22 and 23, 1990. Each inspection disclosed hundreds of

AR 04080

OPERATING AGREEMENT

FOR NORTHWESTERN PACIFIC LINE

THIS OPERATING AGREEMENT, dated as of the 19th day of August, 1996, by and between NORTHWESTERN PACIFIC RAILROAD AUTHORITY, a joint powers agency created under California law ("NWPRA"), and NORTH COAST RAILROAD AUTHORITY, a local agency created by the California legislature ("NCRA").

RECITALS:

WHEREAS, NWPRA was created pursuant to a Joint Powers Agreement ("JPA Agreement") dated May 24, 1995, by and between the Golden Gate Bridge, Highway and Transportation District, the County of Marin and NCRA;

WHEREAS, the purpose of NWPRA, as stated in the JPA Agreement, is to acquire and preserve that portion of the Northwestern Pacific Railroad Right-of-Way consisting of the Healdsburg, Willits and Lombard segments, all as particularly defined in said JPA Agreement;

WHEREAS, pursuant to the aforementioned JPA Agreement, various commitments were made between the parties, including (1) that the NWPRA would acquire title to the Healdsburg and Lombard segments of the right-of-way and that the NCRA would take title to the Willits segment of the right-of-way, (2) that upon acquisition of the Healdsburg and Lombard segments of the right-of-way and subsequent cessation of freight service currently provided by the California Northern Railroad Company ("California Northern"), NWPRA is to convey a perpetual and exclusive easement for the freight service over the Healdsburg and Lombard segments to the NCRA, and NCRA is to assume all freight service and common carrier freight responsibilities in the Healdsburg, Willits and Lombard segments.

WHEREAS, NCRA is an existing common carrier rail freight operator which owns and operates rail lines between Korbel and Willits;

WHEREAS, on April 30, 1996, NWPRA acquired ownership of the Healdsburg and Lombard segments and NCRA acquired title to the Willits segment; and

WHEREAS, in conjunction with those acquisitions, on April 30, 1995, Southern Pacific Transportation Company ("SPTC"), California Northern, NWPRA and NCRA entered into an Agreement Regarding Transition of Freight Operations to address the transfer of freight operations from California Northern to NCRA, set timeline goals, and provide for certain contributions from SPTC to NCRA and NWPRA for rehabilitation work, among other matters ("Transition Agreement");

WHEREAS, the Easement Premises also include that portion of the Golden Gate Bridge, Highway and Transportation District owned right of way between MP 26.96 in Novato and MP 25.57 at Ignacio (for purposes of this Agreement, hereinafter considered part of the Healdsburg Segment);

WHEREAS, also in conjunction with acquisition of the Healdsburg, Lombard and Willits segments, on April 30, 1996, NWPRA and NCRA entered into a set of Principles of Agreement pertaining to freight operations on the right-of-way which enunciated the specific framework for the conveyance of an easement for freight service to the NCRA, set forth understandings of the parties regarding the future operation of freight service by NCRA on the Healdsburg and Lombard segments and identified additional issues to be addressed in a more comprehensive agreement; and

WHEREAS, pursuant to the aforementioned Principles of Agreement, on April 30, 1996, NWPRA conveyed a freight easement to NCRA covering the Healdsburg and Lombard segments, the terms of which provide that said easement rights shall become operative as soon as (1) NCRA obtains authority from the Surface Transportation Board ("STB") to assume the common carrier obligations for providing rail freight service on the right-of-way now provided by California Northern and (2) NWPRA and NCRA enter into a definitive operating agreement the terms of which, as provided for in the aforementioned Principles of Agreement, are to be comprehensive in scope and predicated upon the terms of that certain Lease Agreement for Northwestern Pacific Line entered into between California Northern and Southern Pacific Transportation Company on August 27, 1993 ("Lease Agreement"); and

WHEREAS, NCRA has sought authority of the Surface Transportation Board to acquire the rail freight easement on the right-of-way and to assume the common carrier obligations of providing rail freight service thereon; and

WHEREAS, the parties desire to enter into this operating agreement setting forth terms and conditions for the use and management of the Easement Premises (as defined in Section 1.01 below).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

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SECTION I

EASEMENT PREMISES

SECTION 1.01 -- For the purpose of enabling NCRA to provide exclusive common carrier rail freight and Permitted Passenger Service (as described in Section 3.01 below) on the Healdsburg and Lombard segments in accordance with this Operating Agreement, and subject to the limitations, exclusions and reservations on NCRA's use contained herein, NWPRA does hereby grant to NCRA and NCRA does hereby accept from NWPRA access to and the right to use the Easement Premises consisting of the following: (a) the Easement Land as defined below, (b) "Track" meaning all rail and fastenings, switches and frogs complete, ties, ballast and signals located on the Easement Land as defined below, and (c) "Track Support Structures" meaning all appurtenances to the Track, including without limitation bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts and any other structures or things necessary for support or construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, any crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and crossing warning devices.

The "Easement Land" shall mean the land described in the Grant of Easement Agreement (NCRA Freight- Marin County), attached as **Exhibit A**, the Grant of Easement Agreement (NCRA Freight- Napa), attached as **Exhibit B**; and the Grant of Easement Agreement (NCRA Freight- Sonoma), attached as **Exhibit C**, (collectively referred to as the "Freight Easement") and generally described as the NWP Branch from NWP Milepost 68.22 near Healdsburg, California to NWP Milepost 40.60 near Schellville, California to SPT Milepost 63.40 near Lombard, California.

RESERVING unto NWPRA the rights specified in Sections 1.02 and XV hereof.

SECTION 1.02 -- EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NCRA ACCEPTS THE EASEMENT PREMISES IN "AS IS, WHERE IS" CONDITION AND WITHOUT ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE DESIGN OR CONDITION OF THE EASEMENT PREMISES, ITS MERCHANTABILITY OR ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EASEMENT PREMISES OR CONFORMITY OF THE EASEMENT PREMISES TO ITS INTENDED USE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NCRA ALSO AGREES TO USE THE EASEMENT PREMISES SUBJECT TO THE INTERESTS SET FORTH IN SUBSECTIONS 1.02 BELOW, NONE OF WHICH INTERESTS INDIVIDUALLY OR IN THE AGGREGATE WOULD MATERIALLY INTERFERE WITH NCRA'S ABILITY TO CONDUCT RAIL FREIGHT OPERATIONS ON THE EASEMENT PREMISES SUBSTANTIALLY AS CONDUCTED BY CALIFORNIA NORTHERN RAILROAD

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COMPANY ("Cal Northern") PRIOR TO COMMENCEMENT OF THIS OPERATING AGREEMENT AND AS SET FORTH HEREIN:

(a) reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes;

(b) existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;

(c) encroachments or other conditions that may be revealed by a survey, title search or inspection;

(d) all existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and

(e) NWPRA's exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Easement Premises, or any portion thereof so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with NCRA's rail operations.

(f) On the Commencement Date, NWPRA shall assign to NCRA all contracts, agreements and leases affecting the use, operation and maintenance of the Easement Premises for rail freight service (the "Contracts"), to the extent such contracts were assigned to NWPRA by SPTC.

SECTION II

TERM

SECTION 2.01 -- NCRA shall commence freight rail operations on the Easement Premises on or about July 1, 1996, but in no event prior to satisfaction of the conditions precedent set forth in Section V below. The date on which NCRA actually commences freight rail operations on the Easement Premises shall be the "Commencement Date". This Operating Agreement shall remain in effect until terminated in accordance with Section XIV.

SECTION III

RAIL SERVICE

SECTION 3.01 -- (a) Beginning on the Commencement Date and throughout the term of this Operating Agreement, NCRA shall be the

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sole and exclusive provider of rail freight service. In addition, NCRA may use the Easement Premises to provide passenger excursion and regional intercity service originating or terminating from points north of Healdsburg, provided that these operations shall be subordinate to regularly scheduled commute operations conducted on the Easement Premises, as provided for in the JPA Agreement ("NCRA Passenger Service"). NCRA may not use the Easement Premises for any other type of passenger service, provided, however, that the term "passenger service" shall not include the transportation of officers, employees or invitees of NCRA or the use of equipment utilized for the transportation of such persons. During the term hereof, NWPRA shall not have the right to operate freight trains over the Easement Premises or otherwise exercise rights over the Easement Premises except as specifically set forth herein. NWPRA warrants that, as of the Commencement Date of this Operating Agreement, there is no other rail carrier to which NWPRA or any other party with an interest in the Easement Premises has granted rights to use the Easement Premises. The parties acknowledge that California Northern has trackage rights to operate between Lombard and Schellville, which rights are set forth in an agreement dated July 22, 1996, between California Northern and NCRA, attached hereto as **Exhibit D** and to which NWPRA hereby provides its consent. From the date of this Operating Agreement through the termination hereof, neither NWPRA nor NCRA shall grant to any third party any rights whatsoever to conduct rail freight operations on the Easement Premises during the term of this Operating Agreement without the prior, written consent of the other Party.

SECTION 3.02 -- During the term of this Operating Agreement and in accordance with rights granted in the Freight Easements, NCRA shall hold sole authority and responsibility for common carrier rail freight operations on the Healdsburg and Lombard segments. NCRA shall not suspend or discontinue its operation as a common carrier by rail over all or any part of the Easement Premises except to the extent such obligation has been relieved by all regulatory agencies with jurisdiction, including, without limit, first applying for and obtaining from the Surface Transportation Board (STB) and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approval or exemption from regulation for such discontinuance of operations over the Easement Premises or any portion thereof.

SECTION 3.03 -- NWPRA has an interest in preserving the physical condition of the Easement Premises to facilitate the eventual development of passenger transit services. As long as the Easement Premises are exclusively used by NCRA for rail freight and NCRA Passenger Service, NCRA shall perform all ordinary maintenance functions on the Easement Premises at its sole cost and expense. The following specific principles and understandings shall govern NCRA's maintenance responsibilities:

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(a) The Parties agree that California Northern has not performed the normalized maintenance required by Section 3.03 of its Lease Agreement with Southern Pacific Transportation Company ("SPT") and has not maintained the Track and Track Support Structures to the FRA classes required by Schedule 3.03A of said Lease. As a result, the Parties recognize and agree that the track condition of the Easement Premises has deteriorated since the commencement date of the Lease Agreement.

(b) The Parties further acknowledge that the freight revenue stream generated by traffic south of Willits has been inadequate either to fund the normalized maintenance requirements of the NWP Line south of Willits, or to maintain it to the FRA Track Classes specified by Schedule 3.03A of the Lease Agreement.

(c) As a result of the foregoing, the Parties agree that NWPRA and NCRA shall actively work together to obtain potentially available public funds for the maintenance, rehabilitation and improvement of the Easement Premises (without detriment to similar needs of the NCRA-owned line north of Healdsburg and without detriment to the other programs and activities of the NWPRA or any of its member agencies for which public funds may be available), and the Parties further agree that they will encourage the policy makers of their respective public agencies to pursue the same objective.

(d) NCRA commits that all available public funds which are designated for maintenance, rehabilitation, and improvement projects of the Easement Premises shall be spent in a timely and efficient manner once all grant funds and necessary matching funds for particular projects are obtained by NCRA.

(e) It shall be NCRA's goal to maintain the Easement Premises to the following FRA Classes in order to achieve the following Maintenance Standards:

(1) Lombard-Ignacio Segment: FRA Class 2, and

(2) Ignacio-Healdsburg Segment: FRA Class 3.

The Parties recognize that actual track conditions and FRA Classes for both segments do not uniformly meet these standards as of the Commencement Date. As promptly as possible after the Commencement Date, NCRA shall make appropriate inspections of the Easement Premises to document the actual condition and the FRA Classes of the Track and Track Support Structures, the result of which will be attached to this Operating Agreement as Schedule 3.03B.

(f) As of the date of this Operating Agreement, the Parties acknowledge that SPT has agreed to pay the sum of $600,000 to compensate NCRA and NWPRA for deficiencies in the utility level of the NWP Line when compared against the utility level reflected in Schedule 3.03A of the California Northern Lease Agreement. In

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addition, NCRA plans to obtain certain federal and state funds for right of way rehabilitation and has proposed that a portion of said funds will be made available for expenditures on the Easement Premises to upgrade its condition. NCRA shall assume lead responsibility to plan for the necessary improvements on the Easement Premises utilizing these specific funding sources and at the earliest possible date will present its proposed plan and budget for implementing such improvements to the NWPRA Board of Directors for review and approval. The parties agree that a reasonable portion of the SPT and federal grant funds will be spent for rehabilitation and repair of the Easement Premises.

(g) NCRA shall use its best efforts to achieve the Maintenance Standards set forth in Section 3.03 (e), but shall be under no obligation, either to upgrade the Easement Premises to such Maintenance Standards, or to maintain the Easement Premises to such standards, at any time in the future. However, NCRA shall, on an annual basis, and additionally at such other times that NWPRA may reasonable request, provide NWPRA with a maintenance plan and budget showing the expenditures required, either in order to achieve the Maintenance Standards, or to avoid deterioration in the FRA Classes shown in Schedule 3.03B. After NCRA has assumed operating responsibility for the Easement Premises, NCRA will also include with its maintenance plan and budget,a report of work and expenditures made on the Easement Premises. If, in order to preserve the Easement Premises for passenger transit development, NWPRA voluntarily decides to provide the budgeted amounts to NCRA, including any matching funds which NCRA is unable to provide, NCRA commits to spend all such funds in a timely and efficient manner for the sole benefit of NWPRA.

(h) NWPRA shall own all fixtures, improvements and material replaced or added to the Track and Track Support Structures unless otherwise agreed to in writing by NWPRA; materials removed from the Track and Track Support Structures shall become the property of NCRA provided that such materials are replaced by NCRA. No rail or other material that is a part of the Track shall be replaced with lesser weight or size rail or material without the prior written consent of NWPRA.

SECTION 3.04 -- As long as the Easement Premises are exclusively used for rail freight service and permitted passenger service by NCRA, and subject to the limitations on NCRA's obligation to incur rehabilitation costs as set forth in Section 3.03 hereof, NCRA shall maintain all bridges and tunnels on the Easement Premises as required by applicable law.

As long as the Easement Premises are exclusively used for rail freight service and permitted passenger service by NCRA, NCRA shall perform any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of the Track and Track Support Structures and all additions thereto.

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SECTION 3.05 -- NCRA shall comply with all laws affecting the Easement Premises or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer, or permit any act upon the Easement Premises in violation of law and shall do all other acts which from the character or use of the Easement Premises for rail freight and permitted passenger operations may be reasonably necessary, the specific enumeration herein not excluding the general. Without limiting the generality of the foregoing, and subject to Section 9.04 hereof, NCRA expressly agrees that it shall perform all trash and waste abatement required by law or as reasonably necessary in connection with the freight operations on the Easement Premises.

SECTION 3.06 -- NWPRA shall have the right at any time, upon reasonable notice (except for emergencies, where no notice is required) and from time to time to inspect the Easement Premises for conformity with the standards of maintenance contained in this Operating Agreement and to verify compliance with this Operating Agreement; provided, that such inspections shall not unreasonably interfere with NCRA's operations; that all persons conducting such inspections shall execute appropriate release of liability waivers; and that NCRA or its appointed representative may accompany NWPRA or its representatives during such inspections if they relate to inspection of the Track.

SECTION 3.07 -- a. NCRA shall maintain full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Easement Premises and shall keep all track profiles and track charts up to date so as to show all program maintenance and rehabilitation performed on the Track and Track Support Structures. Copies of updated records and track charts shall be provided by NCRA to NWPRA promptly upon request.

b. NCRA shall manage, control and dispatch all rail freight operations and NCRA Passenger Services on the Easement Premises. In the event NWPRA establishes commute passenger operations on the Easement Premises, NCRA agrees to allow assignment of dispatching and/or maintenance functions to the operator of those operations if requested by NWPRA.

SECTION 3.08 -- NCRA shall provide a copy of all reports of track inspections by Federal Railroad Administration ("FRA") or California Public Utilities Commission ("CPUC") inspectors to NWPRA promptly upon receipt of said reports; the term "reports" shall include all notices or citations alleging deficiencies from FRA track standards.

SECTION 3.09 -- In the event that NWPRA undertakes to provide commuter rail, intercity, excursion or other passenger transit operations on the Easement Premises, either directly or through the

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designation of a passenger service operator, NCRA and NWPRA shall enter into an agreement (the "Coordination Agreement") that describes in detail the respective rights and obligations of the Parties with respect to maintenance, capital expenditures, dispatching, scheduling of operations, environmental liability, taxes and other matters concerning the joint use of the Easement Premises. NCRA and NWPRA shall negotiate the Coordination Agreement in good faith so as to ensure that passenger service receives operating priority over freight operations, provided that freight service continues to be provided on the Easement Premises in a manner that meets the needs of the shippers on the line, and that passenger operations disrupt NCRA's freight operations to the minimum extent possible. The Coordination Agreement shall include provisions that address the issues set forth in Schedule 3.10 attached hereto as **Exhibit E** and incorporated by reference.

SECTION IV

CONSIDERATION

In consideration of the rights granted herein, and in lieu of compensation to NWPRA measured by a percentage of gross revenues derived from NCRA's prospective rail freight traffic handled over the NWPRA-owned ROW, NCRA agrees to pay an appropriate share of the annual expenses incurred by the NWPRA not covered by grant funds or income from property agreements. The Parties acknowledge that the JPA Agreement, when executed, anticipated that the NWPRA would be self sustaining such that its member agencies would not be required to contribute local funds to satisfy budget shortfalls. Said provision, however, assumed the derivation on income by the NWPRA from freight revenues. NCRA, accordingly, agrees to make annual payments to the NWPRA, in lieu of payments measured by NCRA's freight revenues. The amount of NCRA's annual payment shall be negotiated annually between the parties upon development of NCRA's annual budget. For the first year, commencing July 1, 1996, NCRA's payment shall be Fifty Thousand Dollars ($50,000), which amount was arrived at in recognition of additional startup costs to be assumed by NCRA in assuming common carrier freight service responsibilities. It is the understanding of the parties, barring unforeseen circumstances, that the annual payment will be increased in future years. Payment shall be made in equal monthly installments due the first day of each month.

SECTION V

CONDITIONS PRECEDENT

The following are conditions precedent to the commencement of NCRA's rail freight operations hereunder:

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SECTION 5.01 -- NCRA shall have obtained the necessary authority or exemption from the STB to conduct rail service over the Track and Track Support Structures located on the Easement Premises, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

SECTION 5.02 -- NWPRA and NCRA shall not be prevented from fulfilling their respective obligations under this Operating Agreement as a result of legislative, judicial or administrative action.

SECTION 5.03 -- No substantive condition unacceptable to NCRA or to NWPRA shall have been imposed in connection with the regulatory approvals, authorizations and exemptions contemplated by Section 5.02.

SECTION 5.04 -- NCRA shall have provided satisfactory documentation showing its compliance with the insurance requirements of Section 11.02.

SECTION 5.05 -- Each Party's representations and warranties shall be true and correct in all material respects as of the Commencement Date, and each Party shall have performed its covenants hereunder to the extent such covenants are required under this Operating Agreement to be performed prior to the Commencement Date.

SECTION VI

ACCOUNTING AND REPORTING

SECTION 6.01 -- NWPRA and its agents shall have the right at any time upon reasonable notice to inspect NCRA's books, records, or any other reports or supporting documents or materials necessary to determine compliance with any provisions of this Operating Agreement. Such inspection shall be conducted during normal business hours and NCRA shall make its facilities available to NWPRA's inspectors to permit such inspection without undue interference with NCRA's operations. Any direct expense arising from making the inspection shall be borne by NWPRA.

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SECTION VII

MODIFICATIONS AND IMPROVEMENTS

SECTION 7.01 -- NCRA shall not use nor permit the use of the Easement Premises in any manner that will tend to create waste or a nuisance or would materially interfere with the continued commercial, industrial or transportation corridor uses of the Easement Premises. In using the Easement Premises, and in constructing, maintaining operating and using the Track and Track Support Structures, NCRA shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations or any governmental body having jurisdiction thereover, including, but not limited to, building and zoning ordinances regulating the occupancy, use or enjoyment of the Easement Premises or regulating the character, dimensions or location of any Track and Track Support Structures on the Easement Premises.

SECTION 7.02 -- Subject to Section III hereof, NCRA may construct or relocate sidetracks or industrial spur tracks on the Easement Premises as required in the ordinary course of business so long as such work is done in conformity with applicable governmental regulations. Sidetracks or industrial spurs in place on the Easement Premises as of the Commencement Date may not be removed from the Easement Premises without consent of NWPRA, which consent will not be unreasonably withheld. In the event any existing tracks are removed and not replaced and the track materials sold for salvage, the net proceeds (after removal costs) of such sale shall belong to NWPRA unless otherwise agreed to in writing; provided that NCRA may remove new sidetracks and industrial spurs it installs on and after the Commencement Date, and retain the proceeds from the sale of such materials, without obtaining the prior consent of NWPRA.

SECTION VIII

REPRESENTATIONS AND WARRANTIES

SECTION 8.01 -- NWPRA represents and warrants that, as of the date hereof and of the Commencement Date:

(a) NWPRA is a joint powers agency duly organized under California Government Code Section 6500 et seq. for the joint exercise of certain powers to provide for the acquisition, maintenance, management and operation of the Healdsburg, Lombard and Willits segments for future public transportation and freight use.

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(b) NWPRA has full power and authority to enter into this Operation Agreement and, subject to necessary regulatory authority, to carry out its obligations hereunder.

(c) This Operating Agreement and the Related Agreements have been duly authorized, executed and delivered by NWPRA and are the legal, valid and binding agreements of NWPRA, enforceable against NWPRA in accordance with their terms. Neither the execution and delivery of this Operating Agreement by NWPRA, the consummation by NWPRA of the transactions contemplated hereby, nor compliance or performance by NWPRA with any of the provisions hereof does or will violate any judgment, order, law or regulation applicable to NWPRA or any provisions of NWPRA's JPA Agreement or by-laws or results in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NWPRA or the Easement Premises (other than created by this transaction) pursuant to any note, bond, indenture, mortgage, deed of trust, bank loan or credit arrangement or other instrument to which NWPRA is a party or by which any of the Easement Premises is bound, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar law affecting the enforcement of creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).

(d) NWPRA's execution of and performance under this Operating Agreement does not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which NWPRA is party.

(e) To the best of available knowledge that NWPRA is in compliance with applicable federal, state and municipal laws, ordinances and regulations, including but not limited to all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances, waste or other pollutants. As of the date of this Operating Agreement, NWPRA has not received any notice from any governmental agency of any alleged violation of environmental law, rule, regulation or ordinance or any judgment pursuant to any environmental law, rule, regulation or ordinance relating to the Easement Premises.

SECTION 8.02 -- NCRA represents and warrants that, as of the date hereof and as of the Commencement Date:

(a) It is a statutorily created public entity authorized to provide passenger and freight railroad service in Humboldt, Mendocino, Sonoma and Marin Counties.

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(b) It has full power and authority to enter into this Operating Agreement, and subject to necessary regulatory authority, to carry out the obligations of NCRA hereunder.

(c) This Operating Agreement has been duly authorized, executed and delivered by NCRA and are the legal, valid and binding agreements of NCRA, enforceable against NCRA, in accordance with their terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Operating Agreement by NCRA, and consummation by NCRA of the transaction contemplated hereby, nor compliance or performance by NCRA with any of the provisions hereof does or will violate any judgment, order, law or regulation applicable to NCRA or any provisions of NCRA's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NCRA

(d) NCRA has satisfied itself as to the state of title to the Easement Premises, the physical condition of the Easement Premises and their suitability for the uses proposed by NCRA. In so doing, NCRA has relied solely upon its own inspection and investigation and not upon any representation or warranty made or furnished by NWPRA or any of its agents or other representatives, except as expressly stated in any representation or warranty contained in this Operating Agreement.

(e) There are no actions, suits or proceedings pending, or to NCRA's knowledge threatened, against NCRA or any of its property in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to NCRA, would prohibit the execution and delivery by NCRA of this Operating Agreement, or the consummation by NCRA of the transactions contemplated hereby.

(f) There are no judgments, orders or decrees entered in any lawsuit or proceeding that affect, or could reasonably be expected to prohibit the execution and deliver by NCRA of this Operating Agreement, or the consummation by NCRA of the transaction contemplated hereby.

(g) No representation or warranty by NCRA in this Operating Agreement contains any untrue or materially misleading statement of fact, and no representation or warranty by NCRA omits any material fact that is necessary to prevent the misrepresentation or warranty from being misleading in any material respect.

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SECTION IX

OBLIGATIONS OF THE PARTIES

SECTION 9.01 -- Except as provided below, during the term hereof, NCRA shall pay all bills for utilities, including without limitation those for water, sewer, gas and electric service to the Easement Premises. If NWPRA is required to, or does pay, any such bill, NCRA shall promptly reimburse NWPRA within thirty (30) days of receipt of a bill or bills therefor. If the Easement Premises are not billed separately but as a part of a larger tract or parcel, NCRA shall pay that portion of such bills as is attributable to usage on or in connection with Easement Premises. Upon the earlier of the commencement of construction for passenger operations or the commencement of passenger service by NWPRA or its designee, payment of utility bills shall be paid and allocated on a basis to be set forth in the Coordination Agreement.

SECTION 9.02 -- NCRA shall at its sole cost and expense protect and defend NWPRA's title against all persons claiming against or through NCRA and at all times keep the Easement Premises free from any legal process or encumbrance whatever, including without limitation mechanics, and execution liens, attachments and levies (except any created by or under or through NWPRA) (collectively, "Title Claims"), and shall give NWPRA immediate written notice of any such legal process or encumbrance and shall indemnify, defend, protect and hold harmless NWPRA from same and from any such claim, liability, loss or costs caused thereby (including, without limit, attorney's fees and court costs).

SECTION 9.03 -- (a) During the term of the Operating Agreement, NCRA shall comply with all federal, state, and local laws, rules, regulations, directives, orders and judgments applicable to the Easement Premises, regardless of scope or costs (collectively, "Applicable Laws"), including but not limited to those controlling air, water, noise, hazardous waste, solid waste, and other pollution, or relating to the use, generation, storage, transport, release, or disposal of Hazardous Materials as defined in **Exhibit F**, attached hereto and incorporated by reference. Except to the extent that such activities are the responsibility of NWPRA under Section 9.04 hereof or under the Coordination Agreement, NCRA, at its sole cost and expense shall make all modifications, repairs, or additions to the Easement Premises, and implement and bear the expense of any and all structures, devices, alterations or equipment, which may be required under any such Applicable Laws. Such obligations shall include, without limit, any investigations or remedial or monitoring actions associated with the presence of Hazardous Materials on the Easement Premises. Without limiting the generality of the foregoing, at each location that NCRA or NWPRA parks its locomotives, within three (3) months after the Commencement Date, such Party (or any operator providing

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passenger service on behalf of NWPRA) shall implement appropriate contamination containment procedures with respect to fuel or lubricant drippings. Neither Party shall dispose of hazardous wastes of any kind on the Easement Premises. NCRA shall not use, generate, transport, handle or store Hazardous Materials on the Easement Premises other than as may be used by NCRA in its operations in the normal course of business or as may be transported by NCRA in its capacity as a common carrier by rail and in all events in accordance with Applicable Laws.

(b) To the extent NWPRA conducts passenger rail operations on the Easement Premises during the term hereof, NWPRA shall comply with all Applicable Laws relating to its use of the Easement Premises for such operations.

(c) Should a party fail to perform its obligations under this Section IX, the other party may in its discretion do so and, in addition to all other remedies and damages, it shall be promptly reimbursed by the breaching party for its reasonable costs in doing so, with interest at the maximum rate allowed by law.

SECTION 9.04 -- (a) Until modified by the Coordination Agreement described in Section 3.04 above, it is the express intention of both NCRA and NWPRA that NCRA assumes the risk of and agrees to indemnify and hold NWPRA harmless from, and to defend NWPRA against, any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or source for (i) any defects or Environmental Problems, whether latent or obvious, discovered or undiscovered, in the Easement Premises, including any improvements, fixtures or equipment associated with its use; (ii) personal injury to or death of persons whomsoever (including without limitation to employees, agents or contractors of NWPRA, NCRA, or any third party); (iii) property damage or destruction of whatsoever nature (including without limitation damage to property of NWPRA or NCRA, or property in NCRA's care, custody or control, and third party property), (iv) violation of any Applicable Laws; or (v) breach of this Operating Agreement (collectively, "Claims") when such Claims arise out of acts, omissions (whether or not negligent) or events occurring on the Easement Premises after the Commencement Date (or, if freight service on the Easement Premises is undertaken by NCRA prior to the Commencement Date, then such earlier date) and before the termination of this Operating Agreement; except that NCRA shall not indemnify or hold harmless NWPRA (i) to the extent that the Claim arises out of or in connection with acts, omissions or negligence of NWPRA or any agent, lessee, licensee of NWPRA acting in such capacity prior to, during or following the term of this Operating Agreement (including operations, construction and maintenance in connection with passenger service and property management); (ii) in connection with any Environmental Problems of

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which NWPRA has actual knowledge as of the date of this Operating Agreement (including any incremental liability arising in connection with such known Environmental Problems during the term of this Operating Agreement, except to the extent such increments are due to the acts or omissions of NCRA, its agents, employees, licensees, contractors or affiliates); (iii) any Environmental Problems which NCRA shows existed on the Easement Premises prior to the Commencement Date not attributable to acts or omissions of NCRA.

(b) It is the express intention of both NCRA and NWPRA that NWPRA shall assume the risk of, and agrees to indemnify and hold NCRA harmless from, and to defend NCRA against any Claims for, (i) any defects or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be used by NCRA hereunder, which NCRA proves (a) existed prior to the Commencement Date (or, if freight service on the Easement Premises is undertaken by NCRA prior to the Commencement Date, then such earlier date) or (b) occurred after the termination of this Operating Agreement and termination of the Freight Easement ("Excluded Environmental Claim"); (ii) for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of NWPRA, NCRA or any third party) or property damage or destruction of whatsoever nature (including without limitation property of NWPRA or NCRA, or property in its or their care, custody or control, and third party property) where such Claims arise out of acts, omissions or negligence or events occurring on the Easement Premises prior to the Commencement Date (or, if freight service on the Easement Premises is undertaken by NCRA prior to the Commencement Date, then such earlier date) or subsequent to the termination of the Operating Agreement; or (iii) where such Claims arise out of acts or omissions arising out of or in connection with the provision of commuter passenger service or construction in connection therewith on the Easement Premises during the term of this Operating Agreement (except to the extent such injuries, death, property losses or damages are caused by NCRA, its agents, employees, affiliated companies, successors or assigns). Furthermore, nothing in this Operating Agreement shall be construed as modifying any agreement between SPTCo and NWPRA concerning responsibility for Environmental Problems. "Environmental Problems" shall mean any Claim arising under Applicable Laws or due to any violation thereof, including, without limit, federal, state or local legislation or other rules of law, and private causes of action of whatever nature, which regulate or concern the use, generation, storage, transportation, disposal, release, handling or presence of Hazardous Materials in or about the Easement Premises or related to its use and operation.

SECTION 9.05 -- Each Party shall promptly furnish the other Party written notice of any and all (a) Claims which occur during the term of this Operating Agreement arising due to Environmental Problems and (b) the violation of any Applicable Laws relating to Hazardous Materials. To the extent practicable, such written

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notice shall identify, as applicable, the nature and circumstances giving rise to the Claim; the Hazardous Material released, the amount released and the measures undertaken to clean up and remove the released material and any contaminated soil or water; the nature and extent of the alleged violation of Applicable Laws and the measures taken to eliminate the violation; and shall state either that the Party providing the notice will comply or has complied with all applicable regulations, orders, judgments or decrees in connection therewith, and the date by which such compliance has been or is anticipated to be effected, or that it is contesting same in good faith. Each party shall provide the other party with copies of any and all reports made to any governmental agency which relate to such Environmental Problems which arise during the term of this Operating Agreement.

SECTION 9.06 -- During the term of this Operating Agreement, upon compliance with the notice requirements set forth in Section 3.06 hereof, NWPRA shall have the right to enter, inspect and test the Easement Premises for the purpose of ensuring compliance with the requirements of this Section IX or to respond to any Environmental Problems. If NWPRA detects any violation of Applicable Laws, including any contamination of the Easement Premises by Hazardous Materials during the term hereof, NWPRA shall notify NCRA in writing of the violation. The failure to provide such notice shall not affect NCRA's obligations under this Section IX. As soon as NCRA has notice of any Environmental Problems, NCRA shall take immediate steps to eliminate the violation or otherwise fully respond to the Environmental Problem to the extent of its obligations hereunder, including, without limit, investigating, removing and remediating the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation of Applicable Law or the Environmental Problem. Should NCRA inadequately remedy or fail to eliminate an Environmental Problem, NWPRA or its representative shall have the right, but not the obligation, to enter the Easement Premises and to take whatever corrective action NWPRA deems necessary to resolve the Environmental Problem or to eliminate the violation, at the sole cost and expense of NCRA. NCRA shall reimburse NWPRA for any and all amounts expended by NWPRA promptly following NWPRA's demand, together with the costs of collection and interest at the maximum allowed. Should it subsequently be determined that the contamination or violation was NWPRA's responsibility under Section 9.04, NWPRA shall promptly reimburse NCRA for any and all reasonable amounts expended by NCRA in seeking to remedy or eliminate the condition or violation, together with interest at the legal rate.

SECTION 9.07 -- The parties agree that NCRA employees are not employees of the NWPRA. NCRA assumes exclusive responsibility for compliance with all employment laws and regulations applicable to its operations as a common carrier freight service provider, as

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well as the terms of any collective bargaining agreements to which NCRA may, from time to time, be a party.

During the term of and following termination of this Operating Agreement, NCRA shall bear any and all costs of protection of its current or future employees, arising from any labor protective conditions imposed on NCRA by the STB, any other regulatory agency or statute as a result of NCRA's use, operation or maintenance of the Easement Premises and any related agreements or arrangements, including collective bargaining agreements, or arising as a result of the termination of this Operating Agreement. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder.

SECTION 9.08 -- As between the Parties, NCRA and NWPRA waive and shall not assert as a defense any statute of limitations applicable to any controversy or dispute arising between the Parties under this Section IX.

SECTION 9.09 -- Subsequent to the execution hereof, NWPRA will not take any action or fail to take any action, without the written consent of NCRA, which act or omission would cause the Easement Premises to be encumbered by any mortgage, indenture, bond, note or lien of any kind that would have a material, adverse effect on NCRA's conduct of rail freight operations on the Easement Premises or that would require the payment of money by NCRA. NCRA shall not unreasonably refuse or delay its consent to each action.

SECTION X

INDEMNIFICATION AND INSURANCE

SECTION 10.01 -- (a) It is the express intent of NWPRA and NCRA that NCRA shall protect, defend, hold harmless and indemnify NWPRA, Southern Pacific Transportation Company, and their respective directors, officers, member agencies, agents, employees, successors and assigns from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorney's fees (collectively "Liability"), incurred by or assessed against NWPRA, Southern Pacific Transportation Company, and their respective directors, officers, member agencies, agents, employees, successors and assigns on account of injuries, death, or property loss or damage arising from (i) NCRA's use, operation or maintenance of the Easement Premises, (ii) failure by NCRA to perform any of its covenants under this Operating Agreement, (iii) failure of any representation or warranty of NCRA under this Operating Agreement to be true and correct in all material respects as of the date made; except, however, that all Liability, including Liability for any injury, death, or property loss or damages

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arising in connection with hazardous substances or environmental conditions shall be governed by the provisions of Section 9.04 hereof.

(b) It is the express intent of NWPRA and NCRA that NWPRA shall protect, defend, hold harmless and indemnify NCRA, its directors, officers, agents, employees, affiliated companies, successors and assigns from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorneys' fees (collectively "Liability"), incurred by or assessed against NCRA, its directors, officers, agents, employees, affiliated companies and successors and assigns on account of injuries, death, property loss or damage for operations, construction or maintenance relating to passenger service by NWPRA or its designated third party contractors during the term of this Operating Agreement (except to the extent that such injuries, death, property loss or damage is caused by NCRA, its directors, officers, agents, employees, affiliated companies, successors or assigns), except however, that all Liability, including Liability for any injury, death or property loss or damage, arising in connection with hazardous substances or environmental conditions shall be governed by the provisions of Section 9.04 hereof.

(c) The foregoing notwithstanding, neither Party shall have any claim against the other Party for interruption of or delay to such Party's business or for loss of profit or income. NCRA shall have no cause of action against NWPRA for the condition of the Easement Premises.

(d) Each Party hereto covenants and agrees that its obligations under this indemnity will be fulfilled whether or not such Liability arises during the time that this Operating Agreement is in effect or thereafter. The covenants of indemnity contained in this Operating Agreement shall continue in full force and effect notwithstanding the full payment of all sums due under this Operating Agreement, or the satisfaction, discharge or termination of this Operating Agreement in any matter whatsoever.

SECTION 10.02 -- NCRA shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Operating Agreement effective on Commencement Date and promptly pay when due all premiums for that insurance. Upon the failure of NCRA to maintain insurance as provided herein, NWPRA shall have the right after giving NCRA ten (10) days written notice to obtain insurance and NCRA shall promptly reimburse NWPRA for that expense. The following minimum insurance coverage shall be kept in force during the term of this Operating Agreement:

Comprehensive Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at last twenty-five million dollars ($25,000,000) for each incident and a general aggregate limit of at least twenty-five

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million dollars ($25,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Operating Agreement, severability of interests and name NWPRA and Southern Pacific Transportation Company as additional insureds with respect to liabilities arising out of NCRA's obligation to NWPRA in this Operating Agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Operating Agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

Upon request of NWPRA, NCRA will provide evidence of statutory workers' compensation coverage and employer's liability coverage, with a minimum limit of $2 million each accident, including coverage for any United States Longshoreman and Harbor Workers Act or Federal Employer's Liability Act exposure with a waiver of subrogation endorsement.

SECTION 10.03 -- NCRA warrants that this Operating Agreement has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name NWPRA as additional insured with respect to liabilities which arise out of NCRA's obligation to NWPRA.

SECTION 10.04 -- NCRA shall furnish to NWPRA certificates of insurance evidencing the required coverage and endorsement(s) and upon written request of NWPRA, NCRA shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) shall notify NWPRA in writing of any material alteration including any change in the retroactive date in any "claim made" policies or substantial reduction of aggregation limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 10.05 -- The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to NWPRA or with current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the State of California. If requested, NCRA must furnish a certified copy of all insurance policy(ies) and endorsement(s) to NWPRA within seven (7) days of such request.

SECTION 10.06 -- Insurance coverage provided in the amounts set forth herein shall not relieve NCRA from liability hereunder in excess of such coverage, nor shall it preclude NCRA or NWPRA from taking such other action as is available to it under any other provision of this Operating Agreement or otherwise in law or equity.

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SECTION 10.07 -- The limits of liability required under Section 11.02 shall be reviewed every five (5) years during the term or any extended term hereof to ensure that such limits are in accordance with industry standards. Notwithstanding the foregoing, in the event of substantial change in the cost or availability of insurance required under this Section XI, NWPRA and NCRA agree to review and renegotiate the insurance requirements of this Section XI in good faith.

SECTION XI

TAXES

SECTION 11.01 -- The Easement Premises shall be used by NCRA in its freight railroad operations and shall be a part of NCRA's operating property. NCRA shall pay all real property taxes and bonded or special assessments which may be levied, assessed or imposed upon the Easement Premises during the term.

SECTION XII

NCRA'S MANAGEMENT RIGHTS AND RESPONSIBILITIES

SECTION 12.01 -- From and after the Commencement Date, NCRA, at its own expense, shall manage all existing industrial track, and other agreements involving the Track or Track Support Structure. From and after the Commencement Date, NCRA shall have the right to enter into new industrial track, and other agreements involving the Track or Track Support Structure that are necessary for NCRA to discharge its exclusive common carrier rail freight responsibilities, provided that in each such case (i) NCRA complies with standard agreement provisions provided by NWPRA; (ii) NCRA notifies NWPRA of such agreements; (iii) NCRA adheres to the requirements of NWPRA's Encroachment Policy adopted April 22, 1996, as may be amended from time to time; (iv) such agreements shall be consistent with the Coordination Agreement; and (v) such agreements shall be subject to NWPRA's reserved rights under Section XV below.

SECTION XIII

TERMINATION

SECTION 13.01 -- This Operating Agreement shall be terminated upon NCRA's obtaining all necessary regulatory approvals or exemptions permitting NCRA to discontinue rail freight operations. In the event that NCRA ceases to provide common carrier freight service for a period exceeding 60 consecutive months and has not obtained regulatory approval for such decision, and NWPRA has reasonably determined that the continuation of this Operating

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Agreement unreasonably interferes with the NWPRA's ability to then presently utilize the Healdsburg and Lombard Segments for transportation purposes, nothing herein shall prevent NWPRA from seeking regulatory approval, which NCRA will not oppose, for termination of NCRA's common carrier authority on the NWPRA-owned ROW. Upon obtaining such regulatory approval, this Operating Agreement shall terminate. Nothing contained herein shall prevent NWPRA from exercising its common law right to quiet title to the surface easement, or to obtain regulatory approval for termination of NCRA's common carrier authority on the NWPRA-owned ROW, upon an NCRA service interruption of less than 60 months in circumstances where NCRA is defunct or otherwise has evidenced the intent to abandon the freight service permanently. NWPRA will give 90 days written notice to NCRA, or if NCRA is defunct, the Boards of Supervisors of its members, prior to filing to quiet title or to obtain regulatory approvals.

SECTION 13.02 -- In the event of termination of this Operating Agreement, NCRA shall vacate the Easement Premises in an orderly manner. Upon termination as provided herein and upon NWPRA's request, NCRA shall quitclaim its right, title and interest in the Easement Land to NWPRA or its designee.

SECTION 13.03 -- The supervision or termination of this Operating Agreement shall not limit or eliminate the obligations of the parties under Section IX, or respecting any other obligation which accrued during the term of this Operating Agreement.

SECTION XIV

NWPRA'S RESERVED RIGHTS

SECTION 14.01 -- NWPRA excepts from the Easement Premises and reserves unto itself, its successors and assigns, the following exclusive rights with respect to the Easement Premises (provided, in each case that NWPRA or any person or entity claiming through NWPRA, shall not materially interfere with NCRA's freight railroad operations on the Easement Premises or increase the expense, cost or liability of NCRA in the exercise of such rights; that NWPRA shall provide NCRA with reasonable prior, written notice of the exercise of the reserved rights; that upon request of NCRA, NWPRA shall meet with NCRA to discuss the proposed exercise of NWPRA's reserved rights so as to minimize the effect of such exercise on rail freight operations on the Easement Premises; and that NWPRA shall ensure, upon request of NCRA, that all persons exercising such rights provide to NCRA an appropriate written release of liability):

(a) The right to construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and/or future

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railroad, rail and railroad-related equipment, facilities, and transportation systems necessary for and related to passenger rail operations. NWPRA reserves the right to contract with NCRA on mutually acceptable terms, or with a third party or third parties, for the operation of passenger rail service. NWPRA shall be entitled to all revenues derived from all current and future agreements to which NWPRA is a party affecting passenger rail operations. If NWPRA uses the Easement Premises for passenger rail operations, such use shall be in accordance with the Coordination Agreement. Allocation of liability will be specified in the Coordination Agreement.

(b) The right to use all minerals and mineral rights, interests, and royalties, including, but not limited to, oil, gas and other hydrocarbon substances, timber, and metallic or other solid minerals, in and under the Easement Premises, subject to previously retained rights of SPTC.

(c) The right to own, construct, reconstruct, maintain, operate, use and remove existing and future pipelines, communication systems, signboards and related facilities of every kind and nature, including, but not limited to, all existing pipelines and telephone, telegraph, television and fiber optic lines, signboard structures and related equipment and appurtenances.

(d) The right to use the Easement Premises for any other reasonable commercial, industrial or utility-related purpose (other than as a freight railroad), including, without limitation the right to enter into leases, easements, licenses or leases in respect of the Easement Premises.

(e) A limited right-of-way and right of access across the Easement Premises, for purposes of exercising any rights with respect to the Easement Premises as set forth in this Operating Agreement.

(f) Except as expressly set forth in this Operating Agreement, all improvements presently existing on or hereafter constructed on the Easement Premises shall remain the property of NWPRA. NWPRA shall be entitled to all revenues derived from all current and future agreements to which NWPRA is a party affecting the Easement Premises.

(g) The right, upon thirty (30) days prior written notice, to designate to NCRA those parcels or parcel of land not then used by NCRA for freight rail operations or not determined by NCRA to be reasonably needed for future freight rail operations that NWPRA desires to remove from the Easement Premises. Upon receipt of such notice, NCRA shall determine in good faith whether the designated parcel(s) are being used by it for freight rail operations and, if not, NCRA shall vacate the designated parcel(s) by the 30th day specified in the designation notice. If the designated parcel is partially used by NCRA for freight rail operations, the parties

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shall confer and agree about the scope of the parcel release. NCRA shall execute such documents in the form of Exhibit D attached to formalize the release of parcels. Any parcel vacated by NCRA shall, from and after such 30th day, be deemed to have been added to Exhibit __ hereto, and this Operating Agreement shall terminate as to such parcel from and after such date. NWPRA and NCRA shall promptly execute an addendum to this Operating Agreement confirming such termination.

SECTION 14.02 -- Except as to matters that relate to NCRA's use of the Easement Premises for freight rail operations and except as expressly set forth in this Operating Agreement, NWPRA has reserved to itself and shall have the exclusive right to lease, operate, manage and control the Easement Premises and to take all action in connection therewith deemed appropriate by NWPRA, at NWPRA's sole cost and expense, including without limitation the right to:

(a) negotiate or renew leases of the Easement Premises upon such terms and leasing rates as NWPRA deems appropriate;

(b) execute all lease documents, collect rents, security deposits, utility payments and other monies due or to become due from the Easement Premises or its use or possession;

(c) terminate tenancies and sign and serve such notices to tenants as are deemed necessary or appropriate by NWPRA;

(d) institute and prosecute actions to evict tenants as NWPRA deems necessary or appropriate;

(e) sue to recover rents and other sums due, and otherwise to enforce the rights of NWPRA with respect to the Easement Premises;

(f) settle, compromise and release claims or legal proceedings in respect of the Easement Premises.

Except as to matters that relate to NCRA's use of the Easement Premises for freight rail operations and except as expressly set forth in this Operating Agreement to the contrary, NWPRA shall receive and be entitled to all of the rents, income, receipts, revenues, issues and profits derived from the Easement Premises that have accrued during the term of this Operating Agreement.

SECTION XV

DEFEASANCE

SECTION 15.01 -- NCRA shall not make any use of the Easement Premises which is inconsistent with NWPRA's right, title and

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SECTION 15.01 -- NCRA shall not make any use of the Easement Premises which is inconsistent with NWPRA's right, title and interest therein and which may cause the right to use and occupy the Easement Premises to revert to any party other than NWPRA.

SECTION XVI

MISCELLANEOUS

SECTION 16.01 -- This Operating Agreement contains the entire agreement between the Parties, constitutes a restatement and amendment of the Lease Agreement, and supersedes all other prior oral or written agreements, commitments, or understanding with respect to the matters provided herein, except that the following provisions of prior related agreements shall remain in full force and effect: (a) Sections 2 and 4 of the Consent to Interim Trackage Rights Agreement entered into by the Parties and California Northern dated July 19, 1996, and (b) Section 13 of the Assignment Agreement entered into by the Parties and California Northern dated as of August 26, 1996. No modification of this Operating Agreement shall be binding upon the Party affected unless set forth in writing and duly executed by the Party to be charged.

SECTION 16.02 -- All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Operating Agreement shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for NWPRA, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to NWPRA at:

Northwestern Pacific Railroad Authority
Golden Gate Bridge, Highway and Transportation District
Box 9000, Presidio Station
San Francisco, California 94129-0601
Attention: Executive Director

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, California 94105-2173
Attn: David J. Miller, Esq.

(b) If intended for NCRA, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or

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by national overnight delivery service, prepaid, addressed to NCRA at:

North Coast Rail Authority
4 West Second Street
Eureka, California 95501
Attention: Executive Director

with a copy to:

Christopher J. Neary, Esq.
110 S. Main Street, Suite C
Willits, California 95490

SECTION 16.03 -- Each notice, demand, request or communication which shall be mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 16.04 -- This Operating Agreement shall be binding upon and inure to the benefit of NWPRA and NCRA, and shall be binding upon the successors and assigns of NWPRA and NCRA, subject to the limitations hereinafter set forth. NCRA may not assign its right under this Operating Agreement or any interest therein, or attempt to have any other person assume its obligations under this Operating Agreement, without the prior written consent of NWPRA, which consent may be withheld in NWPRA's sole discretion. Prior to any proposed assignment, NCRA shall secure any necessary approvals of the STB and such other regulatory approvals as may be then required.

SECTION 16.05 -- If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Operating Agreement in whole in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Operating Agreement shall remain operative and in full force and effect.

SECTION 16.06 -- If any action is brought to enforce the terms of this Operating Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees from the other Party as part of the prevailing Party's costs, the amount of which fees shall be fixed by the court and shall be made a part of any judgment

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rendered. The "prevailing Party" will be the Party that prevails in obtaining the remedy or relief that most nearly reflects the remedy or relief that such Party sought.

IN WITNESS WHEREOF, the Parties have caused this Operating Agreement to be executed in duplicate as of the day and year first herein written.

NORTHWESTERN PACIFIC RAILROAD AUTHORITY

By: _____
Title: CHAIRMAN BOARD OF DIRECTORS

By: _____
Title: Secretary for Authority

Approved as to form:

_____
Attorney for Northwestern Pacific Railroad Authority

NORTH COAST RAILROAD AUTHORITY

By: _____
Title: Chairman Board of Directors

By: _____
Title: _____

Approved as to form:

_____
Attorney for North Coast Railroad Authority

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EXHIBIT "A"

Series of Legal Descriptions of Real Property
in the County of Marin

EXHIBIT "B"

Series of Legal Descriptions of Real Property
in the County of Napa

EXHIBIT "C"

Series of Legal Descriptions of Real Property
in the County of Sonoma

EXHIBIT "D"

Interim Trackage Rights Grant and Assignment Agreement
among CNRC, NCRA, NWPRA
dated July 22, 1996

EXHIBIT "E"
Schedule 3.10 (re Coordination Agreement)

EXHIBIT "F"
Hazardous Materials Definition

EXHIBIT A

Priority of Use of Right of Way

The Lease Agreement for Northwestern Pacific Line dated August 27, 1993, by and between Southern Pacific Transportation Company, Lessor, and California Northern Railroad Company Ltd. Partnership, Lessee, addresses priority of service on the line in Section 3.09, which reads as follows:

> "In the event that Lessor undertakes to provide passenger operations on the Leased Premises, either directly or through the designation of a passenger service operator, Lessee and Lessor shall enter into an agreement (the "Coordination Agreement") that describes in detail the respective rights and obligations of dispatching, scheduling of operations and other matters concerning the joint use of the Leased Premises. Lessee and Lessor shall negotiate the Coordination Agreement in good faith so as to ensure that passenger operations have reasonable priority over freight on the Leased premises in a manner that meets the needs of the shippers on the line, and that passenger operations disrupt lessee's freight operations to the minimum extent possible. The coordination agreement shall include provisions that address the issues set forth in Schedule 3.10.

The determination of priority use of the right of way shall take into account the terms of the aforementioned freight lease for the duration of that agreement. Schedule 3.10, referred to above, is attached hereto and incorporated herein by this reference.

SCHEDULE 3.10

The Coordination Agreement shall include provisions that address, inter alia, the following:

(1) Passenger operations shall have reasonable priority over freight operations, provided that such priority shall not materially adversely affect NCRA's performance of its common carrier obligations, NCRA's conduct of rail freight operations or NCRA's ability to provide adequate service to shippers and receivers.

(2) Reasonable accommodations shall be made during any construction required for passenger operations, at Commuter Authority's expense, to allow freight operations to continue during the construction period.

(3) NCRA shall not bear any portion of any maintenance, rehabilitation or capital expense that is incurred in order to accommodate passenger service but that would not be required in order to continue freight operations substantially as such operations have been conducted by NCRA on the Easement Premises.

(4) NCRA's share of maintenance expenditures shall not exceed the amount that NCRA reasonably would have expended for maintenance in the absence of passenger operations on the Easement Premises.

(5) Capital expenditures shall be allocated between NCRA and NWPRA on an equitable basis that takes into account whether NCRA would have made such a capital expenditure if there were no passenger operations on the Easement Premises, and if so, the relative benefit to the Parties.

(6) NWPRA may require that NCRA perform upgrading of the Track and Track Support Structures and/or installation of additional trackage, signals or other facilities, at NWPRA's expenses, and NCRA may engage subcontractors to perform such work.

(7) Reasonable fees shall be established for services such as dispatching that are provided by one Party to the other.

(8) NWPRA shall reimburse NCRA for the reasonable expenses incurred by NCRA (including without limitation attorneys' fees) as a result of NCRA's participation in regulatory proceedings or public hearings concerning passenger service on the Easement Premises.

(9) There shall be mutual indemnification and an equitable allocation of environmental liability.

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EXHIBIT A

RHS
10/20/9
DGZ.
1-24-9.

All that certain real property situate in the
County of Marin, State of California, and is described as follows:

PARCEL ONE: [V-2-1 #2, 3, 4, 5, 6 and 7] (188580-3)

ALL THAT PORTION as described in the instrument to Sonoma and Marin Railroad Company, recorded May 22, 1877 in Book P of Deeds at Page 418, Records of said County.

EXCEPTING THEREFROM that portion described in the deed to the City of Novato, recorded November 7, 1974 in Book 2844 at Page 434, Official Records of said County.

PARCEL TWO: [V-2-1 #7 and 9; V-2-2 #9, 10 and 12] (188580-4)

ALL THAT PORTION as described in the instrument to Sonoma and Marin Railroad Company, recorded May 22, 1877 in Book P of Deeds at Page 416, Records of said County.

EXCEPTING THEREFROM that portion lying within Rancho Olompali.

BEING A PORTION of Survey 56, 60 and 61 of Swamp and Overflowed Lands in T3N R6W, MDB&M.

PARCEL THREE: [V-2-1 #8] (188580-9)

ALL THAT PORTION as described in the instrument to Northwestern Pacific Railroad Company, recorded July 20, 1907 in Book 110 of Deeds at Page 35, Records of said County.

EXCEPTING THEREFROM that portion described in the deed to the City of Novato, recorded November 7, 1974 in Book 2844 at Page 434, Official Records of said County.

PARCEL FOUR: [V-2-2 #11] (188580-5)

ALL THAT PORTION as described in the instrument to San Francisco and North Pacific Railroad Company, recorded August 30, 1882 in Book X of Deeds at Page 363, Records of said County.

PARCEL FIVE: [V-2-2 #13 and 14] (18850-6)

ALL THAT PORTION as described in the instrument to San Francisco and North Pacific Railroad Company, recorded March 13, 1893 in Book 25 of Deeds at Page 188, Records of said County.

PARCEL SIX: [V-2-2 #17] (188580-7)

ALL THAT PORTION as described in the instrument to Northwestern Pacific Railroad Company, recorded September 18, 1955 in Book 974 of Deeds at Page 596, Records of said County.

CONTINUED

Legal Description
(Continued)

PARCEL SEVEN: [V-2-2 #16 V-2-3 #16] (188580-8)

ALL THAT PORTION firstly described in the instrument to Sonoma and Marin Railroad Company, recorded May 22, 1877 in Book P of Deeds at Page 420, Records of said County.

PARCEL EIGHT: [V-5-1 #1] (188580-1)

ALL THAT PORTION as described in the instrument to Marin and Napa Railroad Company, recorded May 9, 1887 in Book 5 of Deeds at Page 119, Records of said County.

EXCEPTING THEREFROM any portion thereof lying within Novato Creek, as it presently exists and/or formerly existed.

PARCEL NINE: [V-5-1 #3] (188580-2)

ALL THAT PORTION as described in the instrument to Marin and Napa Railroad Company, recorded September 7, 1887 in Book 5 of Deeds at page 453, Records of said County.

EXCEPTING THEREFROM any portion thereof lying within Novato Creek, as it presently exists and/or formerly existed.

RESERVING THEREFROM an easement, 20 feet wide, for road and utility purposes, the southeasterly line thereof described as follows:

Beginning at the intersection of the southwesterly line of Grandview Ave., as described in deed to County of Marin, recorded November 15, 1979 Book 3642 page 471, Official Records of said county, with the southeasterly line of said land recorded September 7, 1887; thence southwesterly, along said southeasterly line, 170 feet.

The Westerly line of said strip of land to be drawn at right angles, northwesterly, from said southeasterly line; the northwesterly line thereof to terminate in the southwesterly line of Grandview Ave.

PARCEL TEN: [V-5-1 #8] (188580-10)

ALL THAT PORTION as described in the instrument to Northwestern Pacific Railroad Company, recorded December 29, 1933 in Book 271 of Deeds at Page 361, Records of said County.

EXCEPTING THEREFROM that portion described in the instrument to Floyd B. Trombetta, et ux, recorded July 30, 1968 in Book 2229 at Page 57, Official Records of said County

Legal Description
(Continued)

PARCEL ELEVEN: [V-5-1 #11] (188580-12)

ALL THAT PORTION as described in the instrument to Northwestern Pacific Railroad Company, recorded September 25, 1979 in Book 3615 of Deeds at Page 395, Records of said County.

PARCEL TWELVE: [V-5-1 #10] (188580-11)

ALL THAT PORTION as described in the deed to Northwestern Pacific Railroad Company, recorded February 15, 1963 in book 1658, Page 155, Official Records of said County.

DBJ
-3-21-95-

No Record Parcels -- Marin County

Those parcels situated in the County of Marin described as follows:

Parcel I: (V-2-1 portion of #2)

That portion, 50 feet wide, being 25 feet each side of the surveyed center line of Sonoma and Marin Railroad Company, now Southern Pacific Transportation Company, within Novato Creek, lying between the northerly line of land described in deed to San Francisco and North Pacific Railroad Company, recorded September 13, 1882 in Deed Book X, Page 378, Records of said County and the northerly bank of said creek.

Parcel II: (V-2-2 portion of #9)

That portion within Rancho Olompali: Being a portion of Survey 56, 60 and 61 of Swamp and Overflowed Land in T.3N., R. 6W., M.D.M. and being a portion of the land described in an instrument to Sonoma and Marin Railroad Company, recorded May 22, 1877 in Book P of Deed, Page 416, Records of said County.

Parcel III: (V-5-1, #1, 2 & 3)

That portion described in deeds to Marin and Napa Railroad Company, recorded May 9, 1887 in Book 5 of Deeds, Page 119 and in deed recorded September 7, 1887 in Book 5 of Deeds, Page 453, Records of said County, lying within Navato Creek as it presently exists/or formerly existed.

AR 04507

EXHIBIT B

DBJ
1-31-96

All those parcels of land situate in the County of Napa, State of California, described as follows:

PARCEL 1: (V-82-3 #1 and V-82-2 #6 [59169-N-9])

All that portion as described in the Deed to the Santa Rosa and Carquinez Rail Road, a corporation, recorded July 27, 1887 in Book 42 of Deeds at Page 60, Napa County Records.

EXCEPTING THEREFROM any portion thereof which lies within the boundaries of Sonoma County as the same existed at the date of said conveyance.

PARCEL 2: (V-82-2 #3 [59169-N-3])

Parcel A:
All that portion as described in the Deed to Santa Rosa and Carquinez Rail Road Company, a corporation, by Deed recorded July 27, 1887 in Book 42 of Deeds at Page 66, Napa County Records.

Parcel B:
All that portion as described in the Deed to Santa Rosa and Carquinez Rail Road Company, a corporation, by Deed recorded May 16, 1888 in Book 43 of Deeds at Page 188, Napa County Records.

EXCEPTING THEREFROM all that portion as described in the Deed to Santa Rosa and Carquinez Rail Road Company, a corporation, by Deed recorded July 27, 1887 in Book 42 of Deeds at Page 66, Napa County Records.

PARCEL 3: (V-82-2 #2 [59169-N-1])

All that portion as described in the Deed to Northern Railway Company, a corporation, by Deed recorded August 29, 1888 in Book 43 of Deeds at Page 307, Napa County Records.

PARCEL 4: (V-82-2 #5 [59169-N-6])

All that portion as described in the Deed to the Santa Rosa and Carquinez Railroad Company, a corporation, recorded August 3, 1888 in Book 43 of Deeds at Page 270, Napa County Records.

EXCEPTING THEREFROM any portion thereof which lies within the boundaries of Sonoma County as the same existed on the date of said conveyance.
CONTINUED

DESCRIPTION CONTINUED:

PARCEL 5: (V-82-2 #1 and V-82-1 #7 [59169-N-4])

All that portion as described in the Deed to Santa Rosa and Carquinez Rail Road Company, a corporation, by Deed recorded December 8, 1888 in Book 43 of Deeds at Page 419, Napa County Records.

PARCEL 6: (V-82-2 #4 [59169-N-5])

All that portion as described in the Deed to the Santa Rosa and Carquinez Rail-road Company, a corporation, by Deed recorded July 27, 1887 in Book 42 of Deeds at Page 62, Napa County Records.

PARCEL 7: (V-82-2 #7 [59169-N-8])

All that portion as described in the Deed to Northern Railway Company, a corporation, by Deed recorded June 5, 1897 in Book 57 of Deeds at Page 461, Napa County Records.

PARCEL 8: (V-82-2 #9 [59169-N-7])

All that portion as described in the Deed to Southern Pacific Railroad Company recorded March 18, 1918 in Book 120 of Deeds at Page 445, Napa County Records, described as follows:

Parcel A:
COMMENCING at a point on the Southerly line of right of way of the Southern Pacific Railroad Company, said point being 30 feet at right angles Southerly from the center line of the constructed main track of said railroad, running between Napa Junction and Santa Rosa, and opposite Engineer Survey Station 175 plus 36; thence South 20°49' West on a line that is at right angles to said center line 50 feet; thence South 69°11' East and parallel to said center line 2391.04 feet; thence South 80°30' East 254.8 feet to a point on said Southerly line of right of way; thence North 69°11' West and along said Southerly line of right of way 2640.89 feet to the point of commencement.

CONTINUED

DESCRIPTION CONTINUED:

Parcel B:
COMMENCING at a point on the Northerly line of right of way of the Southern Pacific Railroad Company, said point being opposite and at right angles to Engineer Survey Station 175 plus 36 and 30 feet at right angles Northerly from the center line of the constructed main track of said railroad, running between Napa Junction and Santa Rosa; thence South 84°11' East 96.6 feet to a point that is 55 feet at right angles Northerly from said center line; thence South 69°11' East and parallel to said center line 300 feet; thence South 54°11' East 96.6 feet to a point on said line of right of way; thence North 69°11' West 486.6 feet to the point of commencement.

AR 04511

EXHIBIT C

DEG
1-31-96

All those parcels of land situate in the County of Sonoma, State of California, described as follows:

PARCEL 1: (V-2-3 #17) [59169-S-1]

That portion of the following described property lying within the right of way referred to in the Agreement recorded May 10, 1877 in Book 59 of Deeds at Page 424, Sonoma County Records:

Parcel A:
Swamp and Overflow Survey No. 10 embracing a portion of Sections 12 and 13, Township 4 North, Range 7 West, M.D.B. & M., as described in the Patent recorded January 14, 1865 in Book A of Patents at Page 130, Sonoma County Records.

Parcel B:
Swamp and Overflow Survey No. 14 embracing a portion of Section 13, Township 4 North, Range 7 West, M.D.B. & M., as described in the Patent recorded July 20, 1865 in Book A of Patents at Page 133, Sonoma County Records.

PARCEL 2: (V-2-3 #18) [59169-S-2]

That portion of the following described property lying within the right of way referred to in the Agreement recorded May 10, 1877 in Book 59 of Deeds at Page 426, Sonoma County Records:

The fractional Northwest quarter of Section 13 and the North half of the Northeast quarter of Section 14, Township 4 North, Range 7 West, M.D.B. & M., as described in the Patent recorded July 23, 1866 in Book A of Patents at Page 172, Sonoma County Records.

PARCEL 3: (V-2-3 #19) [59169-S-3]

That portion of the following described property lying within the right of way referred to in the Agreement recorded May 10, 1877 in Book 59 of Deeds at Page 428, Sonoma County Records:

Swamp and Overflow Survey No. 8 embracing a portion of Section 7, Township 4 North, Range 6 West a portion of Section 12, Township 4 North, Range 7 West all in M.D.B. & M.

PARCEL 4: (V-2-3 #20) [59169-S-4]

All that portion as described in the Final Decree to The San Francisco and North Pacific Railroad Company, a corporation, recorded October 23, 1877 in Book 61 of Deeds at Page 409, Sonoma County Records.

PARCEL 5: (V-2-3 #21) [59169-S-5]

That portion of the following described parcels lying within the right of way referred to in the Agreement recorded May 10, 1877 in Book 59 of Deeds at Page 422, Sonoma County Records:
CONTINUED

DESCRIPTION CONTINUED:

Parcel A:

The Northeast quarter of the Northeast quarter of Section 11, Township 4 North, Range 7 West, M.D.B. & M.

Parcel B:

All that portion of the S.E. 1/4 of the S.E. 1/4 of Section 2, which lies S. Southerly of the following described line, namely, said line beginning at the large Oak tree in the fence between F. Parkers, and McCurdy's, near the 1/4 Section stake which is 160 rods East of the Section Stake marked 2,3,10,11 with the center of D.G. Healds, preemption claim and running straight with the first portion of said fence Easterly of said tree. Said line is to be extended far enough to reach the East line of the S.E. 1/4 of S.E. 1/4 of Section 2.

Parcel C:

ALSO all of the S.W. 1/4 of S.W. 1/4 of Section 1.

Parcel D:

ALSO all that portion of N.W. 1/4 of N.W. 1/4 of Section 12, which lies Southerly of the following described line, namely beginning at the North end of the fence between F. Parker, and Hynes which is in the N.W. 1/4 of N.W. 1/4 of Section 12, and running to the N.E. corner of the N.W. 1/4 of N.W. 1/4 of Section 12, the first described piece.

Parcels B, C and D lie within Township 4 North, Range 7 West, M.D.B. & M.

PARCEL 6: (V-2-3 #22) [59169-S-6]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded October 1, 1877 in Book 61 of Deeds at Page 191, Sonoma County Records.

PARCEL 7: (V-2-3 #23 and V-2-4 #23) [59169-S-7]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, recorded December 16, 1892 in Book 142 of Deeds at Page 121, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 8: (V-2-4 #24) [59169-S-8]

All that portion as described in the Deed to Sonoma and Marin Rail Road Company, a corporation, recorded July 6, 1875 in Book 63 of Deeds at Page 566, Sonoma County Records, described as follows:

That certain rail road situate in the County of Sonoma and State of California and between the City of Petaluma and the place known as the Haystack Landing with the rail road franchise right of way rail road bed.

EXCEPTING THEREFROM any portion thereof which lies outside of the right of way as defined on the "Right of Way and Track Map - Main Line - Ignacio to Willits No. V-2-4 No. 24".

PARCEL 9: (V-2-4 #'s 25, 28, 29, 31 and 34) [59169-S-9]

Five Parcels of land described in the First, Second, Fourth, Fifth and Sixth Parcels in the Deed to Northwestern Pacific Railroad Company, a California corporation, recorded June 15, 1908 in Book 249 of Deeds at Page 145, Sonoma County Records, as follows:

FIRST:
BEGINNING at the intersection of the center line of the Northwestern Pacific Railroad Company's railroad with the left bank of Petaluma Creek, said Point of Intersection being South 25°8' East thirteen and six tenths (13.6) feet from the center of the railroad drawbridge over Petaluma Creek, running thence along said bank of Petaluma Creek South 83°19' East one hundred (100) feet; thence North 6°41' East thirty (30) feet; thence North 83°19' West eighty three and three tenths (83.3) feet; thence North 25°8' West parallel to and distant thirty (30) feet Easterly from said center line of railroad one hundred seventy and two tenths (170.2) feet; thence South 64°52' West one hundred forty (140) feet; thence South 24°2' East one hundred sixteen and seven tenths (116.7) feet to the left bank of Petaluma Creek; thence along said bank South 83°19' East one hundred thirty two and one tenth (132.1) feet to place of beginning.

SECOND:
Also a tract of land sixty (60) feet in width, being thirty (30) feet on each side of the centerline of the Northwestern Pacific Railroad Company's railroad as the same is now constructed and of the length of said center line described as follows:

CONTINUED

ESCRIPTION CONTINUED:

BEGINNING at a point on said center line North 25°8' West one hundred seventy two and seven tenths (172.7) feet from the center of the railroad drawbridge over Petaluma Creek; running thence North 25°8' West eight hundred eighty three and two tenths (883.2) feet; thence by a curve of 4° or one thousand four hundred thirty two and seven tenths (1432.7) feet radius to the left one thousand three hundred six and seven tenths (1306.7) feet.

FOURTH:
Also a tract of land described as follows:

BEGINNING at a point on the Southerly lire of the right of way of the Northwestern Pacific Railroad Company's railroad, said point being South 77°24' East one hundred and forty (140) feet from the intersection of said Southerly line of right of way with the Southeasterly line of Block 21 of the City of Petaluma, running thence on said Southerly line of right of way South 77°24' East seven hundred and thirty (730) feet; thence South 12°36' West ten (10) feet; thence North 7°24' West seven hundred and thirty (730) feet; thence North 12°36' East ten (10) feet to place of beginning.

FIFTH:
Also a tract of land twelve (12) feet in width, extending through Block 21 in the City of Petaluma and adjoining on the North the land conveyed by J.A. McNear to San Francisco & North Pacific Railway Company by Deed dated October 10, 1893 and recorded in Book 150 of Deeds, Page 511, Sonoma County Records, Excepting therefrom any interest heretofore conveyed to the Standard Oil Company.

SIXTH:
Also a tract of land sixty (60) feet in width, being thirty (30) feet on each side of the center line of the Northwestern Pacific Railroad Company's railroad as the same is now constructed and extending from the right or Southerly bank of Petaluma Creek through all land owned by said parties or either of them, between the Southerly bank of Petaluma Creek and the Northerly line of the County road from Petaluma to San Rafael.

EXCEPTING from the Parcel described as FIFTH above all that portion as described as Parcel No. 1 in the deed to the City of Petaluma, a Municipal corporation by deed recorded October 17, 1972 in Book 2703 of Official Records at page 9, Sonoma County Records described as follows:

"Parcel 1:
All that certain real property situate, lying and being in the City of Petaluma, County of Sonoma, State of California, bounded and described as follows:

CONTINUED

DESCRIPTION CONTINUED:

BEGINNING at a point on the Easterly line of Jefferson Street, said point lies fifteen (15) feet perpendicular from the center line of the existing Railroad track; thence leaving said Easterly line Southeasterly, parallel and fifteen (15) feet from said Railroad track 125 track 125 feet; thence leaving said parallel line on a curve to the left with a radius of 1,510 feet to a point on the property line between Lots 3 and 4 of Block 21, as shown on Harman's Map of East Petaluma, said point also being on the Northeasterly right-of-way line of the Northwestern Pacific Railroad Company; thence leaving said property line Northwesterly along said right-of-way line 20 feet more or less to a point on the Easterly line of Jefferson Street; thence Southwesterly along said Easterly line of Jefferson Street 18 feet to the Point of Beginning.

Being a portion of Lots 1, 2 and 3 of Block 21, as shown on Harman's Map of East Petaluma".

PARCEL 10: (V-2-4 #26) [59169-S217]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded May 25, 1915 in Book 331 of Official Records at Page 370, Sonoma County Records.

EXCEPTING THEREFROM all that portion as described in the deed to Quarry Products, Inc., a corporation dated October 21, 1981 recorded December 21, 1981 as Document No. 81-072958.

PARCEL 11: (V-2-4 #32) [59169-S218]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded December 8, 1911 in Book 280 of Deeds at Page 498, Sonoma County Records.

EXCEPTING THEREFROM all of Parcel 2 as shown in the deed to the City of Petaluma, dated March 23, 1972, recorded October 17, 1972 in Book 2703 of Official Records at Page 9, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as conveyed in the deed to Miller B. McNear et ux., by deed dated May 22, 1987, recorded June 30, 1987 in Document No. 87062087, Sonoma County Records.

PARCEL 12: (V-2-4 #30) [59169-S-10]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded November 10, 1870 in Book 31 of Deeds at Page 232, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 13: (V-2-4 #'s 35, 41 and 44) [59169-S-11]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, recorded December 22, 1910 in Book 269 of Deeds at Page 453, Sonoma County Records.

PARCEL 14: (V-2-4 #33) [59169-S-12]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, recorded November 10, 1893 in Book 150 of Deeds at Page 511, Sonoma County Records.

PARCEL 15: (V-2-4 #39) [59169-S-13]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, recorded November 10, 1893 in Book 147 of Deeds at Page 617, Sonoma County Records.

PARCEL 16: (V-2-4 #42) [59169S-211]

All that portion as described in the Deed to Northwestern Pacific Railroad Company by Deed recorded November 29, 1910 in Book 269 of Deeds at Page 288, Sonoma County Records.

PARCEL 17: (V-2-4 #43) [59169-S212]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded November 7, 1910 in Book 269 of Deeds at Page 117, Sonoma County Records.

PARCEL 18: (V-2-4 #46) [59169-S220]

All that portion as described in the Deed to Peter Donahue by Deed recorded March 13, 1871 in Book 33 of Deeds at Page 82, Sonoma County Records.

EXCEPTING THEREFROM all that portion as described in the deed to the City of Petaluma, dated May 3, 1972, recorded October 17, 1972 in Book 2703 of Official Records at page 12, Sonoma County Records.

ALSO EXCEPTING THEREFROM the Southwesterly 315 feet of land described in deed recorded June 15, 1908, Deed Book 249, Page 145, Records of said County.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 19: (V-2-4 #48) [59169-S-14]

All that portion as described in the Deed to Peter Donahue, recorded November 5, 1870 in Book 31 Deeds at Page 209, Sonoma County Records.

PARCEL 20: (V-2-4 #49) [59169-S-15]

All that portion as described in the Deed to Peter Donahue, recorded November 10, 1870 in Book 31 Deeds at Page 235, Sonoma County Records.

PARCEL 21: (V-2-4 #50) [59169-S-16]

All that portion as described in the Deed to Peter Donahue, recorded November 5, 1870 in Book 31 Deeds at Page 204, Sonoma County Records.

PARCEL 22: (V-2-4 #'s 51 thru 54) [59169-S-17]

All that portion as described in the Decree of Condemnation to The San Francisco and North Pacific Railroad Company, a corporation, recorded December 1, 1892 in Book 141 Deeds at Page 471, Sonoma County Records, described as follows:

And also one other tract commencing at a point where the dividing line between ~~la~~nd claimed and possessed by W.D. Bliss and lands claimed and possessed by ~~Ja~~mes F. Pharris, O.B. Matthews and J.F. Elliott is intersected by the center line of the said Railroad Company's railroad as the same was located at the time of the commencement of this action; thence running Southerly along said center line and thirty feet on each side thereof, over and through the land so claimed and possessed by said Pharris, Matthews and Elliott, eight hundred and forty three feet to the Northerly line of lands claimed and possessed by one Harris, where Christian name is unknown and containing 2.32 acres more or less, which said last mentioned and described tract of land is a portion of a larger tract owned and claimed by Pharris, Matthews and Elliott.

PARCEL 23: (V-2-4 #55) [59169-S-18]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded September 24, 1874 in Book 45 Deeds at Page 639, Sonoma County Records.

PARCEL 24: (V-2-4 #56) [59169-S-19]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded January 8, 1873 in Book 46 Deeds at Page 20, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 25: (V-2-4 #57) [59169-S-20]

All that portion as described in the Deed to Peter Donahue, recorded March 13, 1871 in Book 33 Deeds at Page 89, Sonoma County Records.

PARCEL 26: (V-2-4 #58 and V-2-5 #58) [59169-S-21]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded September 19, 1870 in Book 30 Deeds at Page 519, Sonoma County Records.

PARCEL 27: (V-2-4 #59) [59169-S219]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded October 24, 1916 in Book 345 of Deeds at Page 266, Sonoma County Records.

EXCEPTING THEREFROM all that portion as described in the deed to Sonoma County Flood Control and Water Conservation District dated May 28, 1962, recorded September 18, 1962 in Book 1913 of Official Records at Page 916, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as described in the deed to W. Gail Allen, et ux, dated January 27, 1989, recorded February 1, 1989, Document No. 890009165, Sonoma County Records.

PARCEL 28: (V-2-4 #71) [59169-S-22]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, recorded November 17, 1979 in Book 2429 Official Records at Page 951, Sonoma County Records, described as follows:

Parcel A:

All of the lands described in the following deeds:

1. Deed dated January 2, 1904 from J.O.B. Matthews, et al, to Petaluma & Santa Rosa Railway Company (now Petaluma & Santa Rosa Railroad Company), recorded February 3, 1904 in Book 208 of Deeds, Page 606, Records of said County.

2. Deed dated February 15, 1904 from Emma L. Keller, et al, to Petaluma and Santa Rosa Railway Company (now Petaluma & Santa Rosa Railroad Company) recorded February 15, 1904 in Book 211 of Deeds, Page 83, Records of said County.

CONTINUED

:SCRIPTION CONTINUED:

3. Deed dated January 18, 1904 from James G. Marshall to Petaluma & Santa Rosa Railway Company (now Petaluma & Santa Rosa Railroad Company) recorded January 27, 1904 in Book 208 of Deeds, Page 562, Records of said County.

Parcel B:

That portion of the land described in deed dated December 18, 1903, from Annie Ralston to Petaluma and Santa Rosa Railway Company (now Petaluma and Santa Rosa Railroad Company), recorded December 28, 1903 in Book 208 of Deeds, Page 356, Records of said County, which lies Northerly of the following described line:

BEGINNING at a point on the Easterly line of land described in said deed dated December 18, 1903, that is distant 32.5 feet Easterly, measured radially, from the original located center line of Petaluma & Santa Rosa Railroad Company's main track (Petaluma to Sebastopol) at Enginner Station 29+38.78, said Engineer Station being the Northerly terminus of that certain 2° curve to the left, having a length of 261.67 feet, described in said deed dated December 18, 1903; thence Westerly, along the radial line intersection said center line at said Engineer Station, 55.0 feet to a point on the Westerly line of said land described in said deed dated December 18, 1903.

EXCEPTING THEREFROM all that portion as described in the deed to Paul Zell ~~rded~~ February 26, 1965 in Book 2110 of Official Records at page 666, Sonoma ~~ty~~ Records.

Parcel C:

All of the land described as Parcel 1 in deed dated March 25, 1904, from Katy Silva, et al, to Petaluma & Santa Rosa Railway Company (now Petaluma & Santa Rosa Railroad Company) recorded March 28, 1904 in Book 211, Page 397, Records of said County.

PARCEL 29: (V-2-5 #60) [59169-S-23]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded December 21, 1872 in Book 46 Deeds at Page 16, Sonoma County Records.

PARCEL 30: (V-2-5 #61) [59169-S-24]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, recorded December 10, 1872 in Book 141 Deeds at Page 622, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 31: (V-2-S #63) [59169-S-25]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad Company, a corporation, recorded March 13, 1871 in Book 33 Deeds at Page 85, Sonoma County Records.

PARCEL 32: (V-2-S #66) [59169-S-27]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded September 19, 1870 in Book 30 Deeds at Page 517, Sonoma County Records.

PARCEL 33: (V-2-S #67) [59169-S-28]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad Company, a corporation, recorded March 13, 1871 in Book 33 Deeds at Page 87, Sonoma County Records.

PARCEL 34: (V-2-S #68) [59169-S-29]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded February 10, 1874 in Book 43 Deeds at Page 513, Sonoma County Records.

PARCEL 35: (V-2-S #71) [59169-S-30]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded January 8, 1871 in Book 46 Deeds at Page 22, Sonoma County Records.

PARCEL 36: (V-2-S #73) [59169-S-31]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded January 29, 1873 in Book 41 Deeds at Page 197, Sonoma County Records.

PARCEL 37: (V-2-S #74) [59169-S-32]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded December 21, 1872 Book 46 Deeds at Page 18, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 38: (V-2-5 #75) [59169-S-33]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded January 29, 1873 in Book 41 Deeds at Page 199, Sonoma County Records.

PARCEL 39: (V-2-5 #76) [59169-S-34]

All that portion as described in the Deed to Northwestern Pacific Railroad, recorded October 23, 1973 in Book 2810 of Official Records at Page 215, Sonoma County Records.

PARCEL 40: (V-2-5 #77) [59169-S-35]

All that portion as described in the Deed to Northwestern Pacific Railroad, recorded October 23, 1973 in Book 2810 of Official Records at Page 216, Sonoma County Records.

PARCEL 41: (V-2-5 #78) [59169-S-36]

All that portion as described in the Deed to Northwestern Pacific Railroad, recorded October 23, 1973 in Book 2810 of Official Records at Page 217, Sonoma County Records.

EXCEPTING THEREFROM all that portion as described in the Deed to United States Postal Service recorded August 12, 1982 under Document No. 82043307.

ALSO EXCEPTING THEREFROM all that portion as described in the Deed to Viking Freight System, Inc., a corporation, recorded August 12, 1982 under Document No. 82043308.

PARCEL 42: (V-2-5 #79) [59169-S-37]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, recorded May 14, 1974 in Book 2863 of Official Records at Page 197, Sonoma County Records.

PARCEL 43: (V-2-6 #76) [59169-S-38]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, recorded November 5, 1870 in Book 31 of Deeds at Page 202, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 44: (V-2-6 #'s 77, 83 and 84; V-2-7 #'s 84 thru 86) [59169-S-39]

All that portion as described in the Final Order of Condemnation to The San Francisco and North Pacific Railroad Company, a corporation, recorded December 1, 1892 in Book 141 Deeds at Page 471, Sonoma County Records, described as follows:

It is ordered, adjudged and decreed that said Tract of land described in plaintiff's complaint bounded and described as follows, being situate in the County of Sonoma, State of California to wit:

One tract commencing at a point where the dividing line between lands claimed and possessed by one Brunk whose Christian name is unknown and the lands claimed and possessed by the heirs of the estate of Thomas S. Page, deceased, known as the "Cotate Rancho", is intersected by the center line of the said Railroad Company's railroad as the same was located at the time of the commencement of this action; thence running Southerly along the said center line and thirty feet on each side thereof over and through the land known as the "Cotate Rancho" twenty five thousand eight hundred and seventy three feet to the North line of land claimed and possessed by one Wharff whose Christian name is unknown and containing 35.60 acres more or less, which above described tract of land is a portion of a larger tract known as the "Cotate Rancho".

RCEL 45: (V-2-6 #80) [59169-S-40]

All that portion as described second in the Deed to The San Francisco and North Pacific Railway Company, a corporation, by Deed recorded May 11, 1904 in Book 213 of Deeds at Page 35, Sonoma County Records, described as follows:

BEGINNING at a point on the Easterly line of right of way of said San Francisco and North Pacific Railway, said point being North 35° East thirty four and two tenths (34 2/10) feet from the intersection of the center line of Cotati Avenue with the center line of the San Francisco and North Pacific Railway Company's railroad; running thence North 63°45' East eighty (80) feet; thence South 26°15' East four hundred and ninety one and five tenths (491 5/10) feet; thence South 63°45' West eighty (80) feet to the said Easterly line of right of way; thence on said line North 26°15' West four hundred and ninety one and five tenths (491 5/10) feet to the Place of Beginning.

EXCEPTING THEREFROM all that portion as conveyed to S.R. Frizelle, et ux, by Deed recorded August 17, 1944 in Book 617 of official records at Page 58, Sonoma County Records.

CONTINUED

)ESCRIPTION CONTINUED:

ALSO EXCEPTING THEREFROM all that portion as conveyed to S.R. Frizelle, et ux, by deed recorded October 24, 1946 in Book 716 of Official Records at Page 53, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as conveyed to the City of Cotati by deed recorded February 6, 1967 in Book 2252, of Official Records, at Page 504, Sonoma County Records.

PARCEL 46: (V-2-7 #90) [59169-S-41]

All that portion as described in the Deed to San Francisco and North Pacific Railroad Company, a corporation by Deed recorded June 22, 1871 in Book 34 of Deeds at Page 192, Sonoma County Records.

PARCEL 47: (V-2-7 #91) [59169-S-42]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded October 11, 1870 in Book 31 of Deeds at Page 66, Sonoma County Records.

PARCEL 48: (V-2-7 #93) [59169-S-43]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded December 21, 1872 in Book 46 of Deeds at Page 14, Sonoma County Records.

PARCEL 49: (V-2-7 #'s 94 thru 96 and V-2-8 #96) [59169-S-44]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded April 7, 1875 in Book 50 of Deeds at Page 70, Sonoma County Records.

PARCEL 50: (V-2-7 #97) [59169-S-45]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, by Deed recorded September 4, 1891 in Book 133 of Deeds at Page 112, Sonoma County Records.

PARCEL 51: (V-2-7 #98) [59169-S-46]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a Corporation, by Deed recorded July 17, 1973 in Book 2782 of Deeds at Page 291, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 52: (V-2-7 #99) [59169-S-47]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded April 4, 1974 in Book 2851 of Deeds at Page 491, Sonoma County Records.

PARCEL 53: (V-2-8 #98) [59169-S-48]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad Company by Deed recorded August 10, 1870 in Book 30 of Deeds at Page 353, Sonoma County Records.

PARCEL 54: (V-2-8 #99) [59169-S-49]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad Company, a corporation, by Deed recorded August 10, 1870 in Book 30 of Deeds at Page 354, Sonoma County Records.

PARCEL 55: (V-2-8 #100) [59169-S-50]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad by Deed recorded August 10, 1870 in Book 30 of Deeds at Page 355, Sonoma County Records.

PARCEL 56: (V-2-8 #103) [59169-S-51]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, by Deed recorded May 11, 1908 in Book 246 of Deeds at Page 430, Sonoma County Records.

PARCEL 57: (V-2-8 #104) [59169-S-52]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, by Deed recorded January 9, 1908 in Book 244 of Deeds at Page 306, Sonoma County Records.

PARCEL 58: (V-2-8 #105) [59169-S-53]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded December 30, 1907 in Book 244 of Deeds at Page 206, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 59: (V-2-8 #106) [59169-S-54]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded April 2, 1908 in Book 246 of Deeds at Page 247, Sonoma County Records.

PARCEL 60: (V-2-8 #110) [59169-S-55]

An easement or lesser rights as conveyed by Peter Donahue to the San Francisco and North Pacific Railroad Company, a corporation, by Deed dated April 28, 1871, recorded November 10, 1871 in Book 36 of Deeds at Page 8, Sonoma County Records, which recites:

"All and every the rights of way, privileges and easements not herein before especially enumerated and referred to which may have been in any manner granted and conveyed or intended to be granted and conveyed to the party of the first part by instrument in writing under seal or otherwise by any person or persons whoever for the roadway upon which the party of the first part has heretofore constructed or located the railroad of the party of the second part", as the same may pertain to that certain parcel of land as conveyed by Deed from Peter Donahue to Alexander P. Pettit dated October 31, 1871, recorded November 1, 1871 in Book 35 of Deeds at Page 482, Sonoma County Records, described as follows:

All that certain lot, tract, piece or parcel of land situate lying and begin in the County of Sonoma and State of California bounded and described as follows viz:

COMMENCING in the middle of Santa Rosa Creek where the line running Westerly with the center of Third Street in Santa Rosa, would cross said Creek, thence up said Creek South 65 1/2° East, five chains and twenty two links, thence North 80 3/4 East three chains and five links, thence North 65 1/2° East two chains and fifty six links thence North 47° West seven chains and eighty links to a stake thence South 43° West six chains and thirty five links to the place of beginning known as the Peabody Ranch. Subject to the right of way to San Francisco and North Pacific Rail Road Company of sixty feet in width as now is at present located and built.

EXCEPTING THEREFROM all that portion thereof as conveyed to the San Francisco and North Pacific Rail Road Company by Deed dated February 15, 1888, recorded December 17, 1888 in Book 106 of Deeds at Page 588, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 61: (V-2-8 #'s 111 thru 114 and 119 thru 124) [59169-S-56]

All that portion described in the Deed to Peter Donahue by Deed recorded February 25, 1871 in Book 33 of Deeds at Page 49, Sonoma County Records.

EXCEPTING THEREFROM all that portion described as "Tract One" in the deed to the California Fruit Canners Association, a corporation recorded July 12, 1916 in Book 343 of Official Records at Page 70, Sonoma County Records.

ALSO EXCEPTING THEREFROM that portion thereof lying Northerly of the Northerly line of 3rd Street and Westerly of the Westerly line of that certain strip of land, 60 feet wide, described in said deed recorded February 25, 1871. And also lying Southwesterly of a line distant 315 feet Southwesterly, parallel with the Southwesterly line of Wilson Street in the City of Santa Rosa.

PARCEL 62: (V-2-8 #116) [59169-S213]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded November 12, 1915 in Book 338 of Deeds at Page 66, Sonoma County Records.

EXCEPTING THEREFROM the Westerly 125 feet, measured Easterly from the Westerly e thereof.

ARCEL 63: (V-2-8 #126) [59169-S-57]

All that portion as described in the Deed to The San Francisco and Humboldt Bay Railroad Company by Deed recorded June 29, 1871 in Book 33 of Deeds at Page 576, Sonoma County Records.

PARCEL 64: (V-2-8 #107 and 109) [59169-S-58]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded December 17, 1888 in Book 106 of Deeds at Page 588, Sonoma County Records, described as follows:

All that certain lot, piece or parcel of land situate, lying and being in the City of Santa Rosa, County of Sonoma, State of California and bounded and particularly described as follows to wit:

CONTINUED

DESCRIPTION CONTINUED:

COMMENCING in the middle of the Santa Rosa Creek the line running Westerly with the center of Third Street in Santa Rosa would cross said creek; thence up said creek South 65 1/2° East 5.22 chains; thence North 80 3/4° East 3.05 chains; thence North 71.65 1/2° East 2.56 chains; thence North 47° West 7.80 chains to a stake; thence South 43° West 6.35 chains to the place of beginning. Formerly known as the Peabody Ranch.

EXCEPTING THEREFROM the following described tract commencing at a point in the City of Santa Rosa in the center of the Santa Rosa Creek, immediately under the center of the Bridge and track of the San Francisco and North Pacific Railroad and running thence up said Creek to the South West corner of what is known in said City as Gautiers Addition; thence along the line of Gautiers Addition in a Northerly direction to Third Street; thence Westerly to the center of the track of the San Francisco and North Pacific Rail Road and thence Southerly along and with the center line of said Railroad track to the point of beginning said last above tract herein excepted being the same land conveyed to Thomas J. Ludwig by John K. and Theresa M. Smith by Deed dated on the 21st day of January A.D. 1884 and recorded in Liber 92 of Deeds, Page 569, Sonoma County Records. The land herein conveyed being the same land conveyed to Grantor herein by Theresa M. Smith by Deed dated October 27 A.D. 1887 and recorded in Liber 109 of Deeds, Page 557, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as described as Tract 2 in the Deed to California Fruit Canners Association, a corporation, recorded June 12, 1916 in Book 343 of Official Records at Page 70, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as conveyed to Poultry Producers of Central California recorded April 3, 1952 in Book 1118 of Official Records at Page 422, Sonoma County Records.

PARCEL 65: (V-2-8 #127) [59169-S-59]

All that portion as described in the Deed to Peter Donahue by Deed recorded March 13, 1871 in Book 33 of Deeds at Page 95, Sonoma County Records.

PARCEL 66: (V-2-8 #'s 128 thru 130) [59169-S-60]

All that portion as described in the Deed to Peter Donahue by Deed recorded March 7, 1871 in Book 33 of Deeds at Page 73, Sonoma County Records.

EXCEPTING THEREFROM all that portion as described in the deed to A.M. Trombetta, recorded June 24, 1973 in Book 2784 of Official Records at Page 439, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 67: (V-2-8 #132) [59169-S-61]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded May 31, 1871 in Book 33 of Deeds at Page 506, Sonoma County Records.

PARCEL 68: (V-2-8 #133, 134 and 135) [59169-S-62]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded June 27, 1873 in Book 40 of Deeds at Page 385, Sonoma County Records.

PARCEL 69: (V-2-8 #136) [59169-S-63]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to J. M. Wooldridge, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 70: (V-2-8 #137 and 138; V-2-9 #139) [59169-S-64]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to John Adams, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 71: (V-2-8 #140) [59169-S-66]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a Corporation by Deed recorded October 11, 1921 in Book 404 of Deeds at Page 68, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 72: (V-2-9 #140) [59169-S-67]

All that portion as described in the Deed to Peter Donahue by Deed recorded March 13, 1871 in Book 33 of Deeds at Page 93, Sonoma County Records.

PARCEL 73: (V-2-9 #141) [59169-S-68]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation, by Deed recorded April 13, 1916 in Book 340 of Deeds at Page 481, Sonoma County Records.

PARCEL 74: (V-2-9 #143) [59169-S-69]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to L. Hendrick, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

CEL 75: (V-2-9 #144) [59169-S-70]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded December 12, 1872 in Book 46 of Deeds at Page 3, Sonoma County Records.

PARCEL 76: (V-2-9 #145 and 146) [59169-S-71]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded June 16, 1871 in Book 34 of Deeds at Page 154, Sonoma County Records.

PARCEL 77: (V-2-9 #147) [59169-S-72]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded August 16, 1871 in Book 34 of Deeds at Page 496, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 78: (V-2-9 #148 and 149) [59169-S-73]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, by Deed recorded December 12, 1972 in Book 46 of Deeds at Page 9, Sonoma County Records.

PARCEL 79: (V-2-9 #150) [59169-S-74]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, by Deed recorded June 4, 1903 in Book 205 of Deeds at Page 315, Sonoma County Records.

PARCEL 80: (V-2-9 #151) [59169-S-75]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation, by Deed recorded January 14, 1904 in Book 208 of Deeds at Page 463, Sonoma County Records, described as follows:

COMMENCING at the Southeastern corner or end of lot No. 30 in Block No. 4 as shown and designated upon the map of the Town of Fulton, on file in Book 4 of Maps at page 15, in the office of the County recorder of Sonoma County, being at the juncture of the Westerly line of said lot No. 30 and First Street, as shown said map; and running thence Northwesterly to the Northwest corner of lot No. , in block 2 of said Town of Fulton, as shown on said map; thence Westerly parallel with the Southerly line of A. street, to the Easterly line of the land of said party of the second part thence Southeasterly, along said Easterly line to a point opposite the point of commencement, thence Easterly in a line parallel with the Southerly line of A. street to the place of beginning; The land so conveyed being a strip of land lying between the lands of said Railway Company, and the Western boundary line of said town of Fulton, and being same land conveyed by James Fulton to C.A. Cain by quitclaim deed recorded in Vol. 201 of deeds, at page 63.

EXCEPTING THEREFROM all that portion as conveyed to Fulton Winery Corporation, a corporation, by Deed recorded March 4, 1904 in Book 211 of Deeds at Page 223, Sonoma County Records.

PARCEL 81: (V-2-9 #153) [59169-S-76]

DELETED

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 82: (V-2-9 #154 and 155) [59169-S-77]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Frances Briggs, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 83: (V-2-9 #156 and V-2-10 #156) [59169-S-78]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded January 17, 1873 in Book 45 of Deeds at Page 171, Sonoma County Records.

PARCEL 84: (V-2-9 #157) [59169-S-79]

DELETED

CEL 85: (V-2-10 #157) [59169-S-80]

l that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Willis Faught, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

EXCEPTING THEREFROM all that portion as conveyed to the San Francisco and North Pacific Railroad Company by Deed recorded September 11, 1871 in Book 35 of Deeds at Page 89, Sonoma County Records.

PARCEL 86: (V-2-10 #158 and 159) [59169-S-81]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded September 11, 1871 in Book 35 of Deeds at Page 89, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

EXCEPTING THEREFROM all that portion thereof as conveyed to Soiland, a co-partnership by Deed recorded April 30, 1980 in Document No. 80025303, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion thereof as conveyed to Soiland, a co-partnership by Deed recorded May 6, 1986, Document No. 86031144, Sonoma County Records.

PARCEL 87: (V-2-10 #161 and 163) [59169-S-82]

All that portion as described in the Deed to Peter Donahue by Deed recorded April 1, 1871 in Book 32 of Deeds at Page 579, Sonoma County Records.

PARCEL 88: (V-2-10 #162) [59169-S-83]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Abigail W. Clemens, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 89: (V-2-10 #164) [59169-S-84]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to J.B. McCutcheon, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 90: (V-2-10 #166) [59169-S-85]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

CONTINUED

DESCRIPTION CONTINUED:

A right of way over, through, upon and across lands or land belonging to R.T. Mitchell, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 91: (V-2-10 #168) [59169-S-86]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Mary E. Carter, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 92: (V-2-10 #169) [59169-S-87]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to J.W. Yates, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 93: (V-2-10 #170) [59169-S-88]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Henry Bell, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 94: (V-2-10 #171) [59169-S-89]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded July 3, 1871 in Book 34 of Deeds at Page 238, Sonoma County Records.

EXCEPTING THEREFROM all that portion as conveyed to C.V. Geer, et al, by deed recorded May 5, 1887 in Book 106 of Deeds at page 211, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as conveyed to Sonoma County Cooperative Winery, a California Corporation by Deed recorded April 15, 1937 in Book 427 of Official Records at Page 413, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion conveyed to the County of Sonoma, as described in deed dated December 17, 1992, recorded September 17, 1993 as Document No. 1993-0117210, Sonoma County Records, described as follows:

"Being that portion of the lands of Northwestern Pacific Railroad Company as said lands are described by Deed recorded in Book 34 of Deeds, Page 238, Official Records of the County of Sonoma, lying Westerly of the proposed Easterly right-of-way line of Windsor Road as said line is shown on that map entitled "Record of Survey for the proposed Right-of-Way, including Drainage ...sements, Slope Easements, and Temporary Construction Easements for a portion ...Windsor Road", recorded in Book 458 of Maps, at Pages 12-16, in the Office of ...e County Recorder of the County of Sonoma, State of California, and Northerly of the Northerly line of that parcel of land as described in Deed recorded May 12, 1887 in Book 106 of Deeds, at Page 211, Official Records of said County."

PARCEL 95: (V-2-10 #176 and V-2-11 #176) [59169-S-90]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to Andrew Spence, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 96: (V-2-11 #177) [59169-S-91]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

CONTINUED

DESCRIPTION CONTINUED:

A right of way over, through, upon and across lands or land belonging to S.D. Lampher, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 97: (V-2-11 #179) [59169-S-92]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to J. Oliver Ogle, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 98: (V-2-11 #180) [59169-S-93]

All that portion as described in the deed to Peter Donahue by the agreement recorded March 9, 1871 in Book B of Bonds and Agreements at Page 451, Sonoma County Records described as follows:

A right of way over, through, upon and across lands or land belonging to R.J. Shipley, or in which they may have an interest, upon the line of said road in Sonoma County California, to and for the width of 80 feet and for the whole length of the line of said road where the same is now located by G. Block Chief Engineer of said road, in accordance with his profile of said roads.

PARCEL 99: (V-2-11 #181) [59169-S-94]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded April 9, 1874 in Book 45 of Deeds at Page 351, Sonoma County Records.

EXCEPTING THEREFROM all that portion lying Easterly of a line measured 80 feet Easterly from and parallel with the Westerly line of the above described parcel.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 100: (V-2-11 #182) [59169-S-95]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded August 30, 1872 in Book 43 of Deeds at Page 8, Sonoma County Records.

PARCEL 101: (V-2-11 #183) [59169-S-96]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded December 12, 1972 in Book 46 of Deeds at Page 12, Sonoma County Records.

PARCEL 102: (V-2-11 #185) [59169-S-97]

All that portion as described in the deed from A. Strong, et al., to Peter Donahue recorded April 1, 1871 in Book 32 of Deeds at Page 572, Sonoma County Records.

PARCEL 103: (V-2-11 #186) [59169-S221]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded March 20, 1916 in Book 340 of Deeds at ge 335, Sonoma County Records.

PARCEL 104: (V-2-11 #187) [59169-S222]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded March 18, 1916 in Book 340 of Deeds at Page 320, Sonoma County Records.

PARCEL 105: (V-2-11 #188) [59169-S-98]

All that portion as described in the Deed to Peter Donahue by Deed recorded April 25, 1871 in Book 33 of Deeds at Page 284, Sonoma County Records.

PARCEL 106: (V-2-11 #189) [59169-S-99]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded December 12, 1872 in Book 46 of Deeds at Page 1, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 107: (V-2-11 #190, 191 and 192) [59169-S100]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded January 29, 1874 in Book 43 of Deeds at Page 454, Sonoma County Records.

PARCEL 108: (V-2-11 #195 and V-2-12 #199) [59169-S101]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded September 4, 1917 in Book 352 of Deeds at Page 381, Sonoma County Records.

PARCEL 109: (V-2-11 #196 and V-2-12 #196 thru 198) [59169-S102]

All that portion as described in the Final Order of Condemnation in favor of The San Francisco and North Pacific Railroad Company, a corporation, recorded April 9, 1874 in Book 44 of Deeds at Page 531, Sonoma County Records.

PARCEL 110: (V-2-11 #193 and 194) [59169-S103]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation by Deed recorded December 15, 1896 in Book 167 of Deeds at Page 469, Sonoma County Records, described as follows:

Parcel A:
All that certain lot, piece and parcel of land situate, lying and being in the County of Sonoma, State of California, and bounded and described as follows, to wit:

BEGINNING at the intersection of the Westerly line of the right of way of the San Francisco and North Pacific Railway Company with the center of the lane dividing the land of Mrs. Grant from the land of C.L. McCoy, running thence Westerly along the center of said lane sixty (60) feet, thence Southerly, parallel to and distant one hundred (100) feet from the center line of the San Francisco and North Pacific Railway Company's right of way, five hundred and seventy two and one half (572 1/2) feet, thence at right angles Easterly sixty (60) feet, to the said Westerly line of right of way, thence on said line Northerly five hundred and seventy two and one half (572 1/2) feet, more or less, to the place of beginning.

Parcel B:
Together with a free and uninterrupted right of way twenty (20) feet wide from the Westerly line of the said described tract (Parcel 111A above) to the County Road.

CONTINUED

)ESCRIPTION CONTINUED:

PARCEL 111: (V-2-12 #200 and 202) [59169-S104]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded November 25, 1871 in Book 36 of Deeds at Page 94, Sonoma County Records.

EXCEPTING THEREFROM the Southwesterly 25 feet thereof lying between the Northerly prolongations of the Easterly and Westerly lines, respectively, of the land described in said deed from N.B. Coffman, recorded September 3, 1907 in Deed Book 238, Page 441, Records of said County.

PARCEL 112: (V-2-12 #203) [59169-S105]

DELETED

PARCEL 113: (V-2-12 #204) [59169-S106]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded August 28, 1907 in Book 238 of Deeds at Page 405, Sonoma County Records.

PARCEL 114: (V-2-12 #205) [59169-S107]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded December 2, 1907 in Book 239 of Deeds at Page 428, Sonoma County Records.

PARCEL 115: (V-2-12 #206 and 207) [59169-S108]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation, by Deed recorded November 20, 1871 in Book 36 of Deeds at Page 92, Sonoma County Records.

PARCEL 116: (V-2-12 #208) [59169-S109]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded November 22, 1871 in Book 36 of Deeds at Page 96, Sonoma County Records.

PARCEL 117: (V-2-12 #209 and 210) [59169-S110]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded November 23, 1871 in Book 36 of Deeds at Page 97, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

EXCEPTING THEREFROM all that portion thereof as conveyed to Nulco Fabricators, a California corporation, by deed recorded November 20, 1946 in Book 710 of Official Records at page 304, Sonoma County Records.

PARCEL 118: (V-2-12 #'s 211 and 223 thru 227) [59169-S111]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded November 23, 1871 in Book 36 of Deeds at Page 102, Sonoma County Records, described as follows:

All of that certain piece, parcel or tract of land lying, being and situate in the County of Sonoma, State of California, and being a portion of the Sotoyome Rancho, more particularly described as follows:

Parcel A:
Being a strip or tract of land one hundred feet (100 ft.) upon the located line of the said San Francisco and North Pacific Railroad Company's railroad. The center of said railroad track being the center of said tract of land; said tract of land commencing at the Station 1536+68 upon said line of said railroad and ending at the Station 1542+71 upon said line of said railroad, being in length six hundred and three feet (603 ft.)

PARCEL 119: (V-2-12 #212) [59169-S112]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded February 26, 1872 in Book 36 of Deeds at Page 223, Sonoma County Records.

PARCEL 120: (V-2-12 #213) [59169-S114]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a California corporation by Deed recorded July 29, 1910 in Book 265 of Deeds at Page 289, Sonoma County Records.

EXCEPTING THEREFROM any portion thereof conveyed to Nulco Fabricators, a California corporation, recorded November 20, 1946 in Book 710 of Official Records at page 304, Sonoma County Records.

PARCEL 121: (V-2-12 #217 and 218) [59169-S113]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation, by Deed recorded December 13, 1871 in Book 36 of Deeds at Page 112, Sonoma County Records.

PARCEL 122: (V-2-12 #214) [59169-S227]

All of that portion as described in the Deed to the Northwestern Pacific Railroad Company, a corporation, recorded September 3, 1907 in Book 238 of Deeds at Page 448, Sonoma County Records.

EXCEPTING THEREFROM that portion thereof described in Deed to Nulco Fabricators, recorded November 20, 1946 in Book 710, Page 304, Official Records of Sonoma County.

ALSO EXCEPTING THEREFROM that portion thereof described in Deed to L.D. Gilbert, et ux., recorded August 18, 1948 in Book 817, Page 361, Official Records of Sonoma County.

ALSO EXCEPTING THEREFROM that portion thereof described in Deed to Walter F. Wright, Jr., et ux., recorded February 25, 1947 in Book 717, Page 478, Official Records of Sonoma County.

PARCEL 123: (V-5-2 #8) [59169-S187]

All that portion as described in the Deed to The Marin and Napa Railroad Company by Deed recorded September 7, 1887 in Book 107 of Deeds at Page 615, Sonoma County Records.

PARCEL 124: (V-5-2 #9) [59169-S188]

All that portion as described in the Deed to the Marin and Napa Railroad Company by Deed recorded May 17, 1887 in Book 107 of Deeds at Page 609, Sonoma County Records.

PARCEL 125: (V-5-2 #'s 10 and 11) [59169-S189]

All that portion as described in the Deed to the Marin and Napa Railroad Company by Deed recorded September 7, 1887 in Book 107 of Deeds at Page 612, Sonoma County Records.

PARCEL 126: (V-5-2 #12) [No Prior Report]

All that portion as described in the Deed to the San Francisco and North Pacific Railway Company, a corporation, recorded January 18, 1900 in Book 188 of Deeds at Page 486, Sonoma County Records.

PARCEL 127: (V-5-2 #13) [59169-S190]

All that portion as described in the Deed to The Marin and Napa Railroad Company by Deed recorded September 7, 1887 in Book 107 of Deeds at Page 607, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

EXCEPTING THEREFROM any portion lying within the parcel conveyed to the Sonoma Valley Railroad Company, recorded August 21, 1880 in Book 72 of Deeds at page 328, Sonoma County Records.

PARCEL 128: (V-5-2 #14) [59169-S191]

All that portion as described in the Deed to the Marin and Napa Railroad Company by Deed recorded October 22, 1887 in Book 109 of Deeds at Page 359, Sonoma County Records.

EXCEPTING THEREFROM any portion lying within the parcel conveyed to the Sonoma Valley Railroad Company recorded August 21, 1880 in Book 72 of Deeds at page 328, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as conveyed to the Napa and Lakeport Railway Company, a corporation, by Deed recorded September 28, 1907 in Book 239 of Deeds at page 262, Sonoma County Records.

PARCEL 129: (V-5-2 #'s 16 and 18 and V-5-3 #18) [59169-S192]

All that portion as described in the Deed to Sonoma Valley Railroad Company by Deed recorded August 21, 1880 in Book 72 of Deeds at Page 328, Sonoma County Records.

PARCEL 130: (V-5-2 #17 and V-5-3 #19) [59169-S193]

All that portion as described in the Deed to Sonoma Valley Railroad Company by Deed recorded July 24, 1880 in Book 72 of Deeds at Page 316, Sonoma County Records.

PARCEL 131: (V-5-3 #'s 20 and 22) [59169-S194]

All that portion as described in the Final Order of Condemnation in favor of The Sonoma Valley Railroad Company by Deed recorded July 19, 1882 in Book 82 of Deeds at Page 103, Sonoma County Records.

PARCEL 132: (V-5-3 #'s 21 and 23 and V-5-4 #'s 23 and 26) [59169-S195]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded September 25, 1907 in Book 239 of Deeds at Page 245, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 133: (V-5-3 #24) [59169-S196]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation, recorded April 24, 1923 in Book 45 of Official Records at Page 169, Sonoma County Records.

PARCEL 134: (V-5-3 #25 and V-5-4 #45) [59169-S197]

All that portion as described in the Judgment in favor of Northwestern Pacific Railroad Company, a corporation, recorded December 4, 1967 in Book 2303 of Official Records at Page 112, Sonoma County Records.

PARCEL 135: (Portion V-5-4 #28) [59169-S205]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded January 13, 1917 in Book 347 of Deeds at Page 269, Sonoma County Records, and by deed recorded February 8, 1917 in Book 347 of Deeds at Page 500, Sonoma County Records.

PARCEL 136: (V-5-4 #30) [59169-S198]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation by Deed recorded February 20, 1893 in Book 145 of Deeds at Page 16, Sonoma County Records.

PARCEL 137: (V-5-4 #'s 31 and 32) [59169-S199]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation by Deed recorded March 3, 1893 in Book 145 of Deeds at Page 13, Sonoma County Records.

EXCEPTING THEREFROM that portion thereof lying Westerly of the Westerly line of 8th Street East.

PARCEL 138: (V-5-4 #33) [59169-S200]

All that portion as described in the Deed to The San Francisco and North Pacific Railway Company, a corporation by Deed recorded September 5, 1903 in Book 207 of Deeds at Page 242, Sonoma County Records.

CONTINUED

ESCRIPTION CONTINUED:

PARCEL 139: (V-5-4 Portion #28 and 35) [59169-S201]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded June 13, 1917 in Book 347 of Deeds at Page 268, Sonoma County Records.

PARCEL 140: (V-5-4 #'s 36 and 37) [59169-S202]

All that portion as described in the Deed to The San Francisco and North Pacific Railroad Company, a corporation by Deed recorded July 5, 1919 in Book 372 of Deeds at Page 364, Sonoma County Records.

PARCEL 141: (V-5-4 #39) [59169-S203]

All that portion as described in the Deed to Southern Pacific Corporation, a corporation by Deed recorded July 23, 1906 in Book 226 of Deeds at Page 286, Sonoma County Records.

PARCEL 142: (V-5-4 #42) [59169-S204]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded September 11, 1945 in Book 650 of Official Records at Page 371, Sonoma County Records.

PARCEL 143: (V-5-4 #43) [59169-S206]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded October 30, 1951 in Book 1085 of Deeds at Page 109, Sonoma County Records.

PARCEL 144: (V-5-4 portion #38 and V-82-4 portion #1) [59169S-207]

All that portion as described in the Deed to Northwestern Pacific Railroad Company, a corporation by Deed recorded February 8, 1935 in Book 381 of Official Records at Page 74, Sonoma County Records, described as follows:

Parcel A:

A strip or tract of land 60 feet wide situate, lying and being in the Rancho Huichica, lying equally 30 feet on each side of the following described center line:

CONTINUED

DESCRIPTION CONTINUED:

BEGINNING at a point on the originally located center line of the Southern Pacific Railroad Company's main track (Napa Junction to Santa Rosa) known as Engineers Station 602+22.6, said point being distant 2.4 feet Easterly measured along said center line of main track from a point distant 30 feet Northerly measured along a radial line to said center line from the most Easterly corner of that certain parcel of land described in deed dated July 12, 1906, Arthur B. Schell and Frederick A. Schell to Southern Pacific Company, recorded July 23, 1906, in Book 226 of Deeds, Page 386, Sonoma County Records; thence Westerly along said center line of main track, a distance of 588.2 feet to a point on the Easterly line of the land described in deed dated February 14, 1893, Montgomery P. Akers and Mary J. Akers, his wife, to Southern Pacific Railroad Company, recorded February 23, 1893, in Liber 142 of Deeds, Page 524, Sonoma County Records, and being a portion of that certain parcel of land described in deed dated August 15, 1887, Georgiana L. Schell by F.A. Schell, her attorney-in-fact, to Santa Rosa and Carquinez Railroad Company, recorded August 27, 1887, in Liber 105 of Deeds, Page 414, Sonoma County Records.

Parcel B:

A strip or tract of land 60 feet wide situate, lying and being in the Rancho Huichica, lying equally 30 feet on each side of the following described center line:

BEGINNING at a point on the originally located center line of the Southern Pacific Railroad Company's main track (Napa Junction to Santa Rosa) known as Engineers Station 608+10.8, said point being the Westerly termination of the center line described in Parcel No. 1 herein; thence Westerly along said center line of main track, to a point on said center line known as Engineers Station 613+02 at the intersection with the Easterly line of 8th Street East, and being a portion of that certain parcel of land described in deed dated February 14, 1893, Montgomery P. Akers and Mary J. Akers, his wife, to Southern Pacific Railroad Company, recorded February 23, 1893, in Liber 142 of Deeds, Page 524, Sonoma County Records.

PARCEL 145: (V-82-4 Portion #1 and V-82-3 #4) [59169-S208]

All that portion as described in the Deed to Santa Rosa and Carquinez Rail Road Company, a corporation, recorded August 27, 1887 in Book 105 of Deeds at Page 414, Sonoma County Records.

EXCEPTING THEREFROM all that portion as conveyed to Northwestern Pacific Railroad Company by deed recorded February 8, 1935 in Book 381 of Official Records at Page 74, Sonoma County Records.

CONTINUED

AR 04546

DESCRIPTION CONTINUED:

PARCEL 146: (V-82-3 #2) [59169-S209]

All that portion as described in the Deed to The Santa Rosa and Carquinez Rail Road Company, a corporation, recorded December 8, 1887 in Book 110 of Deeds at Page 224, Sonoma County Records.

PARCEL 147: (V-82-3 #3) [59169-S210]

All that portion as described in the Deed to The Santa Rosa and Carquinez Rail Road Company, a corporation, recorded August 27, 1887 in Book 105 of Deeds at Page 402, Sonoma County Records.

PARCEL 148: (V-82-2 #6 and V-82-3 #1) [No Prior Report]

All that portion as described in the Deed to the Santa Rosa and Carquinez Railroad Company, a corporation, recorded November 13, 1888 in Book 114 of Deeds at Page 549, Sonoma County Records.

EXCEPTING THEREFROM any portion thereof which lies within the boundaries of Napa County as the same existed at the date of said conveyance.

PARCEL 149: (V-5-4 #32, Portion #38 and #41)

All that portion as reserved and described in "Exhibit B" of deed to Diana F. Ekedahl, et al., recorded July 15, 1992 under Recorder's Serial No. 92-87453, Official Records of Sonoma County.

PARCEL 150: (V-2-7 #89)

All that portion for a public roadway as described in the Deed to the Northwestern Pacific Railroad Company, a corporation, recorded June 20, 1913 in Book 312 of Deeds at Page 218, Sonoma County Records.

PARCEL 151: (V-2-4 #32) [No Prior Report]

All of that certain easement, 10 feet wide for roadway, as reserved in Deed to Miller R. McNear, et al., recorded June 30, 1987 as Instrument No. 87062087, Official Records of Sonoma County.

CONTINUED

The land referred to in this Report is situated in the City of Petaluma, County of Sonoma , State of California and is described as follows:

PARCEL 152: (V-1-1 Portion #4):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded December 28, 1903 in Book 208 of Deeds at Page 356, Sonoma County Records.

EXCEPTING THEREFROM that portion lying Northerly of the Southerly line of Parcel 2 as described in the deed to Northwestern Pacific Railroad Company, a corporation, recorded November 17, 1969 in Book 2429 of Official Records at Page 951, Sonoma County Records.

PARCEL 153: (V-1-1 #5):

All that portion as described in the deeds to The Petaluma and Santa Rosa Railway Company, a corporation, recorded December 28, 1903 in Book 208 of Deeds at Page 354, and October 3, 1905 in Book 221 of Deeds at Page 273, Sonoma County Records.

PARCEL 154: (V-1-1 #6):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded December 19, 1903 in Book 209 of Deeds at Page 23, Sonoma County Records.

PARCEL 155: (V-1-1 #8):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded December 21, 1903 in Book 208 of Deeds at Page 322, Sonoma County Records.

PARCEL 156: (V-1-1 #9):

All that portion as described in the deed to Petaluma and Santa Rosa Railroad Company, a corporation, recorded January 31, 1921 in Book 395 of Deeds at Page 406, Sonoma County Records.

PARCEL 157:(V-1-1 #10):

All that portion as described in the deed to Petaluma and Santa Rosa Railroad Company, a corporation, recorded December 28, 1933 in Book 353 of Official Records at Page 262, Sonoma County Records.

EXCEPTING THEREFROM one-sixteenth of all coal, oil, gas and other mineral deposits pursuant to an act of the Legislature approved May 25, 1921 (Chapter 303, Statutes of California, 1921), as reserved in the deed from the State of California recorded December 28, 1933 in Book 353 of Official Records at Page 262, Sonoma County Records.
CONTINUED

AR 04548

)ESCRIPTION CONTINUED:

PARCEL 158: (V-1-1 #11):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded January 12, 1904 in Book 209 of Deeds at Page 135, Sonoma County Records.

PARCEL 159: (V-1-1 #12):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded December 31, 1903 in Book 209 of Deeds at Page 66, Sonoma County Records.

PARCEL 160: (V-1-1 #14):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded January 5, 1904 in Book 209 of Deeds at Page 101, Sonoma County Records.

PARCEL 161: (V-1-1 #15):

All that portion as described in the deed to Petaluma and Santa Rosa Railway Company, a corporation, recorded March 31, 1904 in Book 209 of Deeds at Page 536, Sonoma County Records.

PARCEL 162: (V-1-1 #31):

All that portion as described in the deed to Petaluma and Santa Rosa Railroad Company, a corporation, recorded December 23, 1921 in Book 406 of Deeds at page 170, Sonoma County Records.

PARCEL 163: (V-1-1 #32):

All that portion as described in the Agreement by and between James F. Parker, et al, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded August 30, 1922 in Book 16 of Official Records at Page 338, Sonoma County Records.

PARCEL 164: (V-1-1 #33):

All that portion as described in the Agreement by and between Lillie H. Parker, et al, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 27, 1927 in Book 163 of Official Records at Page 412, Sonoma County Records.

CONTINUED

AR 04549

DESCRIPTION CONTINUED:

PARCEL 165: (V-1-1 #34):

All that portion as described in the Agreement by and between George P. McNear and Petaluma and Santa Rosa Railroad Company, a corporation, recorded December 4, 1922 in Book 30 of Official Records at Page 144, Sonoma County Records.

PARCEL 166: (V-1-1 #37):

All that portion as described in the Agreement by and between Coulson and Stock Food Company, a corporation, and Petaluma and Santa Rosa Railroad Company, a railroad corporation, recorded April 24, 1922 in Book 1 of Official Records at Page 465, Sonoma County Records.

PARCEL 167: (V-1-1 #38):

All that portion as described in the Agreement by and between John T. O'Brien and Petaluma and Santa Rosa Railroad Company, a corporation, recorded May 27, 1922 in Book 14 of Official Records at Page 290, Sonoma County Records.

PARCEL 168: (V-1-1 #39):

All that portion as described in the Agreement by and between Z. Milani Poultry Company, a corporation, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 24, 1922 in Book 14 of Official Records at Page 67, Sonoma County Records.

PARCEL 169: (V-1-1 #40):

All that portion as described in a Memorandum of Agreement by and between Z. Milani Poultry Company, a corporation, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded July 6, 1922 in Book 11 of Official Records at Page 436, Sonoma County Records.

PARCEL 170: (V-1-1 #41):

All that portion as described in the Agreement by and between Schluckebier Hardware Company, a corporation, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 22, 1922 in Book 14 of Official Records at Page 70, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 171: (V-1-1 #42):

All that portion as described in the Agreement by and between Amanda Belle Bauer, et al, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 24, 1922 in Book 14 of Official Records at Page 72, Sonoma County Records.

PARCEL 172: (V-1-1 #43):

All that portion as described in the Agreement by and between H.J. Peters, et al, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded May 27, 1922 in Book 14 of Official Records at Page 291, Sonoma County Records.

PARCEL 173: (V-1-1 #44):

All that portion as described in the Agreement by and between Henry Nauert and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 24, 1922 in Book 14 of Official Records at Page 74, Sonoma County Records.

PARCEL 174: (V-1-1 #45):

All that portion as described in the Agreement by and between The Daniel Brown Estate Company, a corporation, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded May 15, 1922 in Book 11 of Official Records at Page 248, Sonoma County Records.

PARCEL 175: (V-1-1 #46):

All that portion as described in the Agreement by and between George C. Miller and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 24, 1922 in Book 14 of Official Records at Page 76, Sonoma County Records.

PARCEL 176: (V-1-1 #48):

All that portion as described in the Agreement by and between A.B. Hill and Petaluma and Santa Rosa Railroad Company, a corporation, recorded July 6, 1922 in Book 11 of Official Records at Page 434, Sonoma County Records.

PARCEL 177: (V-1-1 #49):

All that portion as described in the Agreement by and between Gertrude Hess Voyer, et vir, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded April 11, 1922 in Book 11 of Official Records at Page 156, Sonoma County Records.

CONTINUED

DESCRIPTION CONTINUED:

PARCEL 178: (V-1-1 #50):

All that portion as described in the Agreement by and between G.P. McNear Co., a corporation, and Petaluma and Santa Rosa Railroad Company, a corporation, recorded October 2, 1942 in Book 560 of Official Records at Page 359, Sonoma County Records.

PARCEL 179: (V-1-1 #28):

That portion of the land described in deed to Petaluma and Santa Rosa Railroad Company, dated September 12, 1930 from National Ice and Cold Storage Company of California, described therein as follows:
"Beginning at a point on the Westerly line of Block 27 as said block is laid down and delineated on that certain map entitled "Harmons Map of East Petaluma" filed in the office of the County Recorder of Sonoma County, State of California, said point of beginning being North 35 degrees 43 minutes East 51.50 feet, from the most Westerly corner of said Block 27 and also being the point of intersection of the Easterly line of Madison Street, with the Northerly line of the right of way of the Petaluma and Santa Rosa Railroad Company; thence along said Westerly line of Block 27 North 35 degrees 43 minutes East 24.84 feet to a point on a curve to the left the bearing of the tangent to which is South 77 degrees 15 minutes East, said curve having a radius of 176.53 feet and being parallel and 16.00 feet Westerly from the center line of a survey for a spur track leading from said Petaluma and Santa Rosa Railroad to the plant of the party of the first part; thence along said curve a distance of 117.64 feet; thence North 64 degrees 34 minutes East 44.71 feet; thence continuing Easterly and parallel to the center line of survey of said spur track along a curve to the right having a radius of 194.63 feet for a distance of 143.58 feet, to intersection with the most Westerly side of the present right of way leading to Hopper Street from the property of the Poultry Producers of Central California; thence continuing along said curve a distance of 12.91 feet to an intersection with a line 8.50 feet Northerly and produced Westerly from center line of forward tangent of spur track; thence South 54 degrees 31 minutes East 49.88 feet; thence South 35 degrees 29 minutes West 30.00 feet to intersection with the Northerly line of the property of said Poultry Producers of Central California; thence North 54 degrees 31 minutes West 62.35 feet to the most Northerly corner of said property of said Poultry Producers of Central California; thence South 35 degrees 29 minutes West along said property line 5.75 feet which point being the intersection of a curve to the left 15 feet Southerly and parallel to center line of survey of said spur track; the bearing of a tangent to the curve at this point being North 76 degrees 46 minutes West; thence Westerly and Southerly on a curve to the left parallel to said center line and with a radius of 164.63 feet a distance of 111.10 feet; thence South 64 degrees 34 minutes West 44.71 feet; thence continuing Southerly and Westerly and parallel to said center line on a curve to the right with a radius of 206.53 feet a distance of 137.10 feet to intersection with the said Northerly line of right of way of the Petaluma and Santa Rosa Railroad Company; thence along said right of way line North 42 degrees 21 minutes West 12.48 feet to the point of beginning and containing 0.25 acres more or less and being a portion of Lots 16, 17, 18, 8, 9, 10 and 11 of Block 27 East Petaluma."

LYING Southwesterly of the land described in deed to Pacific Growers recorded April 23, 1968 in Book 2327, Page 951, Official Records of Sonoma County.

DESCRIPTION CONTINUED:

PARCEL 180: (V-1-1 #29):

All that portion as described in the Agreement with Petaluma and Santa Rosa Railroad Company and Poultry Producers of Central California, recorded December 14, 1946 in Book 713, Page 229, Official Records of Sonoma County.

PARCEL 181: (V-1-1 #52):

All that portion as described in the Agreement with Petaluma and Santa Rosa Railroad Company and B.W. Frasier, et al., recorded September 2, 1922 in Book 21, Page 310, Official Records of Sonoma County.

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No Record Parcels -- Sonoma County

Those parcels situated in the County of Sonoma, State of California, described as follows:

Parcel I (V-2-5 #64)

That certain strip of land, 60 feet wide, lying 30 feet each side of the original surveyed center line of The San Francisco and Humboldt Bay Railroad Company (now Southern Pacific Transportation Company); said strip of land described, in Suit #459, Sonoma County Court, May 16, 1870, as follows:

Beginning at a post marked 138+68 at a point where the center line of the San Francisco and Humboldt Bay Railroad as surveyed and located by the Chief Engineer of said railroad Company intersects the North Western boundary of the lands of C. W. Ham; thence North 35°27' East thirty one feet along said boundary to a post marked 1; thence North 40°21' West on a line parallel with and thirty feet distant from said center line nine hundred and fifty eight (958) feet to a post marked A; thence curving to the right and taking the last mentioned course as a tangent, along the arc of a circle having a radius of two thousand eight hundred and thirty five (2835) feet, two thousand three hundred and seventy eight (2378) feet, keeping at a distance of thirty feet from said center line to a post marked D, thence along a tangent of said arc North 7°43' East five hundred and eighty four (584) feet to a post marked E at the fence on the South West side of the road; thence North 54°33' West thirty four feet along said fence to a post on said center line of said railroad marked 178+37; thence on the same course along said fence thirty four feet to a post marked F; thence South 7°43' West six hundred and sixteen (616) feet to a post marked C; thence curving to the left

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taking the last mentioned course as a tangent along the arc of a circle having a radius of two thousand eight hundred and ninety five (2895) feet keeping at a distance of thirty feet from said center line twenty four hundred and twenty eight (2428) feet to a post marked B; thence along a tangent to said arc South 40°21' East nine hundred and seventy three (973) feet to a post marked 2 at the fence on the North Western boundary of land of said C. W. Ham; Thence North 35°27' East thirty one feet along said boundary to the place of beginning containing five and 47/100 acres of land.

Parcel II (V-2-12 #249)

That certain strip of land 20 feet wide, the easterly line thereof being coincident with the westerly line of land described in deed to The San Francisco and North Pacific Railroad Company, recorded February 26, 1872, Deed Book 36, Page 229, Records of said County; bounded by the northwesterly prolongation of the southwesterly line of land described in said deed recorded February 26, 1872, and by the westerly prolongation of the northerly line of land described in last said deed.

Parcel III (V-82-2-portion of #5)

That portion of the land described in deed to the Santa Rosa and Carquinez Railroad Company, recorded August 3, 1888, in Book of Deed at Page 270, Napa County Records, lying within the boundaries of Sonoma County as the same existed on the date of said conveyance. Said land described therein as follows:

"Being a portion of the Huichica Rancho and Commencing at a point on the center line of said Railroad where the line of the same as finally located intersects the Easterly line of said tract of lands of J.M. Buchli at Station 279+78 and running thence Westerly along said center line of said Santa Rosa and

Carquinez Railroad following the curvatures and embracing a strip of land thirty (30) feet wide on each side of said center line to the Westerly line of said tract at the land of Filippini at Engineer Station No. 353+46 a distance of 5348 feet more or less."

Parcel IV (V-5-2 #18A)

A strip of land varying in width, the westerly line thereof described as follows:

Said westerly line being distant 40 feet westerly parallel and concentric with the original center line of track of Marin and Napa Railroad Company and the Sonoma Valley Railroad Company (both now Southern Pacific Transportation Company), said westerly line of the herein described strip of land terminates southerly in the northerly line of land described in deed to Marin and Napa Railroad Company, recorded October 22, 1887 in Deed Book 109, Page 359, records of Sonoma County, and northerly in a line drawn at right angles westerly at Engineer's Station 420+35.0.

EXHIBIT D

INTERIM TRACKAGE RIGHTS GRANT AND ASSIGNMENT AGREEMENT

This Interim Trackage Rights Grant and Assignment Agreement ("Agreement") dated JULY 22 1996, is entered into by and among California Northern Railroad Company Limited Partnership, a California limited partnership ("CNRC"), North Coast Railroad Authority, a local agency created by the California legislature ("NCRA"), and Northwestern Pacific Railroad Authority, a California joint powers agency ("NWPRA"), collectively referred to herein as the "Parties."

W I T N E S E T H

WHEREAS, Southern Pacific Transportation Company ("SPTCo") and CNRC previously entered into that certain Lease Agreement for Northwestern Pacific Line dated as of August 27, 1993, as amended by that certain First Amendment to Lease Agreement dated as of April 30, 1996 ("NWP Lease"), whereby SPTCo leased to CNRC certain real property as more particularly described in the NWP Lease ("NWP Leased Premises") for freight rail use by CNRC.

WHEREAS, Pursuant to (i) the Amended and Restated Agreement of Purchase and Sale (Healdsburg and Lombard Segments) dated April 11, 1996, between SPTCo and NWPRA, and (ii) the Amended and Restated Agreement of Purchase and Sale (Willits Segment) dated April 11, 1996, between SPTCO and NCRA, SPTCo agreed to sell, and NWPRA and NCRA agreed to purchase, certain property that included the NWP Leased Premises. The closing of these two transactions occurred on April 30, 1996 ("SPTCo Closing").

WHEREAS, Concurrent with the SPTCo Closing, SPTCo assigned all of its right, title and interest as "Lessor" under the NWP Lease to NWPRA and NCRA (sometimes collectively referred to hereafter as "Lessor") pursuant to: (i) Partial Assignment, Assumption and Indemnification Agreement (Northwestern Pacific Line Lease - Willits Segment), and (ii) Partial Assignment, Assumption and Indemnification Agreement (Northwestern Pacific Line Lease - Healdsburg and Lombard Segments) (collectively, "Partial Assignment Agreements").

WHEREAS, CNRC desires to assign all of its right, title and interest as "Lessee" under the NWP Lease to NCRA in accordance with the terms and conditions of this Agreement.

WHEREAS, on May 8, 1996, NCRA filed a petition ("Petition") with the Surface Transportation Board ("Board") seeking an exemption under 49 U.S.C. §10502 from the application requirements of 49 U.S.C. §10902 for the purpose of operating an extended rail

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line for freight and passenger excursion operations on a portion of the NWP Leased Premises.

WHEREAS, CNRC and NCRA desire the assignment to be effective as of July 22, 1996;

WHEREAS, because the Board will likely not approve the Petition by July 8, 1996, the Parties will execute this Agreement to provide for an interim grant by CNRC to NCRA of trackage rights on a portion of the NWP Leased Premises until such time as the Petition is approved by the Board; and

WHEREAS, upon the Board's approval of the Petition, the assignment described in this Agreement shall become effective.

NOW, THEREFORE, for good and valuable consideration and receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Interim Grant. Effective July 22, 1996 ("Commencement Date"), and in consideration of the sum of ONE AND NO/100 DOLLARS ($1.00) plus the Purchase Price (as defined in Section 7 below) (collectively, "Compensation") to be paid by NCRA to CNRC in immediately available funds, (i) CNRC grants to NCRA interim trackage rights ("Interim Grant") to operate its trains, locomotives, cars and equipment over the NWP Leased Premises except for that portion that runs from NWP milepost 40.4 near Schellville, California to SP milepost 63.4 at Lombard Station, Napa County, California ("Interim Trackage Rights Portion") in accordance with the Interim Trackage Rights Agreement in the form attached hereto as Exhibit "A" and incorporated herein by this reference ("Interim Trackage Rights Agreement"), and (ii) NCRA takes, accepts and assumes all obligations of CNRC under the NWP Lease relative to the Interim Trackage Rights Portion. Effective as of the Commencement Date, NCRA is bound by all of the terms of the NWP Lease relative to the Interim Trackage Rights Portion, and assumes all of the obligations and liabilities of Lessee under the NWP Lease accruing on and after the Commencement Date relative to the Interim Trackage Rights Portion (including without limitation, with respect to the Interim Trackage Rights Portion, the duty to pay rent, insurance premiums, utilities, maintenance, rehabilitation and repair costs, the obligation to comply with all laws, rules, regulations, inspection and reporting requirements, the duty to manage, control and dispatch all rail freight operations on the NWP Leased Premises, and the obligation to comply with all representations, warranties and indemnification obligations of Lessee under the NWP Lease). The Interim Grant does not include any right, title or interest of any party in any of the "Retained Agreements" as defined in the Partial Assignment Agreements.

2. Common Carrier Service. Pursuant to the Interim Grant, effective as of the Commencement Date, NCRA shall have the right and obligation to provide common carrier service to all shippers on the Interim Trackage Rights Portion in accordance with applicable law. Notwithstanding the foregoing, CNRC shall retain a residual obligation to serve shippers on the Interim Trackage Rights portion, until such time as the Petition has been approved by the Board.

3. Assignment of NWP Lease. Effective immediately on the date the Board approves the Petition ("Assignment Date"), CNRC assigns, conveys, sells and transfers to NCRA, and NCRA takes, accepts and assumes from CNRC, all of CNRC's right, title and interest as Lessee in, under and to the NWP Lease, including, without limitation, all duties, obligations, rights, benefits and privileges hereafter owing by and accruing to the Lessee thereunder with respect to the NWP Leased Premises in their entirety ("Assignment"). Effective as of the Assignment Date, NCRA is bound by all of the terms of the NWP Lease relative to the NWP Leased Premises in their entirety, and NCRA assumes all of the obligations and liabilities of Lessee under the NWP Lease accruing on and after the Assignment Date (including without limitation, with respect to the NWP Leased Premises in their entirety, the duty to pay rent, insurance premiums, utilities, maintenance, rehabilitation and repair costs, the obligation to comply with all laws, rules, regulations, inspection and reporting requirements, the duty to manage, control and dispatch all rail freight operations on the NWP Leased Premises, and the obligation to comply with all representations, warranties and indemnification obligations of Lessee under the NWP Lease). The Assignment does not include any right, title or interest of any party in any of the "Retained Agreements" as defined in the Partial Assignment Agreements.

4. Representations and Warranties of CNRC to NCRA. CNRC hereby represents and warrants to NCRA that, as of the Commencement Date and Assignment Date:

a. It has full corporate power and authority to enter into this Agreement and to effectuate the Interim Grant and Assignment.

b. This Agreement has been duly authorized, executed and delivered by CNRC and is the legal, valid and binding agreement of CNRC, enforceable against CNRC in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by CNRC, the consummation by CNRC of the transactions contemplated hereby, nor compliance or performance by CNRC with any of the provisions hereof

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or of the NWP Lease does or will violate any judgment, order, law or regulation applicable to CNRC or any provisions of CNRC's organizational documents.

c. CNRC's execution of and performance under this Agreement does not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which CNRC is party.

d. CNRC shall bear any and all costs of protection of its current employees arising from any labor protective conditions imposed by the Board, any other regulatory agencies, or statute as a result of CNRC entering into this Agreement or implementing the transactions contemplated hereunder (collectively, "CNRC Labor Costs").

e. Except as set forth in Schedule 1, there are no actions, suits or proceedings pending, or to CNRC's knowledge threatened, against CNRC or any of its property in any court or before any federal, state, municipal or other governmental agency, that, if decided adversely to CNRC, would prohibit the execution and delivery by CNRC of this Agreement or the consummation by CNRC of the transaction contemplated hereby. No litigation, arbitration, administrative proceedings or investigation is pending, or to CNRC's knowledge threatened, against CNRC or the NWP Leased Premises or operations of the NWP Leased Premises the result of which, alone or in the aggregate, could reasonably be expected to materially adversely affect the NWP Leased Premises or the operations thereon as contemplated in the NWP Lease.

5. Representations and Warranties of NCRA to CNRC. NCRA hereby represents and warrants to CNRC that, as of the Commencement Date and Assignment Date:

a. It has full statutory power and authority to enter into this Agreement, to effectuate the Interim Grant, and, subject to necessary regulatory authority that has been obtained as of the Commencement Date, to carry out the obligations of Lessee under the NWP Lease relative to the Interim Trackage Rights Portion.

b. It has full statutory power and authority to enter into this Agreement, to effectuate the Assignment, and, subject to necessary regulatory authority that has been obtained as of the Assignment Date, to carry out the obligations of Lessee under the NWP Lease relative to the NWP Leased Premises.

c. This Agreement has been duly authorized, executed and delivered by NCRA and is the legal, valid and binding agreement of NCRA, enforceable against NCRA in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws

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affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by NCRA, the consummation by NCRA of the transactions contemplated hereby, nor compliance or performance by NCRA with any of the provisions hereof or of the NWP Lease does or will violate any judgment, order, law or regulation applicable to NCRA or any provision of NCRA's organizational documents.

d. NCRA's execution of and performance under this Agreement and the NWP Lease does not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which NCRA is party.

e. NCRA shall bear any and all costs of protection of its current employees arising from any labor protective conditions imposed by the Board, any other regulatory agencies, or statute as a result of NCRA entering into this Agreement or implementing the transactions contemplated hereunder (collectively, "NCRA Labor Costs").

f. There are no actions, suits or proceedings pending, or to NCRA's knowledge threatened, against NCRA or any of its property in any court or before any federal, state, municipal or other governmental agency, that, if decided adversely to NCRA, would prohibit the execution and delivery by NCRA of this Agreement or the consummation by NCRA of the transaction contemplated hereby. No litigation, arbitration, administrative proceedings or investigation is pending, or to NCRA's knowledge threatened, against NCRA or the NWP Leased Premises or operations of the NWP Leased Premises the result of which, alone or in the aggregate, could reasonably be expected to materially adversely affect the NWP Leased Premises or the operations thereon as contemplated in the NWP Lease.

6. Representations and Warranties of Lessor to CNRC. Lessor hereby represents and warrants to CNRC that, as of the Commencement Date and Assignment Date:

a. It has full statutory power and authority to enter into this Agreement and to perform all obligations of Lessor described herein.

b. This Agreement has been duly authorized, executed and delivered by Lessor and is the legal, valid and binding agreement of Lessor, enforceable against Lessor in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of

whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by Lessor, the consummation by Lessor of the transactions contemplated hereby, nor compliance or performance by Lessor with any of the provisions hereof or of the NWP Lease does or will violate any judgment, order, law or regulation applicable to Lessor or any provisions of Lessor's organizational documents.

c. Lessor's execution of and performance under this Agreement and the NWP Lease does not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which Lessor is party.

d. There are no actions, suits or proceedings pending, or to Lessor's knowledge threatened, against Lessor or any of its property in any court or before any federal, state, municipal or other governmental agency, that, if decided adversely to Lessor, would prohibit the execution and delivery by Lessor of this Agreement or the consummation by Lessor of the transaction contemplated hereby. No litigation, arbitration, administrative proceedings or investigation is pending, or to Lessor's knowledge threatened, against Lessor or the NWP Leased Premises or operations of the NWP Leased Premises the result of which, alone or in the aggregate, could reasonably be expected to materially adversely affect the NWP Leased Premises or the operations thereon as contemplated in the NWP Lease.

7. Personalty. CNRC and NCRA agree that CNRC shall sell to NCRA, and NCRA shall purchase from CNRC, all of the personal property and equipment that is identified on Schedule 1 to the Bill of Sale in the form attached hereto as Exhibit "B" and incorporated herein by this reference ("Bill of Sale") (collectively, "Personalty"). The purchase price for the Personalty shall equal EIGHTEEN THOUSAND AND NO/100 DOLLARS ($18,000.00) ("Purchase Price"). The Personalty is sold in its AS IS, WHERE IS condition, without any representation or warranty, expressed or implied, as to its condition or fitness for any particular purpose. CNRC and NCRA further agree that CNRC shall sublease to NCRA, and NCRA shall sublease from CNRC, all of the vehicles that are identified on Schedule 1 to the Sublease Agreement in the form attached hereto as Exhibit "F" and incorporated herein by this reference ("Sublease") (collectively, "Vehicles").

8. Utilities. CNRC shall be obligated to pay all charges for utilities servicing the NWP Leased Premises for the period prior to the Commencement Date, and NCRA shall be obligated to pay all charges for utilities servicing the NWP Leased Premises for the period commencing on the Commencement Date. Accordingly, within twenty-four (24) hours after the Commencement Date, NCRA shall notify all utilities servicing the NWP Leased Premises that

it has assumed all obligations to pay for all utilities provided to the NWP Leased Premises for the period commencing as of the Commencement Date.

9. Covenants of CNRC.

a. For the period commencing as of the date of this Agreement and terminating immediately prior to the Commencement Date, CNRC shall continue to perform all of its obligations as Lessee under the NWP Lease.

b. On or before the Commencement Date, CNRC shall, at its sole cost and expense, cause all of its equipment, material and other personal property, other than the Personalty, to be removed from the NWP Leased Premises.

c. On or before the Commencement Date, CNRC shall deliver to NCRA the following documents duly executed by CNRC: (i) the Interim Trackage Rights Agreement, (ii) the Interchange Agreement in the form attached hereto as Exhibit "C" and incorporated herein by this reference ("Interchange Agreement"), (iii) the Trackage Rights Agreement in the form attached hereto as Exhibit "D" and incorporated herein by this reference ("Trackage Rights Agreement"), (iv) the Bill of Sale and all relevant title documents required to transfer title to the Personalty by CNRC to NCRA effective as of the Commencement Date, (v) the Sublease and all relevant documents required to sublease the Vehicles by CNRC to NCRA effective as of the Commencement Date, and (vi) the Assignment and Assumption of Agreements in the form attached hereto as Exhibit "E" and incorporated herein by this reference ("Assignment of Agreements") wherein, effective as of the Commencement Date, CNRC assigns to NCRA its rights as lessor under those certain agreements identified therein relating to the use, operation and maintenance for rail freight service of the NWP Leased Premises ("Assigned Agreements"), and NCRA agrees to perform and be bound by all the obligations of lessor under the Assigned Agreements. By their terms, the Interim Trackage Rights Agreement, the Bill of Sale, the Sublease and the Assignment of Agreements shall become effective as of the Commencement Date. By their terms, the Interchange Agreement and Trackage Rights Agreement shall become effective as of the Assignment Date.

d. Because this Agreement does not include the transfer of any right, title or interest in any of the Retained Agreements, effective as of the Commencement Date, CNRC shall continue to pay all amounts owing by CNRC, and receive all amounts payable to CNRC, under the Retained Agreements, regardless of whether such amounts are attributable to the period prior to or after the Commencement Date.

10. Covenants of NCRA.

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a. For the period commencing as of the Commencement Date, NCRA shall perform all obligations as Lessee under the NWP Lease relative to the Interim Trackage Rights Portion.

b. For the period commencing as of the Assignment Date, NCRA shall perform all obligations as Lessee under the NWP Lease relative to the NWP Leased Premises.

c. On or before the Commencement Date, NCRA shall pay to CNRC the Trackage Rights Fee in the form of cash, wire transfer, or certified or cashier's check.

d. On or before the Commencement Date, NCRA shall deliver to CNRC the following documents duly executed by NCRA: (i) Interim Trackage Rights Agreement, (ii) the Bill of Sale, (iii) Interchange Agreement, (iv) Trackage Rights Agreement, and (v) Assignment of Agreements.

e. Because this Agreement does not include the transfer of any right, title or interest in any of the Retained Agreements, effective as of the Commencement Date, NCRA shall promptly pay to CNRC all sums that NCRA may receive pursuant to the Retained Agreements, including, without limitation, allowances payable by SPTCo to CNRC under the Retained Agreements, regardless of whether such sums are attributable to the period prior to or after the Commencement Date.

f. NCRA shall promptly seek all regulatory approvals required to enable it to accept the Interim Grant as described herein and to operate on the Interim Trackage Rights Portion.

g. NCRA shall promptly seek all regulatory approvals required to enable it to accept the Assignment as described herein and to operate on the NWP Leased Premises.

h. NCRA shall undertake all actions required to obtain the Board's approval of the Petition in a timely fashion.

i. NCRA shall not interfere, either directly or indirectly, with the Board's approval of the Petition, and NCRA shall not directly or indirectly encourage any shipper on the NWP Premises to interfere in any fashion with the Board's approval of the Petition.

j. NCRA shall not modify, amend, withdraw or revoke the Petition in any manner without the prior written consent of CNRC, which consent may be withheld in CNRC's sole and absolute discretion.

k. NCRA shall provide to CNRC's employees who are adversely affected by the assignment of the NWP Lease as described herein and who seek employment with NCRA the first opportunity for employment for each non-management position created by NCRA during the period beginning with the Commencement Date and ending one (1) year after the Commencement Date, and for each vacancy in any such position which occurs during such time period, provided the employee is qualified for the position. The terms of employment, including without limitation rates of pay, benefits, and employee responsibilities and qualifications shall be as determined by NCRA.

11. CNRC's Conditions. CNRC's obligations under this Agreement shall be subject to the satisfaction of the following conditions:

a. All representations and warranties made by NCRA in this Agreement shall be true and correct as of the Commencement Date and the Assignment Date;

b. All covenants made by NCRA in this Agreement that are required to be performed prior to the Commencement Date shall be performed as of the Commencement Date;

c. All covenants made by NCRA in this Agreement that are required to be performed prior to the Assignment Date shall be performed as of the Assignment Date; and

d. All regulatory approvals required to be obtained to effectuate the terms of this Agreement have been obtained and are valid and in full force and effect as of the Commencement Date and Assignment Date, as applicable, and shall not contain any condition unacceptable to CNRC in its reasonable discretion.

e. CNRC shall have executed an agreement with SPTCo. for payments of a switch fee by SPTCo. to CNRC to compensate CNRC for handling all traffic originating or terminating on the NWP Leased Premises to or from Schellville and Suisan and for switching the traffic at Suisan.

12. NCRA's Conditions. NCRA's obligations under this Agreement shall be subject to the satisfaction of the following conditions:

a. All representations and warranties made by CNRC in this Agreement shall be true and correct as of the Commencement Date and Assignment Date;

b. All covenants made by CNRC in this Agreement that are required to be performed prior to the Commencement Date shall be performed as of the Commencement Date;

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c. All covenants made by CNRC in this Agreement that are required to be performed prior to the Assignment Date shall be performed as of the Assignment Date;

d. All regulatory approvals required to be obtained to effectuate the terms of this Agreement have been obtained and are valid and in full force and effect as of the Commencement Date and Assignment Date, as applicable, and shall not contain any condition unacceptable to NCRA in its reasonable discretion.

13. Lessor's Consent and Release. Notwithstanding any provision in the NWP Lease to the contrary, Lessor hereby acknowledges and consents to (i) the Interim Grant as described herein and approves NCRA as successor-in-interest to CNRC as the Lessee under the NWP Lease as to the Interim Trackage Rights Portion effective as of the Commencement Date, and (ii) the Assignment as described herein and approves NCRA as successor-in-interest to CNRC as the Lessee under the NWP Lease effective as of the Assignment Date. In addition, notwithstanding any provision in the NWP Lease to the contrary, effective as of the (i) Commencement Date, Lessor releases CNRC as to all of the obligations and liabilities of Lessee under the NWP Lease as to the Interim Trackage Rights Portion accruing from and after the Commencement Date, and (ii) the Assignment Date, Lessor releases CNRC as to all of the obligations and liabilities of Lessee under the NWP Lease accruing from and after the Assignment Date. In conjunction with the releases described in this Section 13, Lessor waives the provisions of California Civil Code §1542 that provides as follows:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Notwithstanding the foregoing, the consents and releases described in this Section 13 do not constitute a release of the obligations of CNRC described in this Agreement, including, without limitation, the obligations of CNRC described in Sections 4(d) and 14 of this Agreement.

14. CNRC's Indemnification Obligations. Effective as of the Commencement Date, CNRC unconditionally indemnifies and holds harmless NCRA and Lessor, their respective successors and assigns, member agencies, officers, directors and employees, from and against any and all debts, claims or liabilities of any nature (including but not limited to reasonable attorneys' fees and disbursements) that (i) are the responsibility of Lessee under the NWP Lease that are attributable to the period prior to the Commencement Date, or (ii) result from CNRC's breach of this

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Agreement including, without limitation, CNRC's failure to pay any CNRC Labor Costs (collectively, "CNRC Indemnifiable Events"). The indemnification obligations of CNRC as described in this Section 14 shall automatically lapse and be of no further force or effect as to CNRC Indemnifiable Events that are not brought to CNRC's attention in writing by NCRA or Lessor, as applicable, prior to the three (3) year anniversary of the Commencement Date.

15. NCRA's Indemnification Obligations. Effective as of the Commencement Date, NCRA unconditionally indemnifies and holds harmless CNRC, its successors and assigns, member agencies, officers, directors and employees, from and against any and all debts, claims or liabilities of any nature (including but not limited to reasonable attorneys' fees and disbursements) that (i) are the responsibility of Lessee under the NWP Lease that are attributable to the period commencing as of the Commencement Date, or (ii) result from NCRA's breach of this Agreement including, without limitation, NCRA's failure to pay any NCRA Labor Costs (collectively, "NCRA Indemnifiable Events"). The indemnification obligations of NCRA as described in this Section 15 shall automatically lapse and be of no further force or effect as to NCRA Indemnifiable Events that are not brought to NCRA's attention in writing by CNRC prior to the three (3) year anniversary of the Commencement Date.

16. Lessor's Indemnification Obligation. Effective as of the Commencement Date, Lessor unconditionally indemnifies and holds harmless CNRC, its successors and assigns, officers, directors and employees, from and against any and all debts, claims or liabilities of any nature (including but not limited to reasonable attorneys' fees and disbursements) that are the responsibility of Lessor under the NWP Lease ("Lessor Indemnifiable Events") and that are attributable to the period prior to the Commencement Date. The indemnification obligations of Lessor as described in this Section 16 shall automatically lapse and be of no further force or effect as to Lessor Indemnifiable Events that are not brought to Lessor"s attention in writing by CNRC prior to the three (3) year anniversary of the Commencement Date.

17. Notice. Effective as of the Commencement Date, all notices intended for the Lessee under the NWP Lease shall be delivered to:

North Coast Railroad Authority
4 West 2nd Street
Eureka, California 95501
Attention: Edward M. McLaughlin
Telephone No: 707-441-1625
Telecopy No.: 707-441-1324

18. Attorneys' Fees. Should any party institute an action or proceeding to enforce any provision of this Agreement or

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for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such prevailing party in connection with such action or proceeding.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same instrument.

20. Governing Law. This Agreement shall be deemed to be an agreement made under the laws of the State of California and for all purposes shall be governed by and construed in accordance with such laws without regard to conflict of law provisions.

21. Effect on NWP Lease. Except as expressly assigned hereby, the NWP Lease is unmodified and remains in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first above written.

CNRC:

CALIFORNIA NORTHERN RAILROAD
COMPANY LIMITED PARTNERSHIP,
a California limited partnership

By: David L. Parkinson
Printed Name: DAVID L. PARKINSON
Title: General Partner PRESIDENT
PARKSIDE CORP.

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NCRA:

NORTH COAST RAILROAD AUTHORITY, a local agency created by the California Legislature

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Attorney

LESSOR:

NORTH COAST RAILROAD AUTHORITY, a local agency created by the California Legislature

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Attorney

LESSOR:

NORTHWESTERN PACIFIC RAILROAD AUTHORITY, a California joint powers authority

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Attorney

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EXHIBIT E

SCHEDULE 3.10

The Coordination Agreement shall include provisions that address, inter alia, the following:

(1) Passenger operations shall have reasonable priority over freight operations, provided that such priority shall not materially adversely affect Lessee's performance of its common carrier obligations, Lessee's conduct of rail freight operations or Lessee's ability to provide adequate service to shippers and receivers.

(2) Reasonable accommodations shall be made during any construction required for passenger operations, at Commuter Authority's expense, to allow freight operations to continue during the construction period.

(3) Lessee shall not bear any portion of any maintenance, rehabilitation or capital expense that is incurred in order to accommodate passenger service but that would not be required in order to continue freight operations substantially as such operations have been conducted by Lessee on the Leased Premises.

(4) Lessee's share of maintenance expenditures shall not exceed the amount that Lessee reasonably would have expended for maintenance in the absence of passenger operations on the Leased Premises.

(5) Capital expenditures shall be allocated between Lessee and Lessor on an equitable basis that takes into account whether Lessee would have made such a capital expenditure if there were no passenger operations on the Leased Premises, and if so, the relative benefit to the Parties.

(6) Lessor may require that Lessee perform upgrading of the Track and Track Support Structures and/or installation of additional trackage, signals or other facilities, at Lessor's expenses, and Lessee may engage subcontractors to perform such work.

(7) Reasonable fees shall be established for services such as dispatching that are provided by one Party to the other.

(8) Lessor shall reimburse Lessee for the reasonable expenses incurred by Lessee (including without limitation attorneys' fees) as a result of Lessee's participation in regulatory proceedings or public hearings concerning passenger service on the Leased Premises.

(9) There shall be mutual indemnification and an equitable allocation of environmental liability.

(10) The parties shall address the issue of Lessor's right, if any, to raise affirmative defenses to performance of its obligations under the Lease Agreement (including without limitation Lessor's obligation to indemnify Lessee in certain circumstances) based upon Lessor's status as a governmental entity, quasi-governmental entity or political subdivision of same, and if such affirmative defenses are available to Lessor, the manner in which Lessee's interests may be reasonably protected in light of such defenses.

EXHIBIT F

Hazardous Materials-Definition. The term "Hazardous Material" shall mean: (i) any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; (B) the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq.; (C) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (D) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (E) California Health and Safety Code §§ 25115-25117, 25249.5, 25249.8, 25281, and 25316; (F) the Clean Air Act, 42 U.S.C. § 7901 et seq.; and (G) California Water Code § 13050; (ii) any amendments to such enumerated statutes or acts; and (iii) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the date of the Operating Agreement to which this Agreement is attached under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum (or any fraction thereof), natural gas and synthetic fuel products and byproducts.

Discussion of Comments

RSPA received public comments on Notice 1 from six gas pipeline operators and one pipeline related trade association. All seven commenters endorsed the alternative approach proposed by the petitioner and believed that the plan of action would ensure pipeline safety. Two pipeline operators stated that "CNGT's proposal appears to be an excellent implementation of RSPA's proposed implementation of Risk Based Pipeline Operations procedures."

Action on Petition

In accordance with the foregoing and by this order, RSPA finds that the requested waiver would not be inconsistent with pipeline safety. However, if during the hydrostatic testing required under Alternative A, a leak other than a specified minor leak occurs, CNGT is required to implement Alternative B. Accordingly, CNGT's petition for waiver from compliance with the requirements of 49 CFR 192.611(a) is granted under the provisions set out in Alternate A and Alternate B (above) under the heading Alternate Approach.

Issued in Washington, DC on September 24, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96-24863 Filed 9-26-96; 8:45 am]

BILLING CODE 4910-60-P

Surface Transportation Board [1]

[STB Finance Docket No. 33115]

North Coast Railroad Authority—Lease and Operation Exemption—California Northern Railroad Company

Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District North Coast Railroad Authority (NCRA), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to acquire by lease and operate approximately 142.2 miles of California Northern Railroad Company (CNRC) line,[2] known as the Northwestern Pacific Line,[3] located in Mendocino, Sonoma, Marin and Napa Counties, CA.[4] In addition, the Northwestern Pacific Railroad Authority and the Golden Gate Bridge, Highway and Transportation District have agreed to grant surface freight and passenger excursion easement to NCRA for a total of 67.9 miles of line (that portion of the Northwestern Pacific Line not owned by NCRA). The line is comprised of four segments: (1) the Willits Segment—extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles;[5] (2) the Healdsburg Segment—extending from NWP milepost 68.2 near Healdsburg, CA, to NWP milepost 26.96 near Novato, CA, a distance of approximately 41.2 miles; (3) the Novato Segment—extending from NWP milepost 26.96 near Novato, CA, to NWP milepost 25.6 near Ignacio, CA, a distance of approximately 1.4 miles; and (4) the Lombard Segment—extending from NWP milepost 25.6 near Ignacio, CA, to Lombard Station in Napa County, CA, SPM milepost 63.4, a distance of approximately 25.3 miles.

The transaction was scheduled to be consummated on or after the effective date of September 12, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33115, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Christopher J. Neary, Esq., 110 South Main Street, Suite C, Willits, CA 95490. Telephone: (707) 459-5551.

Decided: September 18, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-24703 Filed 9-26-96; 8:45 am]

BILLING CODE 4915-00-P

[STB Finance Docket No. 33120]

Connecticut Southern Railroad, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

Connecticut Southern Railroad, Inc. (CSO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate 23.1 miles of rail lines in the State of Connecticut from Consolidated Rail Corporation (Conrail) between milepost 0.0, at East Hartford, and milepost 6.7, at East Windsor; between milepost 0.0, at Windsor Locks, and milepost 4.2, at Suffield; between milepost 0.0, at Hartford, and milepost 9.6, at Manchester; and between milepost 0.0, at Hartford, and milepost 2.6, at Wethersfield. In addition, CSO will acquire by assignment Conrail's rail freight easement over 55 miles of rail line owned by the National Railroad Passenger Corporation in the States of Connecticut and Massachusetts between Amtrak milepost 7.0, near North Haven, CT, and Amtrak milepost 62.0, at Springfield, MA.

The transaction is expected to be consummated on September 20, 1996.

This transaction is related to STB Finance Docket No. 33121, *RailTex, Inc.—Continuance in Control Exemption—Connecticut Southern Railroad, Inc.*, wherein RailTex, Inc. has concurrently filed a verified notice to continue in control of CSO, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33120, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball, Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Decided: September 18, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-24708 Filed 9-26-96; 8:45 am]

BILLING CODE 4915-00-P

[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] CNRC is assigning to NCRA its rights obtained by Lease Agreement dated August 27, 1993, and amended April 30, 1996, between the Southern Pacific Transportation Company and CNRC.

[3] NCRA will be the operator of the Northwestern Pacific Line and will be doing business under the name "Northwestern Pacific Railroad."

[4] NCRA is currently operating over approximately 131.7 miles of the Northwestern Pacific Line under a trackage rights arrangement previously exempted by the Board. *See North Coast Railroad Authority—Trackage Rights Exemption—California Northern Railroad Company,* Finance Docket No. 32994 (STB served July 19, 1996).

[5] Rail line owned by NCRA.

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SURFACE TRANSPORTATION BOARD DECISION DOCUMENT

Decision Information

Docket Number: **FD_33115_0**

Case Title: **NORTH COAST RAILROAD AUTHORITY--LEASE AND OPERATION EXEMPTION--CALIFORNIA NORTHERN RAILROAD COMPANY, NORTHWESTERN PACIFIC RAILROAD AUTHORITY AND GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION DISTRICT**

Decision Type: **Notice**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes:

Full Text of Decision

Improvements; Extend Runway 2/20; Acquire Snow removal Equipment; Update storm water protection plan; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–32733 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 1]

Northwestern Pacific Railroad; Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage From Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Northwestern Pacific Railroad (NWP) of Eureka, California, to discontinue operation by anyone of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the NWP inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (*Ibid.*)

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Operations are currently being conducted under contract by Rail-Ways, Inc.

The majority of NWP's operations involve the transportation of freight; however, in the past, the railroad also has conducted passenger operations between Willits and Healdsburg. The NWP connects to the California Northern Railroad, another freight railroad, at Schellville. It also connects to the California Western Railroad, which operates both freight and passenger trains, at Willits. The California Western operates over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP traditionally hauls mostly timber and wood products, but it also hauls some hazardous materials, especially over the portion of the line south of Willits. Maximum authorized train speed on the line is 30 m.p.h., although train speed over that portion of the line affected by Emergency Order No. 14 is restricted to 10 m.p.h.

The NWP is subject to the jurisdiction of FRA. Portions of its operations currently are subject to Emergency Order No. 14 issued on June 7, 1990, when the line of railroad was known as the Eureka Southern Railroad. Emergency Order No. 14 remains in effect from mile post 145.5 near Willits to Ft. Seward, mile post 216.6 It prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. Concurrent with this emergency order, FRA is amending Emergency Order No. 14 to prohibit the transportation of hazardous materials until the track complies with class 1 track standards.

Northern Portion, Willits to Arcata

In 1990, FRA became concerned about the track conditions on the NWP, then known as the Eureka Southern Railroad, between Willits and Eureka. At the time, the railroad hauled over the line passengers and liquified petroleum gas, a regulated hazardous material. FRA found that the track between Willits and Eureka did not meet class 1 track standards and posed an immediate threat of death or injury to persons. FRA issued Emergency Order No. 14 under which the Eureka Southern Railroad was prohibited from hauling passengers until the track met class 1 track standards and from hauling hazardous materials until the track either met class 1 standards or was designated by the railroad as excepted. The excepted track provision, found at 49 CFR 213.4, limits the hauling of hazardous materials to five cars per train and places other restrictions on the designated track.

On October 1, 1990, because of improved conditions, FRA lifted Emergency Order No. 14 between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka. Since 1990, the NWP has complied with the terms of the emergency order for the remainder of the affected area by discontinuing hauling passengers and hazardous materials between Fort Seward and Willits.

The northern portion of the NWP has been subject to flooding for the past several years. Due to flooding which occurred within the last year, the NWP has discontinued operations on the northern portion from Nashmead (mile post 175.5) to Arcata. The railroad continues to operate on the northern portion between Willits and Nashmead. The NWP has applied to the Federal Emergency Management Agency (FEMA) for funding for repair of flood damage that occurred in 1995, 1997 and 1998. As a result of the application, FEMA, with FRA's assistance, recently conducted a survey of track conditions between Willits and Eureka. FEMA has agreed to provide $1 million to NWP for repair of flood damage.

Southern Portion, Willits to Mile Post 63.4

In 1997, FRA, in partnership with the California Public Utilities Commission

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(CPUC), reviewed NWP's compliance with Federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting numerous inspections of the NWP in the previous years, FRA and CPUC inspectors identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC.

The review conducted by FRA and CPUC also revealed that the NWP was not performing required periodic tests of its locomotive air brake equipment, and that all of the railroad's locomotives exhibited defective conditions which posed a hazard to the personal safety of NWP personnel operating the equipment. FRA and the CPUC concluded that the NWP was in need of a system-wide program to train its employees to recognize safety violations and to perform necessary repairs promptly and correctly.

On June 11, 1997, representatives of FRA and the CPUC met with NWP's executive director, Dan Hauser, and its general manager, Jack Tremain, as well as two members of the railroad's Board of Directors. The group agreed to and signed a Safety Compliance Agreement under which the NWP would perform specified repairs and employee training by determined deadlines. However, one year after the agreement was executed, the NWP had performed only three of the 11 action items identified by the Compliance Agreement. On June 28, 1998, the Federal Railroad Administrator issued a Compliance Order based mostly upon the terms of the prior Agreement. In summary, the Compliance Order, which remains in effect, directs the NWP to:

1. Cease passenger operations between Willits and Schellville until the track is repaired to class 1 track standards;

2. Limit hauling of hazardous materials between Willits and Schellville to two cars per train, and prohibit hauling of any hazardous materials over trackage that is within 100 feet of a bridge or public road and which does not meet class 1 track standards;

3. Develop and furnish to FRA and the CPUC a track maintenance plan and program;

4. Establish a program of employee training on the Federal Track Standards;

5. Certify abilities of each individual conducting track inspections;

6. Establish a program of employee training regarding inspections of locomotive power and equipment;

7. Certify abilities of each individual conducting inspections of locomotive power and equipment;

8. Certify inspection reports of locomotive power and equipment inspections;

9. Certify that proper repairs have been made of all defects found as a result of locomotive power and equipment inspections;

10. Perform testing on passenger and freight cars relative to single car tests and repair tests.

FRA reviewed NWP's compliance with the Compliance Order in September and October, 1998, and found that the railroad is not following many of the Order's directives. Track inspections conducted by FRA and the CPUC discovered that the trackage within 100 feet of bridges and public road between Willits and mile post 63.4, over which hazardous material are hauled, does not meet class 1 track standards. The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track.

Recent Safety Surveys

In light of the NWP's failure to comply with the Compliance Order after several months, FRA and the CPUC surveyed operations on the southern portion of the railroad in September and October, 1998, to assess its overall safety. In October and November, 1998, FRA inspectors accompanied inspectors from the FEMA on surveys of track damage caused by past flooding on the northern portion. In both portions, the inspectors found numerous defects that pose an immediate hazard of death or injury to persons.

Grade Crossing Signals

FRA's regulations addressing grade crossing signal system safety, found at 49 CFR part 234, require railroads to repair, "without undue delay," any essential component of a grade crossing signal that fails to perform its intended function, and until the repair is made, the railroad is to provide alternative measures of safeguarding the crossing. *See* 49 CFR 234.207. These temporary measures, delineated in 49 CFR 234.105, provide for manual flagging by railroad personnel whenever a train must occupy a grade crossing where the signals are not properly functioning. Properly functioning grade crossing signals, and temporary flagging in the event of a signal failure, are absolutely essential to the safety of the grade crossing. Trains traveling through a grade crossing, even at very slow speeds, are not able to stop suddenly to avoid a car in the crossing. Therefore, motorists attempting to cross a grade crossing must be adequately warned about a train's approach so that a potentially deadly accident can be averted.

In recent inspections of grade crossings on the NWP and from information provided by the railroad itself, FRA and CPUC inspectors found that 32 of the railroad's 127 grade crossing signals are not operational. While the railroad has instructed train crews to stop and flag each crossing where the signal is out of service, FRA and CPUC inspectors found one instance when a train crew did not perform this safety duty. Furthermore, many of the grade crossing signals have been out of service for several months, in violation of the Federal regulations' requirement to repair the signals "without undue delay."

Many of the grade crossings where the signals are out of service are situated in towns along the NWP line. In Petaluma, one grade crossing serves 22,000 vehicles per day, while another serves 13,000 every day. The NWP operates four to six train movements through these crossings each day, Monday through Friday. At other crossings where the grade crossing signals are out of service, the daily vehicle count ranges from 200 to 6,000. Vehicles in these counts include trucks carrying hazardous materials, including flammable substances.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts. Tests required by FRA's grade crossing safety regulations are past due at all 127 grade crossings, including relay, insulation resistance, and warning tests. In addition, the NWP lacks sufficient parts and materials to adequately maintain the warning system. Numerous NWP circuit plans are out-dated, illegible, or simply non-existent. They need to be corrected,

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redrawn, and in some cases, redesigned, yet the railroad lacks procedures to correct or redraw circuit plans.

Track Safety

FRA's track safety regulations, found at 49 CFR part 213, prescribe minimum safety requirements for railroad track. There are six classes of track defining maximum speed and minimum maintenance requirements. By designating track as a certain class, a railroad commits to maintaining that track to the standards established by the track safety regulations for that class. Much of the NWP's trackage from Willits to Schellville is designated as class 2 track. However, the numerous track defects found by FRA and the CPUC, as well as the NWP's apparent lack of commitment to properly repair the track, indicate that much of the track does not meet even the standards for class 1, the lowest class of track.

FRA and the CPUC conducted track inspections on the southern portion of the NWP between September 28 and October 15, 1998. A total of six inspections covered the line from mile post 63.4 between Schellville and Napa Junction to Willits at mile post 139.5. Inspectors identified 298 defective conditions in 148 miles of track. The majority of the defects (254) were defective crosstie conditions, including defective joint ties and ties not effectively distributed to support 39 feet of track. In many places, the ties were broken, split, or impaired to the extent that they allowed the ballast to work through. They could not hold spikes and they were allowing the tie plates or the base of the rail to move laterally more than a half inch.

These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support, the track gage, the distance between the inside faces of the rail heads, may become too wide or too tight. Gage that is either wider or narrower than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping off the rails.

The FRA and CPUC track inspectors also found 12 areas where water carrying facilities associated with the track were inadequate to perform proper drainage. Two of these drainage facilities are associated with railroad bridges. At one location, a wooden box culvert has collapsed. Under the regulations (49 CFR § 213.33) each drainage facility associated with a track structure must be kept free of obstruction to accommodate expected water flow for the area it serves. If drainage surrounding the track is not adequate, the condition can lead to wash-outs which will disturb the lateral and vertical support of the rail causing wide or tight gage and possible derailments. Adequate drainage is especially important for the NWP during the winter months when rainfall typically is greater.

Finally, the track safety regulations require that vegetation immediately adjacent to the track bed must be controlled so that it does not pose a fire hazard, obstruct visibility of signs and signals, interfere with railroad employees' trackside duties, prevent proper functioning of signals, or prevent employees from inspecting moving equipment. See 49 CFR 213.37. FRA and CPUC inspectors report that in many areas along the NWP trackage they inspected, the vegetation obstructs any view of the track structure. Some vegetation creates a fire hazard to timber bridges, trestles, and wooden box culverts. Other vegetation obstructs the visibility of signs and signals along the right-of-way and at grade crossings. While vegetation naturally occurs and re-occurs along any railroad track, it cannot be allowed to flourish to the extent that it inhibits the safe operation of the railroad. Vegetation that has been allowed to grow to the point where signals cannot operate properly or cannot be seen, or where it prevents railroad personnel from inspecting the track, or where it becomes conducive to setting fire to bridges and other wooden track structures, poses an imminent threat to the safety to railroad employees and to the traveling public.

Between November 4 and November 13, 1998, FRA and FEMA inspectors surveyed 262 separate locations on the northern portion of the railroad that the NWP identified as storm damaged. The inspectors found numerous locations where proper drainage is not possible because the drainage facilities are plugged or in disrepair or because ditches are plugged, overgrown or inadequate. The area between Willits and Arcata is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate the flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install the culverts at the correct depth or angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is quickly crushed by the weight of work trains. It is not likely that the drainage facilities in place will be adequate to withstand the next rainy season this winter.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. The FRA and FEMA inspectors found numerous locations where the track surface, alignment, and crossties were unacceptable for class 1 track standards. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations, the vegetation poses a fire hazard to track carrying structures.

Finding and Order

The results of the surveys by FRA, CPUC, and FEMA inspectors of tracks and signals along the NWP line have led FRA to conclude that continued use of this rail line poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by the NWP to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the NWP to make the necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is ordered that the Northwestern Pacific Railroad shall discontinue, and shall not permit, the operation of trains over its trackage between mile post 295.5 near Arcata and mile post 63.4 between Schellville and Napa Junction while this Emergency Order remains in effect. This Emergency Order is not meant to prohibit the operation of work trains operated for the specific and sole purpose of effecting repairs on the railroad. Maximum speed of such train movements shall be 10 m.p.h.

Relief

The NWP may obtain full relief from this Emergency Order by performing the following requirements:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. The standards and instructions should be submitted in writing to the Regional Administrator

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for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 6:01 p.m. (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32649 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 145.5 near Willits, California to mile post 216.6 near Ft. Seward, California.

Background

FRA issued Emergency Order No. 14 on June 7, 1990, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

AR 04595

Eureka, mile post 284.1. However, because of improved conditions, FRA lifted the Emergency Order between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka on October 1, 1990. The Emergency Order remains in effect from mile post 145.5 near Willits to mile post 216.6, Ft. Seward. FRA granted further partial relief in January, 1997, by allowing the NWP to haul hazardous materials over track not designated as excepted when the materials hauled were for construction, maintenance, and operation of the railroad.

In conjunction with the California Public Utilities Commission (CPUC) and the Federal Emergency Management Agency (FEMA), FRA conducted in September, October, and November 1998, safety surveys of the entire NWP line from mile post 295.5 near Arcata to milepost 63.4 between Schellville and Napa Junction. The surveys revealed unsafe conditions and practices which, in FRA's judgment, pose an emergency situation involving a hazard of death or personal injury. FRA found that 32 of the railroad's 127 grade crossing signals are not operational, endangering any motorist attempting to cross a grade crossing without adequate warning about a train's approach. The surveys also showed widespread track safety defects including numerous defective crossties, improper drainage, and overgrown vegetation posing a fire hazard and obstructing visibility of signs and signals. Most important, FRA found locations where the conditions for movement over excepted track were not being met.

The area between Willits and Eureka, which encompasses the area affected by Emergency Order No. 14, is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install culverts at the correct depth and angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is crushed quickly by the weight of work trains.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations the vegetation poses a fire hazard to track carrying structures.

In response to these findings, FRA is issuing, concurrent with this amendment, Emergency Order No. 21, which prohibits the NWP from operating, or permitting operations, over its rail line until the railroad inspects and repairs all of its grade crossing signals and repairs the track to class 1 track standards. The requirements of Emergency Order No. 21 apply to the entire railroad, including the portion of the line still governed by Emergency Order No. 14, with the exception of the requirement that the track be repaired to class 1 track standards for all rail traffic.

Until now, Emergency Order No. 14 has permitted movement of hazardous materials over excepted track, consistent with the conditions of 49 CFR § 213.4. However, the same conditions that have caused FRA to prohibit hazardous materials traffic on excepted track elsewhere on the line also exist on the portion of the line still covered by Emergency Order No. 14. Therefore, we are amending Emergency Order No. 14 to prohibit movement of hazardous materials, except in work trains, until the track is brought to class 1 standards. Emergency Order No. 14, as amended here, remains in effect, which allows the NWP to haul non-hazardous freight between Willits and Ft. Seward over excepted track, without repairing the track to class 1 track standards. With Emergency Order No. 14 still in place, NWP is allowed to operate with slightly fewer restrictions than in other parts of the railroad over a portion of its line where the general population is smaller and rail traffic is less extensive.

Amendment to the Order

I find that the unsafe conditions described above compel me to address the hazards presented by hauling hazardous materials over excepted track. Accordingly, I order that the NWP may not haul materials required by 49 CFR Parts 171–179 to be placarded as hazardous over the portion of its line still covered by Emergency Order No. 14 until such trackage meets class 1 standards. The railroad may continue to haul non-hazardous freight over the track once the track is designated as excepted. This amendment is not meant to prohibit the hauling of hazardous materials in work trains for the specific and sole purpose of effecting repairs on the railroad.

Relief

The NWP may obtain full relief from this amendment and all of Emergency Order 14 by fulfilling the following requirements:

1. Repair the track to class 1 track standards.

2. Obtain approval from the Federal Railroad Administrator that all of the requirements of Emergency Order No. 14 have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of Emergency Order No. 14 have been met. Within 30 days of notification, FRA will conduct inspections of the line and within seven days of the inspections, will inform the railroad in writing whether Emergency Order No. 14 is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of Emergency Order No. 14.

Penalties

Any violation of Emergency Order No. 14, as amended, shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C § 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C § 20112.

Effective Date

This amendment shall take effect at 12:01 (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Copies of this amendment Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this amendment will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32650 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

AR 04596

Law Offices of
Leonard J. LaCasse
119 South Main Street
Post Office Box 177
Ukiah, California 95482
Fax (707) 468-0576
Telephone (707) 468-5300

Leonard J. LaCasse
Madeline D. Sayre

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JAN 9 2001

January 8, 2001

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ENTERED
Office of the Secretary

JAN - 9 2001

Part of
Public Record

Mr. Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Northwestern Pacific Railroad Authority

Dear Mr. Williams: FD33998

Enclosed please find 10 original Verified Notices of Exemption. It is my understanding that your office will assign a docket number thereto, and you will send us an endorsed filed copy for our records. (We have enclosed a copy for that purpose.) Also enclosed please find our certificate of service showing all persons who received copies of this filing.

Also enclosed is Northwestern Pacific Railway's check in the amount of $1,200.00.

If you have any questions or if there is anything connected with this application that is missing, please give me a call.

Very truly yours,

LEONARD J. LACASSE

LJL:mm
Encs.
cc: Jim Darling

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JAN - 9 2001

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AR 04603

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Office of the Secretary

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Public Record

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § *1150.31*

STB FINANCE DOCKET NO. FD- 33998

NORTHWESTERN PACIFIC RAILWAY CO., LLC

- OPERATION EXEMPTION -

NORTH COAST RAILROAD AUTHORITY,
NORTHWESTERN PACIFIC RAILROAD AUTHORITY and
GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

Brief summaries of the proposed transaction, the name of the applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed are as follows:

(a) The full name and address of the subject Class III rail carrier applicant is:

Northwestern Pacific Railway Co., LLC
110 South Main Street, Suite F
PO Box 338
Willits, CA 95501
Telephone: (707) 459-7500
Facsimile: (707) 459-7512

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(b) The name, address and telephone number of the representative of the applicant who should receive correspondence is:

Leonard J. LaCasse,
Attorney at Law
119 South Main Street
Ukiah, CA 95482
Telephone: (707) 468-5300
Facsimile: (707) 468-0576

FILED

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(c) As described more fully hereinafter, an agreement was reached between the North Coast Railroad Authority, doing business as the Northwestern Pacific Railroad, and the

AR 04604

Northwestern Pacific Railway Co., LLC ("NWPY") as of August 31, 1998, as amended, which, upon satisfaction of certain conditions precedent to consummation, provided, *inter alia*, for the NWPY to lease and operate all of the railroad operating properties of the NCRA (the Northwestern Pacific Line). Upon consummation, this Agreement provides for a change of operators of the Northwestern Pacific Line. The parties believe the conditions precedent to consummation of the Agreement will have been satisfied on or before December 31, 2000.

(d) The operator of the owned property and easement rights of the North Coast Railroad Authority shall be Northwestern Pacific Railway Co., LLC.

(e) An agreement has been reached with the North Coast Railroad Authority by which all of the plant, property and equipment of the North Coast Railroad Authority, a California local powers agency, doing business under the firm name and style of Northwestern Pacific Railroad ("NWPRR"), has been leased to the Northwestern Pacific Railway Co., LLC, a Colorado limited liability company qualified to do business in the State of California. In addition, the North Coast Railroad Authority has also leased to Northwestern Pacific Railway Co., LLC all of its rights under the surface freight easements granted to it by the Northwestern Pacific Railroad Authority, a Joint Powers Agency created under California law, for that portion of the NWPRR line not owned by North Coast Railroad Authority, specifically that portion extending from Northwestern Pacific Mile Post 68.22 near Healdsburg, California to Northwestern Pacific Mile Post 40.93 near Schellville, California and between Southern Pacific Mile Post 72.6 near Schellville, California, to Southern Pacific Mile Post 63.40 near Lombard, California. To facilitate the foregoing described lease and assignments, an operating agreement has been entered into between the North Coast Railroad Authority and the Northwestern Pacific Railway Co., LLC by which Northwestern Pacific Railway Co., LLC shall accept, assume, discharge and perform substantially all of the rights, duties and obligations of the North Coast Railroad Authority under that certain Operating Agreement that had been entered into between Northwestern Pacific Railroad Authority and the Northwestern Pacific Railroad Authority.

The Northwestern Pacific Line from End of Track at Northwestern Pacific Mile Post 302.65 near Fairhaven, California, to Northwestern Pacific Mile Post MP 175.5 near Nash Mead has been closed to railroad operations since the El Niño storms of February, 1998. Operation the Northwestern Pacific Line between Northwestern Pacific Mile Post 175.5 near Nash Mead and Southern Pacific Mile Post 63.40 near Lombard, California, has been suspended since November 27, 1998, pursuant to the provisions of Emergency Order No. 21, served November 25, 1998, by the Federal Railroad Administration. Track and signal repairs for a portion of the line between Lombard, California, and Northwestern Pacific Mile Post 43.0 are nearly complete and railroad operations are expected to resume on the segment upon receipt of a partial waiver of the provisions of the Emergency Order No. 21. That partial waiver is expected to be issued on or before December 31, 2000.

State funds have been appropriated and transferred to the North Coast Railroad Authority for track and signal repairs from Mile Post 43.0 to Mile Post 139.5, near Willits, California. As repairs are completed, and waivers from Emergency Order No. 21 obtained, railroad operations will be restored.

Repairs northward of Mile Post 139.5 near Willits to End of Track at Mile Post 302.65 are funded but work remains suspended pending completion of a National Environmental Protection Act ("NEPA") review lead by the Federal Emergency Management Agency. Once the NEPA review is completed and the necessary environmental findings obtained, public works contracts will be let to complete repairs to End of Track.

The addresses of the parties are

(i) The address of the railroad transferring the subject property is

North Coast Railroad Authority
Cloverdale Depot
PO Box 279
501 Asti Road
Cloverdale, CA 95425
Attention Max H. Bridges, Executive Director
Telephone (707) 459-1350

The address of one entity which granted the freight easements to the NCRA is

Northwestern Pacific Railroad Authority
Attention Celia G. Kupersmith
Golden Gate Bridge, Highway and Transportation District
P.O. Box 9000
Presidio Station
San Francisco, CA 94129-0601

The address of the other entity which granted freight easements to the NCRA is

Golden Gate Bridge, Highway and Transportation District
Attention Celia G. Kupersmith
P.O. Box 9000
Presidio Station
San Francisco, CA 9129-0601

(ii) The proposed time schedule for consummation of the transaction is immediately upon expiration of the notice period, i.e., on or after January 1, 2001, Northwestern Pacific Railway Co., LLC shall operate the Northwestern Pacific Rail Line under the authority of this exemption. Prior to that time, the Northwestern Pacific Railway Co., LLC shall serve as the agent-operator of the line pursuant to an interim operating agreement.

(iii) The Mile-Post of the subject property including branch lines are as follows: the operation over the course of the Northwestern Pacific Line pursuant to the Lease Assignment encompasses freight operations on that certain rail line located in Humboldt, Trinity, Mendocino, Sonoma, Marin and Napa Counties in the State of California extending from the End of Track at Northwestern Pacific Mile Post 302.865 near Fairhaven, California to Southern

Pacific Mile Post 63 4 at Lombard Station, a distance of approximately 302 6 main line miles comprising five (5) segments (1) the *"Eureka Segment"* extending from End of Track at NWP Mile Post 302 86 near Fairhaven, California, to NWP Mile Post 142 5 near Outlet Station, California a distance of approximately 160 4 miles and including the Korblex Branch from NWP Mile Post 285 2 to NWP Mile Post 295 2, a distance of approximately 10 0 miles, and the Carlotta Branch from NWP Mile Post 262 7 to NWP Mile Post 267 7, a distance of approximately 5 0 miles, (2) the *"Willits Segment"* extending from NWP Mile Post 142 5 near Outlet Station to NWP Mile Post 68 22 near Healdsburg, California, a distance of approximately 74 3 miles, comprising rail line owned by North Coast Railroad Authority, (3) the *"Healdsburg Segment"* extending from NWP Mile Post 68 2 near Healdsburg, California to NWP Mile Post 26 96 near Novato, California, a distance of approximately 41 2 miles, (4) the *"Novato Segment"* extending from NWP Mile Post 26 96 near Novato, California, to NWP Mile Post 25 6 near Ignacio, California, a distance of approximately 1 4 miles, and (5) the *"Lombard Segment"* extending from NWP Mile Post 25 6 near Ignacio, California to Lombard Station in Napa County, California, Southern Pacific Mile Post 63 4, a distance of approximately 25 3 miles

The freight easement rights leased by the North Coast Railroad Authority to the Northwestern Pacific Railway Co , LLC leased by reason of the surface easement acquired from the Northwestern Pacific Railroad Authority comprises the *Healdsburg Segment* and the *Lombard Segment*

The freight easement rights leased by the North Coast Railroad Authority to the Northwestern Pacific Railway Co , LLC leased by reason of the easement acquired from the Golden Gate Bridge, Highway and Transportation District is comprised by the *Novato Segment*

(iv) The total route miles being acquired are comprised of 317 6 miles being subject to the Lease and Operating Agreement permitting Northwestern Pacific Railway Co , LLC to operate from Northwestern Pacific Mile Post 302 86 near Fairhaven, California, to Southern Pacific Mile Post 63 4 at Lombard Station, California The surface easement rights being leased to Northwestern Pacific Railway Co , LLC pursuant to the Lease and Operating Agreement with the North Coast Railroad Authority and subject to the Operating Agreement between the North Coast Railroad Authority and the Northwestern Pacific Railroad Authority and the Golden Gate Bridge, Highway and Transportation District are comprised of a total of 67 9 miles

(f) A map that clearly indicates the area to be served, including origins, termini stations, cities, counties and states is attached hereto as Exhibit "A," and incorporated herein by this reference as though fully set forth at length, and

(g) Northwestern Pacific Railway Co 's projected revenues following the consummation of the transaction will not exceed those that qualify it as a Class III rail carrier

(h) Applicant will preserve intact all sites and structures more than *50* years old in compliance with the requirements of Section 106 of the National Historic Preservation Act 16 U S C 470(f)

AR 04607

Respectfully Submitted,

Dated: December 21, 2000

Leonard J. LaCasse
Attorney at Law
119 South Main Street
Ukiah, CA 95482
Telephone: (707) 468-5300
Attorney for Northwestern Pacific Railway Co., L.L.C

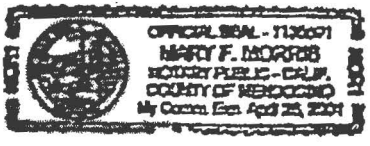
VERIFICATION

I, Leonard J. LaCasse, certify under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, belief and information. Further, I certify that I am qualified and authorized to file this verified notice of exemption.

Dated: December 21, 2000

Leonard J. LaCasse

Subscribed and sworn to before me this 21 day of December, 2000.



Name: Mary F. Morris

My commission expires April 26, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled NOTICE OF OPERATION EXEMPTION on the below-listed persons by sending via first-class mail copies thereof properly addressed as follows:

North Coast Railroad Authority
Attn. Max H. Bridges
PO Box 210
Cloverdale, CA 95425

Christopher J. Neary, Esq.
110 South Main Street, Suite C
Willits, CA 95490

David E. Miller, Esq.
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Ste. 2300
San Francisco, CA 94105-2173

Northwestern Pacific Railroad Authority
Attn: Celia G. Kupersmith
Golden Gate Bridge Highway and Transportation District
Box 9000 Presidio Station
San Francisco, CA 94129-0666

Golden Gate Bridge Highway and Transportation District
Attn: Celia G. Kupersmith
Box 9000 Presidio Station
San Francisco, CA 94129-0601

Madeline Chun, Esq.
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, #2300
San Francisco, CA 94105-2173

I hereby further certify that I have this day served the foregoing document entitled NOTICE OF OPERATION EXEMPTION on the below-listed person via Federal Express properly addressed as follows:

Mr. Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Executed this 8th day of January, 2001, at Ukiah, California.

LEONARD J. LaCASSE
MADELINE D. SAGER

64A0045
NCRA

Master Agreement -- State Funded Transit Projects



California Department Of Transportation

MASS TRANSPORTATION PROGRAM
1120 N STREET, ROOM 3300
P. O. BOX 942874, MS-39
SACRAMENTO, CA 94274-0001
PHONE (916) 654-8811

Revised 02/27/01

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
MASS TRANSPORTATION PROGRAM

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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
MASS TRANSPORTATION PROGRAM

MASTER AGREEMENT
STATE FUNDED TRANSIT PROJECTS

EFFECTIVE DATE OF THIS AGREEMENT: FEBRUARY 21, 2001

TERMINATION DATE OF THIS AGREEMENT: FEBRUARY 21, 2010

RECIPIENT: NORTH COAST RAILROAD AUTHORITY

FUNDING SOURCES COVERED BY THIS AGREEMENT AS IDENTIFIED IN EACH PROGRAM SUPPLEMENT

- PASSENGER RAIL AND CLEAN AIR BOND ACT OF 1990 (PROP. 108),
- CLEAN AIR AND TRANSPORTATION IMPROVEMENT ACT OF 1990 (PROP. 116) BOND FUNDS
- PUBLIC TRANSPORTATION ACCOUNT FUNDS
- STATE HIGHWAY ACCOUNT
- TRAFFIC CONGESTION RELIEF FUND (TCR), GC 14556.40
- GENERAL FUND
- OTHER STATE FUNDING SOURCES

This AGREEMENT, entered into effective as of the date set forth above, is between the public entity identified above, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as **STATE**.

ARTICLE I - PROJECT ADMINISTRATION

SECTION 1. PROGRAM SUPPLEMENT

A. *General*

(1) This AGREEMENT shall have no force and effect with respect to any PROJECT unless and until a separate PROJECT- specific PROGRAM SUPPLEMENT – STATE FUNDED TRANSIT PROJECT (S), hereinafter referred to as "PROGRAM SUPPLEMENT," adopting all the terms and conditions of this AGREEMENT, has been fully executed by both STATE and the RECIPIENT.

(2) **RECIPIENT** agrees to complete each defined PROJECT, or the identified PROJECT Phase/Component thereof, as described in the PROGRAM SUPPLEMENT, adopting all of the terms and conditions of this AGREEMENT.

(3) A financial commitment of **STATE** funds will occur only following the execution of this AGREEMENT together with the subsequent execution of a detailed and separate PROGRAM SUPPLEMENT applicable to that described PROJECT.

(4) **RECIPIENT** further agrees, as a condition to the release and payment of **STATE** funds encumbered for the PROJECT described in the PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants and Conditions attached to, or made a part of, the PROGRAM SUPPLEMENT, identifying and defining the nature of that specific PROJECT.

(5) The PROGRAM SUPPLEMENT shall generally include: a detailed Scope of Work, including Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan as required by the applicable program guidelines.

a. The Scope of Work shall include a detailed description of the PROJECT and itemize the major tasks and their estimated costs.
b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.
c. The Overall Funding Plan shall itemize the various PROJECT Components, the **STATE** funding program(s) or source(s), the matching funds to be provided by **RECIPIENT** and/or other funding sources, if any. (Project Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition).
d. The Project Financial Plan shall provide estimated expenditures for each component by funding source.

(6) Adoption and execution of the PROGRAM SUPPLEMENT by **RECIPIENT** and **STATE**, incorporating the terms and conditions of this AGREEMENT into the PROGRAM SUPPLEMENT, as fully set forth therein, shall be sufficient to bind the **RECIPIENT** to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated in a resolution by the **RECIPIENT**'S governing body, which delegation is expressly assented to and concurred in by **STATE**, the PROGRAM SUPPLEMENT shall be managed by the **RECIPIENT**'s governing body.

(7) The estimated cost and scope of each PROJECT will be as described in the applicable PROGRAM SUPPLEMENT. **STATE** funding participation for each PROJECT is limited to the amounts actually encumbered by **STATE** as evidenced in the PROGRAM SUPPLEMENT. A contract awarded by **RECIPIENT** for PROJECT work in an amount in excess of said approved estimate may exceed any said PROGRAM SUPPLEMENT cost estimate and the limits of **STATE** participation provided:

a. **RECIPIENT** provides the necessary additional funding, or

b. A PROJECT cost increase in **STATE** funding is first requested by **RECIPIENT** and that increase is approved by **STATE** in the form of an Allocation Letter comprising the fund encumbrance document.

(8) **STATE** programmed fund amounts may be increased to cover PROJECT cost increases only if :

a. Such funds are available,
b. **STATE** concurs with that proposed increase, and
c. **STATE** issues an approved Allocation Letter, Fund Shift Letter, or Time Extension Letter as stated in the executed amended PROGRAM SUPPLEMENT.

(9) When additional funds are not available, the **RECIPIENT** agrees that the payment of **STATE** funds will be limited to, and shall not exceed, the amounts already approved in the PROGRAM SUPPLEMENT containing **STATE** approved encumbrance documents and that any increases in PROJECT costs must be defrayed with non-**STATE** funds.

(10) For each approved PROGRAM SUPPLEMENT, **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of matching funds (other than **STATE** funds), if any matching funds are specified within the PROGRAM SUPPLEMENT, or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in an executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than the required match amount toward the cost of the PROJECT in accordance with a schedule of payments as shown in a Project Financial Plan prepared by **RECIPIENT** as part of a PROGRAM SUPPLEMENT.

(11) Upon the stated expiration of this AGREEMENT, any PROGRAM SUPPLEMENTS executed under this AGREEMENT for PROJECTs with work yet to be completed shall be deemed to extend the term of this Agreement only to the specific Project termination or completion date contemplated by the applicable PROGRAM SUPPLEMENT in force at the time the PROGRAM SUPPLEMENT was first executed to allow that uncompleted PROJECT to be administered under the terms and conditions of this AGREEMENT.

B. *Project Overrun*

(1) If **RECIPIENT** and **STATE** determine at any time during the performance of a PROJECT, that the PROJECT budget may be exceeded, **RECIPIENT** shall take the following steps:

a. Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential costs savings or other measures which will bring the Project Budget into balance;

b. Schedule the projected overrun for discussion at the next Quarterly Review meeting; *and*
c. Identify the source of additional **RECIPIENT** or other funds which can be made available to complete PROJECT.

C. *Scope of Work*

(1) **RECIPIENT** shall be responsible for complete performance of the work described in the approved PROGRAM SUPPLEMENT for the PROJECT related to the commitment of **STATE** funds. All work shall be accomplished in accordance with the applicable provisions of the Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.

(2) **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of each PROJECT and its subsequent employment, operation, and repair and maintenance for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by statutes from which these funds are derived, the California Transportation Commission (CTC), the **STATE** Treasurer, the Internal Revenue Service, the applicable PROGRAM SUPPLEMENT, and this AGREEMENT.

D. *Program Supplement Amendments*

PROGRAM SUPPLEMENT amendments will be required when there are CTC-approved changes to the cost, scope of work, or delivery schedule of a PROJECT from that specified in the original PROJECT Application. Any changes to a Scope of Work, Project Description, Project Schedule, Overall Funding Plan, or a Project Financial Plan shall be mutually binding upon the Parties only following the execution of a PROGRAM SUPPLEMENT amendment.

SECTION 2. ALLOWABLE COSTS AND PAYMENTS

A. *Allowable Costs and Progress Payment Vouchers*

(1) Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate **STATE** District Transit Representative) signed Progress Payment Vouchers for actual PROJECT costs incurred and paid for by **RECIPIENT** consistent with The Scope of Work document in the PROGRAM SUPPLEMENT. If no costs were incurred during any given quarter, RECIPIENT is exempt from submitting a signed Progress Payment Voucher, however, RECIPIENT agrees to still present a progress report at each Quarterly Review.

(2) **STATE** shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year, greater than the sums identified and included in the PROJECT Financial Plan. However, accelerated reimbursement of **STATE** funds for PROJECT in excess

of the amounts indicated in the Project Financial Plan, cumulatively by fiscal year, may be allowed at the sole discretion of **STATE** if such funds are available for encumbrance to fulfill that need.

(3) Each such voucher will report the total of PROJECT expenditures from all sources (including those of RECIPIENT and third parties) and will specify the percent of **STATE** reimbursement requested and the fund source. The voucher should also summarize **STATE** money requested by PROJECT component or phase (environmental and permits, PS&E, right of way, construction, rolling stock, or--if bond funded--private activity usage) and be accompanied by a report describing the overall work status and progress on PROJECT tasks. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the PROGRAM SUPPLEMENT which were accomplished prior to the Effective Date of this AGREEMENT or the PROGRAM SUPPLEMENT, and which costs are to be credited toward any required local contribution described in Article II, Section 1 of this Agreement pursuant to any applicable prior executed agreement for Local Match Fund Credit between **RECIPIENT** and **STATE**.

B. *Advance Payments (TCR Projects Only)*

(1) Advance reimbursement or payments by **STATE** are not allowed except in the case of TCR funded Projects when expressly authorized by CTC.

(2) For TCR Projects approved for advanced payment allocation by CTC, said advance payment shall be deposited in a prevailing interest rate bearing trust account held by a **STATE** approved FDIC insured financial institution. No interest earned shall be spent on the PROJECT. Interest earned shall be recorded and documented from the time the TCR funds are first deposited in **RECIPIENT**'S account until all the approved TCR advance funds have been expended or returned together with accrued interest to **STATE**. Interest earned shall be reported to the **STATE** Project Coordinator on an annual basis and upon final PROJECT payment. All interest earned and all unexpended advanced TCR funds shall be returned to **STATE** within 30 days of PROJECT completion.

(3) Advanced payment funds are to be expended only as indicated in the approved TCR Application. RECIPIENT must be able to document the expenditures/disbursement of funds advanced to only pay for actual PROJECT costs incurred and paid.

(4) Advance payments by **STATE** are not allowed except in the case of TCR funded Projects when expressly authorized by the CTC. Payments of non-TCR funds and TCR project funds not authorized for advance payment must be based upon reimbursement for actual allowable PROJECT costs already incurred and paid for by RECIPIENT. Where advance payments are authorized in a PROGRAM SUPPLEMENT, **RECIPIENT** must report and document the expenditure/disbursement of funds advanced to pay for actual eligible PROJECT costs incurred, at least quarterly, using a Progress Payment Voucher to be approved by the District Project Administrator.

C. *Expedited Payments (Excludes TCR Projects)*

(1) Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE**'s Accounting Service Center, the **RECIPIENT** will, not more frequently than as authorized by that MOU, prepare and submit to **STATE** an Expedited Payment Invoice for reimbursements that are consistent with that MOU and the applicable PROGRAM SUPPLEMENT. Expedited Payments are subject to policies established in the Caltrans Accounting Manual (Expedited Payment is not available for TCR funding). One time payments and final payments eligible for expedited pay pursuant to this Section will have ten percent (10%) of each invoice amount withheld pending approval from **STATE** until **STATE** has evaluated **RECIPIENT**'s performance and made a determination that all requirements assumed under this AGREEMENT and the relevant PROGRAM SUPPLEMENT have been satisfactorily fulfilled by **RECIPIENT**.

D. *Advance Expenditure of Local Funds*

Government Code section 14529. 17 (AB 872) allows public agencies to expend their own funds on certain programmed projects prior to CTC allocation of funds, and, upon CTC approval, to then seek reimbursement for those expenditures following execution of a PROGRAM SUPPLEMENT. STATE will acknowledge and accept these statutorily authorized prior payments as credit for required RECIPIENT Match, if any, or as proper PROJECT expenditures for reimbursement purposes.

E. *Travel Reimbursement*

Payments to **RECIPIENT** for PROJECT related travel and subsistence expenses of **RECIPIENT** forces and its subcontractors claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid **STATE** employees under current **STATE** Department of Personnel Administration (DPA) rules. If the rates invoiced by **RECIPIENT** are in excess of those authorized DPA rates, then **RECIPIENT** is responsible for the cost difference and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** by **RECIPIENT** on demand.

F. *Final Invoice*

The PROGRAM SUPPLEMENT Termination Date refers to the last date for **RECIPIENT** to incur valid PROJECT costs or credits and is the date a PROGRAM SUPPLEMENT expires. **RECIPIENT** has 180 days after that Termination Date to make final payment to PROJECT contractors or vendors, prepare the PROJECT Closeout Report, and submit the final invoice to **STATE** for reimbursement for allowable PROJECT costs.

ARTICLE II – GENERAL PROVISIONS

SECTION 1. FUNDING

A. *Local Match Funds*

Paragraphs "A(1) and A(2)" within this Section 1 to only apply to those funding programmed PROJECTS which require a local match. (See individual Program Guidelines for specific funding requirements.)

(1) Except where allowed by the applicable PROGRAM SUPPLEMENT, reimbursement of **STATE** funds and credits for local matching funds will be made or allowed only for work performed after the Effective Date of a PROGRAM SUPPLEMENT and prior to the Termination Date, unless permitted as local match PROJECT expenditures made prior to the effective date of the PROGRAM SUPPLEMENT pursuant to Government Code section 14529.17 or an executed SB 2800 Agreement for Local Match Fund Credit or by.

(2) **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of matching funds (other than **STATE** or federal funds), if any is specified within the PROGRAM SUPPLEMENT or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than its required match amount toward the PROJECT cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by **RECIPIENT** as part of a PROGRAM SUPPLEMENT.

B. *Funding Contingencies*

Delivery by **STATE** of all funds provided pursuant to this AGREEMENT is contingent upon prior budget action by the Legislature, fund allocation by the CTC, and submittal by **RECIPIENT** and approval by **STATE** of all PROJECT documentation, including, without limitation, that required by Government Code Section 14085. In the event of the imposition of additional conditions, delays, or and cancellation or reduction in **STATE** funding, as approved by the CTC, **RECIPIENT** shall be excused from meeting the time and expenditure constraints set forth in the Project Financial Plan, and the PROJECT Schedule to the extent of such delay, cancellation or reduction and the PROGRAM SUPPLEMENT will be amended to reflect the necessary changes in PROJECT funding, scope, or scheduling.

C. *Funds Movement*

RECIPIENT shall notify **STATE** of any proposed changes in any of the four PROJECT phase expenditure components -- Environmental and Permits, PS&E, Right-of-Way and Construction (including major equipment acquisitions). **STATE** approval shall be obtained in writing and **STATE** will determine whether the proposed change is significant enough to also warrant CTC review. Specific rules and guidelines regarding this process may be detailed in the applicable

CTC Resolution, including, but not limited to, numbers G-00-20, and G-00-23 or their successors.

SECTION 2. AUDITS AND REPORTS

A. *Cost Principles*

(1) **RECIPIENT** agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for **STATE** and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to **STATE** and Local Governments.

(2) **RECIPIENT**'s contractors and subcontractors agree that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) they shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. Every sub-**RECIPIENT** receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT, shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(3) Any PROJECT costs for which **RECIPIENT** has received payment or credit that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by **RECIPIENT** to **STATE**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within 30 days of demand, or within such other period as may be agreed between the Parties hereto, **STATE** is authorized to intercept and withhold future payments due **RECIPIENT** from **STATE** or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

(4) **RECIPIENT** agrees to include all PROGRAM SUPPLEMENT(s) adopting the terms of this AGREEMENT in the schedule of projects to be examined in **RECIPIENT**'s annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular A-133.

B. *Record Retention*

(1) **RECIPIENT**, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item of the accounting system of RECIPIENT, its contractors and all subcontractor's shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT**, its

contractors and subcontractors connected with PROJECT performance under this AGREEMENT and each PROGRAM SUPPLEMENT shall be maintained for a minimum of three years from the date of final payment to **RECIPIENT** under a PROGRAM SUPPLEMENT and shall be held open to inspection and audit by representatives of **STATE**, the California State Auditor, and the auditors of the Federal government. Copies thereof will be furnished by **RECIPIENT**, its contractors, and subcontractors upon receipt of any request made by **STATE** or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **RECIPIENT**'S external and internal auditors will be relied upon and used by **STATE** when planning and conducting additional audits.

(2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **RECIPIENT**'s contracts with third parties pursuant to Government Code section 8546.7, **RECIPIENT**, **RECIPIENT**"s contractors and subcontractors and **STATE** shall each maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during a PROJECT period and for three years from the date of final payment to **RECIPIENT** under any PROGRAM SUPPLEMENT. **STATE**, the California State Auditor, the Federal Highway Administration, or any duly authorized representative of the Federal Government, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions, and **RECIPIENT** shall furnish copies thereof if requested.

(3) **RECIPIENT**, its contractors and subcontractors, will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of any investigation to ascertain compliance with Section 1 of this ARTICLE II.

C. *Quarterly Review*

(1) Subject to the discretion of **STATE**, **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of each PROJECT. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding:

a. Whether the PROJECT is proceeding on schedule and within budget;

b. Any requested changes to the Project Description, Scope of Work, Project Schedule, Overall Funding Plan, or Project Financial Plan contained in a PROGRAM SUPPLEMENT;

c. Major construction accomplishments during the quarter;

d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties;

e. The status of the PROJECT budget; and

f. The status of critical elements of PROJECT.

(2) Quarterly reviews of **RECIPIENT** progress will include consideration of whether activities are within the scope of the PROJECT and in compliance with State laws, regulations, administrative requirements, and implementation of the PROJECT under a PROGRAM SUPPLEMENT.

SECTION 3. SPECIAL REQUIREMENTS

A. *California Transportation Commission (CTC) Resolutions*

(1) **RECIPIENT** shall adhere to applicable CTC policies on "Timely Use of Funds." Resolutions G-99-25, adopted August 18, 1999, and G-00-20, adopted July 19, 2000, to provide guidance for the use of Proposition 116 and STIP funds, respectively; and Resolution G-00-23 to provide direction on "Timely Use of Funds" addressing the expenditure and reimbursement for TCR funding. These resolutions, and/or successor resolutions in place at the time a PROGRAM SUPPLEMENT is executed, shall be applicable to all non-General Fund money. (These resolutions do not apply to General Fund money).

(2) **RECIPIENT** shall be bound to the terms and conditions of this AGREEMENT, the PROJECT application contained in the PROGRAM SUPPLEMENT (as applicable), and CTC Resolutions G-99-25, G-00-20, G-00-23 and/or their respective successors in place at the time the PROGRAM SUPPLEMENT is signed (as applicable); and all restrictions, rights, duties and obligations established therein on behalf of **STATE** and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or **STATE**. All terms and conditions stated in aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the PROGRAM SUPPLEMENT is signed (if applicable) shall also be considered to be binding provisions of this AGREEMENT.

(3) **RECIPIENT** shall conform to any and all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a PROGRAM SUPPLEMENT is signed, as applicable, at the expense of **RECIPIENT** and/or the responsible party and without further financial contribution or obligation of **STATE** unless a separate PROGRAM SUPPLEMENT expressly provides funding for the specific purpose of hazardous materials remediation.

B. *RECIPIENT Resolution*

(1) **RECIPIENT** has executed this AGREEMENT pursuant to the authorizing blanket **RECIPIENT** resolution, attached as Attachment I to this Master Agreement. This resolution empowers **RECIPIENT** to enter into this AGREEMENT and all subsequent PROGRAM SUPPLEMENTS.

(2) If **a RECIPIENT** Resolution is needed for each PROGRAM SUPPLEMENT, RECIPIENT will provide information as to who the authorized designee is to act on behalf of the **RECIPIENT** to bind RECIPIENT and **STATE** with regard to the terms and conditions of said PROGRAM SUPPLEMENT.

C. *Termination*

(1) **STATE** reserves the right to terminate funding for any PROGRAM SUPPLEMENT upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with PROJECT work in accordance with the PROGRAM SUPPLEMENT, the bonding requirements, if applicable, or otherwise violates the conditions of this AGREEMENT and/or the PROGRAM SUPPLEMENT or the funding allocation such that substantial performance is significantly endangered.

(2) No such termination shall become effective if, within 30 days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said 30-day period, **RECIPIENT** proceeds thereafter to complete the cure in a manner and time line acceptable to **STATE**. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than 30 days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond 30 days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

(3) If **RECIPIENT** fails to expend GENERAL FUND monies by June 30 any applicable Fiscal Year that those funds would revert, those funds will be deemed withdrawn unless specifically made available beyond the end of the Fiscal Year through reappropriation or other equivalent action of the Legislature.

(4) In the event STATE terminates a PROGRAM SUPPLEMENT for convenience and not for a default on the part of RECIPIENT as is contemplated in (1) and (2) above of this Part C of ARTICLE III, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE'S** share of allowable PROJECT costs incurred prior to the date of termination.

D. *Third Party Contracting*

(1) **RECIPIENT** shall not award a construction contract over $10,000 or other contracts over $25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f) on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of **STATE**. Contracts awarded by **RECIPIENT**, if intended as local match credit, must meet the requirements set forth in Section 1, A(1) and A(2) of ARTICLE I regarding local match funds.

(2) Any subcontract entered by RECIPEINT as a result of this AGREEMENT shall contain all of the provisions of ARTICLE II – GENERAL PROVISIONS.

E. *Change in Terms/Amendments*

This AGREEMENT may be modified, altered, or revised only with the joint written consent of **RECIPIENT** and **STATE**.

F. *Project Ownership*

(1) Unless expressly provided to the contrary in the PROGRAM SUPPLEMENT, subject to the terms and provisions of this AGREEMENT, **RECIPIENT** shall be the sole owner of all improvements and property included in the PROJECT constructed, installed or acquired by **RECIPIENT** with funding provided to **RECIPIENT** under this AGREEMENT. **RECIPIENT** is obligated to continue operation and maintenance of PROJECT dedicated to the public transportation purposes for which PROJECT was initially approved, unless **RECIPIENT** ceases ownership of such PROJECT property; or ceases to utilize PROJECT for the intended public transportation purposes; or sells or transfers title to or control over PROJECT, and **STATE** is refunded the Credits due as provided in this paragraph (4) below.

(2) Should **STATE** bond funds encumbered to fund PROJECT under this AGREEMENT, then at **STATE**'s option, **RECIPIENT** shall be required to first obtain a determination by Bond Counsel acceptable to the State Treasurer's Office that a change in operation, proportion, or scope of PROJECT as proposed by **RECIPIENT** will not adversely affect the tax-exempt status of those bonds.

(3) PROJECT right-of-way, PROJECT facilities constructed or reconstructed on a PROJECT site and/or PROJECT property purchased by RECIPEINT (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this AGREEMENT) shall remain permanently dedicated to public transit use in the same proportion and scope, and to the same extent as described in the PROGRAM SUPPLEMENT and related Bond Fund Certification documents, if applicable, unless **STATE** agrees otherwise in writing. Vehicles acquired as part of PROJECT, including rail passenger equipment and ferry vessels, shall be dedicated to that public transportation use for their full economic life cycle, which, for

the purpose of this AGREEMENT, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achieved by reconstruction, rehabilitation or enhancements.

(4) Except as otherwise set forth in this Section 3, **STATE**, or any other assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (Credit), at **STATE'S** sole option, equivalent to the proportionate PROJECT funding participation offered RECIPIENT by **STATE** and third parties in the event that **RECIPIENT** ceases to utilize PROJECT for the intended public transportation purposes or sells or transfers title to or control over PROJECT. **STATE** shall also be entitled to an equivalent acquisition credit for any future purchases or condemnation of all or portions of PROJECT by **STATE** or a designated agent of **STATE**. The refund or credit due **STATE** will be measured by the funding ratio of **STATE** and other third party funding (unless that 3rd Party's to also contractually entitled to a similar refund (credit)) to **RECIPIENT** funding participation applied to the then fair market value of PROJECT property acquired or constructed. For vehicles, this refund shall be equivalent to the proportion of the full economic life cycle remaining, multiplied by the non-RECIPIENT funds provided for the equipment acquisition. For real property, this credit shall be measured by the funding ratio of **STATE** and other third party funding (unless that 3rd Party's also contractually entitled to a similar refund (credit)) to **RECIPIENT** funding participation applied to the present fair market value, as determined by **STATE**, of the PROJECT property acquired under this AGREEMENT.

(5) In determining the present fair market value of the property for purposes of calculating **STATE**'s Credit under this AGREEMENT, any portions of PROJECT site contributed by **RECIPIENT** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s contributions to parties other than **RECIPIENT** shall be included, if made a part of PROJECT funding.

(6) Once **STATE** receives the Credit as provided for above because **RECIPIENT** ceased to utilize PROJECT for the intended public transportation purposes, or sold, or transferred title to, or control over PROJECT, neither **RECIPIENT** nor any person to whom **RECIPIENT** has transferred said title or control shall any longer have any obligation under this AGREEMENT to continue operation of PROJECT and/or PROJECT facilities for public transportation purposes, but may then use PROJECT and any of its facilities for any lawful purpose.

(7) To the extent that **RECIPIENT** operates and maintains Intermodal Transfer Stations as any integral part of PROJECT, **RECIPIENT** shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code, Section 99317.8). Upon request of **STATE**, **RECIPIENT** shall also authorize **STATE**-funded bus services to use the station and its appurtenances without any charge to **STATE** or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the **STATE**-

funded bus service (for the purpose of this paragraph, "**STATE**-funded bus service" means any bus service funded pursuant to Public Utilities Code, Section 99316).

(8) Special conditions apply to any proposed sale or transfer or change of use as respects PROJECT property, facilities or equipment acquired with State bond funds and RECIPIENT shall conform to those restrictions as set forth in ARTICLE III, A(7) here in below.

G. *Disputes*

The remedy for the resolution of any claims brought by **RECIPIENT** against **STATE** under this AGREEMENT shall be by arbitration. Unless otherwise agreed by **STATE** and **RECIPIENT**, an arbitration shall be conducted by a single arbitrator selected by the parties from the certified list created by the Public Works Contract Arbitration Committee per Public Contract Code Section 10240.

H. *Hold Harmless and Indemnification*

(1) Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT or any PROGRAM SUPPLEMENT or as respects environmental clean up obligations or duties of **RECIPIENT** relative to PROJECT. It is also understood and agreed that, pursuant to Government Code Section 895.4, **RECIPIENT** shall fully defend, indemnify and hold the CTC and **STATE** and their officers and employees harmless from any liability imposed for injury and damages (as defined by Government Code Section 810.8) or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT and all PROGRAM SUPPLEMENT.

(2) **RECIPIENT** shall indemnify, defend and hold harmless **STATE**, the CTC and the State Treasurer relative to any misuse by **RECIPIENT** of State funds, PROJECT property, PROJECT generated income or other fiscal acts or omissions of **RECIPIENT**.

I. *Labor Code Compliance*

RECIPIENT agrees that it shall include in all subcontracts awarded using PROJECT funds a requirement that each subcontractor shall comply with California Labor Code requiring that all workers employed on public works aspects of any PROJECT (as defined in California Labor Code § 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of Contract award by the RECIPIENT.

J. *Non-Discrimination*

In the performance of work under this AGREEMENT, **RECIPIENT**, its contractor(s) and all subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, or family and medical care leave and denial of pregnancy disability leave. **RECIPIENT**, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their **RECIPIENT**, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the **RECIPIENT**'s contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements. During performance of this AGREEMENT, RECIPIENT shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are applicable to this AGREEMENT by reference. **RECIPIENT** shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

K. *STATE Fire Marshal Building Standards*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State owned or State occupied buildings per Section 13108 of the Health and Safety Code. When applicable, State Fire Marshal to ensure consistency with State fire protection standards.

L. *Americans with Disabilities Act*

By signing this Master Agreement, RECIPIENT assures STATE that RECIPIENT shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.)

M. *Access for Persons with Disabilities*

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. No construction contract will be awarded by **RECIPIENT** unless **RECIPIENT**'S plans and specifications for such facilities conform to the provisions of Sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. *Disabled Veterans Program Requirements*

(1) Should Military and Veterans Code Sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or **RECIPIENT'S** applicable higher goals) in the award of every contract for PROJECT work to be performed under these this AGREEMENT.

(2) **RECIPIENT** shall have the sole duty and authority under this AGREEMENT to determine whether these referenced code sections are applicable to **RECIPIENT** and, if so, whether good faith efforts asserted by those contractors were sufficient as outlined in the Military and Veterans Code Sections 999 et seq.

O. *Environmental Process*

Completion of the environmental process ("clearance") for PROJECT by **RECIPIENT** (and/or **STATE** if it affects a STATE facility within the meaning of the applicable statutes) is required prior to requesting PROJECT funds for right-of-way purchase or construction. No **STATE** agency shall request funds nor shall any **STATE** agency, board or commission authorize expenditures of funds for any PROJECT effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report per mandated by the California Environmental Quality Act (CEQA). California Public Resources Code Section 21080(b)(10), does provide an exemption for passenger rail PROJECT which institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

ARTICLE III – SPECIAL PROVISIONS

SECTION 1. BOND PROVISIONS

A. *General Bond Provisions*

(1) If **RECIPIENT** enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with PROJECT, RECIPIENT will obtain approval from Bond Counsel acceptable to **STATE** that the terms of that management contract meet the requirements of Internal Revenue Service Revenue Procedure 82-14 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property) or are otherwise acceptable. RECIPEINT will also be prepared to certify, upon request of **STATE,** that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of transportation services in connection with PROJECT (but not including any subsidy of the transportation operation from taxes or other outside fund sources) are, for any fiscal year less, than the ordinary and necessary expenses directly attributable to the operation and maintenance of the transportation system (excluding any overhead or administrative costs of **RECIPIENT**).

(2) If **RECIPIENT** receives any revenues or profits from any NUP allowed pursuant to this Article (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for the public transportation services for which PROJECT was initially approved, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate those revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE's** equivalent to **STATE's** non-RECIPIENT percentage participation in PROJECT.

(3) Notwithstanding the foregoing, **RECIPIENT** maybe authorized a private activity allocation of bond proceeds, not to exceed the amount specified in the PROGRAM SUPPLEMENT, once **RECIPIENT** submits to **STATE** the complete certification questionnaire and the State Treasurer and **STATE** approve that private activity as described therein.

(4) **RECIPIENT** shall not loan any portion of bond proceeds funding PROJECT to any private (including nonprofit) person or business. For this purpose, a "loan" includes any arrangement which is the economic equivalent of a loan, regardless of how it is named.

(5) Delivery by **STATE** of any bond funds is contingent on the sale of bonds by the **STATE** Treasurer. In the event bond sales are delayed, canceled, or downsized or other AGREEMENT funds are restricted, limited or otherwise conditioned by acts of Congress, the CTC, the Legislature, the Internal Revenue Service or the Federal Transit Administration, **STATE** shall not be held liable for any resulting damage or penalty to **RECIPIENT**.

(6) **RECIPIENT** shall, for the purposes of any **STATE** bond funded right of way acquisition which will become a permanent part of PROJECT (such acquisitions exclude temporary construction easements, property allocated to matching funds, and excess property purchased with **STATE** funds whose resale proceeds are returned or credited to **STATE**), maintain ownership of such PROJECT property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property, subject to the Credits due **STATE** as provided in Article III, Section 1-A above.

B. *Proposition 116 Bond Fund*

If PROJECT funding is being provided, in whole or in part, pursuant to the Clean Air and Transportation Improvement Act of 1990 (Proposition 116), the following additional provisions apply to **RECIPIENT**:

(1) Where **RECIPIENT'S** PROJECT includes a commuter rail PROJECT within the meaning of Proposition 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services

shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.

(2) **RECIPIENT** agrees that all passenger rail and water borne ferry equipment and all facilities acquired or constructed pursuant to this AGREEMENT shall be accessible to persons with physical disabilities, including wheelchair users. All passenger vehicles and vessels acquired pursuant to this AGREEMENT shall be accessible to wheelchair users at all stops, stations and terminals, whether or not staffed.

(3) **RECIPIENT** (other than the transit operator identified in Sections 99633 and 99634 of the Public Utilities Code) shall require that all intercity and commuter rail cars purchased with PROJECT funding conform to the California Rail car specifications developed by **STATE** as specified in the Clean Air and Transportation Improvement Act.

(4) Except as provided in this Section 1., **STATE** and **RECIPIENT** agree that any costs of PROJECT acquired or constructed by **RECIPIENT** allocable to portions of PROJECT which are subject to any property interests held by a non-governmental person(s) in connection with business activities, such as easements, leases, or fee interests not generally enjoyed by the public, (hereafter referred to as Non-governmentally Used Property or "NUP") shall, for accounting and bookkeeping purposes, be allocated to funding sources other than the **STATE** bond funds. For purposes of making such allocations, the costs attributable to NUP involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square or cubic footage/acreage of the area encumbered by the lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.

(5) NUP will include, but is not limited to, property, which is sold (including sales of air and subsurface rights), and property subject to easements, leases or similar rights. A rail right of way will not be treated as NUP solely as a result of a Freight Use Easement retained by the seller of the right of way to **RECIPIENT**, provided that the sales agreement appropriately excludes the Freight Use Easement from the property or rights being acquired. Further, notwithstanding anything in this Article VI to the contrary, **RECIPIENT** may allocate grant funds to the cost of any NUP if (i) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any payments from or on behalf of the non-governmental user of the NUP, or (ii) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the non-governmental use of the NUP.

(6) **RECIPIENT** shall request, in writing, **STATE'S** advance approval if PROJECT funds are to be allocated to any NUP, except "incidental use" property described below. If property, the costs of which have previously been allocated to PROJECT funds, is to become NUP before the State bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided, or obtain **STATE'** approval that the allocation of the costs of such property to

the bond funds may remain. It is anticipated that **STATE** approval will be granted if, taking into account the existing and expected uses of the proceeds of the State bonds, the **STATE** determines that the continued tax-exempt status of the State bonds will not be adversely affected and that the use of the property is consistent with PROJECT and its described purpose.

(7) For purposes of these fund source allocations **RECIPIENT** does not have to take into account as NUP those "incidental uses" of PROJECT (For example, advertising billboards, vending machines, telephones, etc.) which meet requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general, such Notice requires that the incidental use not be physically separated from the rest of PROJECT and not comprise in the aggregate more than 2-1/2% of the total costs of PROJECT.

SECTION 2. TCRP PROJECTS

A. *California Transportation Commission (CTC) Resolutions*

The TRAFFIC CONGESTION RELIEF (TCR) ACT OF 2000 (the "ACT"), in Chapter 4.5, was added (commencing with Section 14556) to part 5.3 of Division 3 of Title 2 of the Government Code by AB 2928 and SB 406, as amended by SB 1662. As directed by the ACT and the CTC established Guidelines, **RECIPIENT** will cause its Resolution to be attached as part of any TCRP funded PROGRAM SUPPLEMENT as a condition precedent to the acceptance of TCR ACT funds.

SECTION 3. PROJECT MANAGEMENT

(1) The PROJECT administrators for this AGREEMENT for the **STATE** shall be the Chief, Office of State Transit Program Management of the Mass Transportation Program for TCR projects, and the Chief, Office of State Transit Project Delivery for all other projects, and for **RECIPIENT**, its General Manager, Executive Director or a Designee as named in writing to STATE following execution of this AGREEMENT.

(2) PROGRAM SUPPLEMENT administrators for **STATE** shall be the District Division Chief for Planning and for **RECIPIENT**, the designee named in the applicable PROGRAM SUPPLEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY: _____
PETER J. STEINERT, Chief
Office of State Transit Program Management
Mass Transportation Program

RECIPIENT

BY: _____
MAX BRIDGES, Executive Director
North Coast Railroad Authority

APPROVED AS TO FORM AND PROCEDURE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY: _____
WILLIAM B. BASSETT, Attorney

ATTACHMENT I
RECIPIENT AGENCY BOARD RESOLUTION

RESOLUTION #2001-02
AUTHORIZATION FOR THE EXECUTION OF A MASTER AGREEMENT AND PROGRAM SUPPLEMENTS FOR STATE FUNDED TRANSIT PROJECTS

WHEREAS, the North Coast Railroad Authority may receive funding from the State of California now or sometime in the future for transit related projects; and

WHEREAS, substantial revisions were made to the programming and funding process for the transportation projects programmed in the State Transportation Improvement Program, by Chapter 622 (SB 45) of the Statutes of 1997; and

WHEREAS, the Traffic Congestion Relief Act of 2000 (the Act) was established by Chapters 91 (AB) 2928) and 92 (SB 496), as amended by SB 1662, of the statutes of 2000, creating the Traffic Congestion Relief Program (TCRP); and

WHEREAS, these statutes related to state funded transit projects require a local or regional implementing agency to execute a cooperative agreement with Caltrans before it can be reimbursed for project expenditures; and

WHEREAS, the California Transportation Commission (CTC) guidelines for the Traffic Congestion Relief Program, encourages Caltrans and the implementing agency to maximize the use of existing agreements such as Master Agreements and Program Supplements to expedite development and execution of cooperative agreements; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the North Coast Railroad Authority that the Agency agrees to comply with all conditions and requirements set forth in this agreement and applicable statues, regulations, and guidelines for all state funded transit projects.

WHEREAS, the CTC, who governs the administration of transit related projects, requires a cooperative agreement, for TCRP projects to include a certification, by resolution of the governing board of a local or regional agency, as required by statutes, that it will sustain its level of expenditures for transportation purposes at a level that is consistent with the average of its annual expenditures during the 1997-98, 1998-99, and 1999-2000 fiscal years, including funds reserved for transportation purposes, during the fiscal years that the allocation is available for use; and

NOW, THEREFORE, BE IT RESOLVED that the level of expenditures for transportation purposes will be sustained at a level that is consistent with the average of its annual expenditures during the 1997-98, 1998-99, and 1999-2000 fiscal years, including funds reserved for

transportation purposes, during the fiscal years that allocations for TCRP Projects are available for use.

WHEREAS, the North Coast Railroad Authority wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director; and

NOW THEREFORE, BE IT RESOLVED that the Executive Director be authorized to execute Master Agreement No. 64A0045 and all Program Supplements for State Funded Transit Projects, and any amendments thereto with the California Department of Transportation.

AYES: Dir. Ripple, Dir. Hemphill, Dir. Schlienger, Dir. Mackenzie

NAYES: None

ABSTAIN: None

ABSENT: Dir. Simonson, Dir. Opalach

David Ripple, Chair

Max H Bridges, Secretary

Revised 02/27/01

ATTACHMENT II
CTC RESOLUTION G-91-2

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION G-91-2
Commission Policy Resolution for Hazardous Waste Identification and Cleanup for Rail Right-of-Way

WHEREAS, the Commission has programmed funding for rail right-of-way acquisition in the 1990 State Transportation Improvement Program and may allocate funds for rail right-of-way acquisition from the Clean Air and Transportation Improvement Act; and

WHEREAS, hazardous wastes, based upon federal and state statutes and regulations, include but are not limited to such categories as heavy metals, (e.g., lead), inorganic (e.g., excessive mineral levels) and organic compounds (e.g., petroleum products), and can occur on a property's surface and subsurface; and

WHEREAS, rail properties often have hazardous wastes exceeding State of California and federal hazardous waste standards; and

WHEREAS, such properties contaminated with hazardous wastes require mitigation prior to using them for rail purposes; and

WHEREAS, hazardous wastes discovered on rail property may significantly impact property value, project scheduling and future liability for the grant applicant; and

WHEREAS, the Commission must be assured that acquisition of rail properties have been fully reviewed by the grant applicant, and if warranted, the grant applicant has tested for hazardous wastes; and

WHEREAS, if hazardous wastes exist, the Commission must be assured that the hazardous wastes identified has either been cleaned up, or financial responsibility for the cleanup has been determined prior to title transfer to the grant applicant, or easement has been secured in lieu of purchasing the property, and the subsurface rights and liability for hazardous wastes remain with the property seller; and

WHEREAS, hazardous wastes identified subsequent to title transfer to the grant applicant will be cleaned up by the seller or a mechanism to recover clean-up-costs is established and executed as a condition prior to title transfer: and

WHEREAS, full due diligence is necessary in discovering hazardous waste and is an essential element in acquiring rail right-of-way properties by the grant applicant; and

NOW THEREFORE BE IT RESOLVED, that acquisition of all rail right-of-way properties will be fully investigated by the grant applicant to determine the absence/presence of hazardous wastes. Investigations shall be conducted in accordance to the standards and practices of the local, state and/or federal regulatory agencies having jurisdiction and by personnel adequately trained in hazardous waste investigation; and

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BE IT FURTHER RESOLVED, that all properties, discovered with hazardous wastes which exceed the federal/state standards, will be cleaned up to the satisfaction of the responsible local, state and/or federal regulatory agency. The appropriate regulatory agency shall certify to grant applicant that the cleanup has been completed; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution to the Commission that all reasonable steps have been completed to assure full due diligence in the discovery of hazardous waste has been achieved during the acquisition of rail right-of-way and the state is held harmless from cleanup liability or damages, both present and future; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution that it will not seek further state funding, for cleanup, damages, or liability cost associated with hazardous wastes on or below acquired property's surface; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission:

- that all rail right-of-way acquisition properties have been investigated and have been found clean;
- or that the cleanup of discovered hazardous waste has been completed prior to acquisition of the property;
- or that the grant applicant has obtained permanent easement and the subsurface rights and liability and full responsibility to pay for and remove such hazardous waste remains with the seller in conformance with applicable State and Federal law;

BE IT FURTHER RESOLVED, the Commission declares all future liability resulting from hazardous wastes remain with the seller or the grant applicant, not the state, and the grant

- or if hazardous wastes are known to exist prior to acquisition and if the applicant determines that time is of the essence for acquisition, then and in that event, an enforceable agreement will be entered into requiring the responsible party(ies) to clean all hazardous wastes by a date certain, with the option of funds sufficient for the clean-up costs deposited in escrow by the seller.

In the event of failure to clean up by the date determined, the recipient of the grant will make full restitution to the State for its participation. This resolve does not preclude the recipient from requesting re-allocation not to exceed the refunded amount after the hazardous waste(s) have been fully removed from the subject site; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission that the seller from whom properties have been acquired retain liability for any hazardous waste investigation and/or cleanup, and damages discovered subsequent to the transfer of title; and

applicant has been indemnified by the seller for any costs resulting from failure to eliminate hazardous wastes; and

BE IT FURTHER RESOLVED, no state funds will be made available for any future costs associated with cleanup, damages, or liability costs associated with hazardous wastes on or below the acquired property's surface.

Revised 02/27/01



A Report to the California Transportation Commission

On

The North Coast Railroad Authority

May 2002

Executive Summary

Administrative Funding

NCRA has identified unrestricted funding sufficient to provide for its projected administrative needs from fiscal year 2002-03 through the first half of fiscal year 2004-05 while still meeting its commitments with respect to liability obligations. The identified unrestricted funding sources provide NCRA a total of $916,400 in the current (2001-02) fiscal year and an additional $276,000 in fiscal year 2002-03 of unrestricted funds. There will be need for additional administrative support from mid-2004-05 through early 2008-09 when it is anticipated that sufficient revenue from operations will be available to fully support administrative needs. Schedule A provides a detailed summary of the projected revenues and expenditures through fiscal year 2013-14. Schedule B provides NCRA's administrative expenditures for fiscal years 2000-01 through the current year and the recently adopted administrative budged for 2002-03.

NCRA intends to aggressively pursue additional revenue from its leases and other property revenues and ways to reduce administrative expenditures to lessen the need for further administrative subsidy.

Status of Debt

NCRA has potential liabilities that are characterized as annual, long-term, to be forgiven, not valid, and deferred. They are listed by category on Schedule C. Those identified as being legitimate obligations total $14,220,675 of which $12,000,000 is the Q-Fund loan obligation that will be paid in 2013 from the revenues generated by the funds held in trust by the State Treasurer's Office Local Agency Investment Fund pursuant to a MOU between the Commission and NCRA.

Schedule A provides NCRA's projected retirement of its liabilities utilizing identified revenues projected through fiscal year 2013-2014.

Background

The 2000 Traffic Congestion Relief Program (TCRP)

The Traffic Congestion Relief Program was established with the adoption of AB 2928 in 2000. It provided a total of $60 million to NCRA to address various immediate, intermediate and long term needs related to administrative expenditures ($1,000,000), repayment of the Q-Fund loan ($5,500,000), environmental remediation ($4,100,000), debt reduction ($10,000,000), re-opening to Willits ($600,000), re-opening Willits to Arcata ($1,000,000), upgrading to FRA Class 2 and 3 ($5,000,000), local match funds ($1,800,000) and long-term slope stabilization ($31,000,000).

These funds are under the direction of the California Transportation Commission (CTC) and are available for allocation as directed by the legislation. Thus far $17.75 Million has been allocated by the CTC for the following items:

$10.00 Million for Debt Relief
$ 1.00 Million for Administrative Expenses (2000-01 and 2001-02 FY)
$ 5.50 Million for repayment of the acquisition costs from FHWA (Q-Fund Loan)[1]
$ 0.60 Million for completion of rail line – Lombard to Willits (completed April 2002)
$ 0.60 Million Capital Projects and Environmental Consent Assessments (due June 2002)
$ 0.05 Million for Local Matching needed for use of ISTEA funding (still pending)

Pursuant to AB 2928 and subsequent action by the California Transportation Commission (CTC), future funding allocations to the NCRA were conditioned upon completion of a Strategic Plan and an assessment evaluating the capital needs of the entire line providing a clear scope of the costs associated with its rehabilitation. In May of 2001 the CTC accepted NCRA's *Strategic Plan for Resumption of Viable Rail Service to California's North Coast* and authorized the expenditure of TCR funds for the preparation of a comprehensive assessment of the railroad's capital project and environmental consent needs.

Purpose of Report

The California Transportation Commission (CTC) has requested that the North Coast Railroad Authority (NCRA) provide at the Commission's May 2002 meeting an evaluation of projected costs and identifiable funding sources available to fund the NCRA administrative and maintenance of way needs until such time as operational revenues fully support the railroad. ***Schedule A*** attached to this report provides, in support of the text, a detailed summary of the anticipated expenditures and revenue sources through fiscal year 2013-14.

This report also contains clarification, by the NCRA, on its existing debt and provides an explanation on when and how this debt will be repaid. Additionally, a discussion regarding the current status of the contract with the County of Sonoma [for accounting services] as well as a progress report on the Capital Projects and Environmental Consent Assessments are included.

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[1] Caltrans audit exceptions require re-payment on the FHWA Q-Fund loan of $1.3 million in fiscal year 2001-02. This obligation is to be paid from the trust fund currently generating interest in the State Treasury. The total remaining amount due is $10.7 million which will be due in 2013 unless NCRA is successful in getting this debt forgiven.

A brief history of the North Coast Railroad Authority has been included with in this report. Although not a complete chronology of events, certain salient points are highlighted in an attempt to provide some background for Commission members in the context of the issues currently facing the Authority.

Mission of the NCRA

It has long been understood that the long-term viability of the former Northwestern Pacific Railroad (NWP) requires that the entire line, from Humboldt Bay in the north to the point of interchange at Lombard in the south be open to revenue generating freight and excursion passenger service. That has been the consistent mission of the NCRA since its formation in 1989.

The NCRA Board of Directors and staff are unconditionally committed to restoring service on the entire line. This will be accomplished through the completion of all the projects identified in the Strategic Plan and the Capital Projects Assessment. The Board takes seriously its responsibilities to both the communities it services as well as the people of the State of California who have entrusted the funding to make possible the return of the NWP to its former viability.

Recent improvements to the Port of Humboldt Bay coupled with the interest in development of new rail dependent industries along the corridor indicate that the re-establishment of rail service will be a major component in the overall economic recovery of the entire region.

NCRA is dedicated to working with the agencies and the commission to achieve the vision of the Governor's Administration in returning sustainable rail service to the North Coast region of California.

History of the North Coast Railroad Authority

Rail service on the North coast dates well back into the 19th century. Completion of the connection between Eureka and San Francisco was attained in 1914. Designated the Northwestern Pacific Railroad (NWP), it was jointly owned by Santa Fe and Southern Pacific Railroads and operated independently until 1929 when it became exclusively part of Southern Pacific Railroad.

The NWP was the only means of transportation within the corridor prior to completion of Highway 101 and remained the sole means of substantial freight movement for decades. It is worthy of note that the railroad has survived many natural disasters and was restored much sooner than State Highway 101 after the devastating and record setting storm of December 1964.

Southern Pacific sold the portion north of Willits in 1984. Called the Eureka Southern, it operated until December 1986 when it declared bankruptcy. A Federally appointed bankruptcy trustee managed the railroad until 1992. Southern Pacific maintained ownership and continued to operate the NWP, south of Willits, through an operating agreement with the California Northern Railroad.

In 1989 the California Legislature created the North Coast Railroad Authority (NCRA). Utilizing State provided funding (Proposition 116) this new authority acquired the former Eureka Southern out of bankruptcy in 1992 and in 1996 acquired the portion of the NWP between Willits and Healdsburg.

The remaining portions of the NWP south of Healdsburg were acquired from 1983 through 1996 The ownership of the Healdsburg to Lombard segment is under Northwestern Pacific Railroad Authority (NWPRA) ownership; a joint powers agency comprised of NCRA, the Golden Gate Bridge, Highway, and Transportation District, and the County of Marin. Other portions are owned by the Bridge District and the County of Marin separately from NWPRA. Part of the joint powers formation documents provided that NCRA was to receive approximately $8.6 million in Intermodal Surface Transportation Efficiency Act (ISTEA) demonstration funds to be used for capital projects on the north portion of the line. In exchange for these funds, NCRA became obligated to repay the $12.0 million FHWA revolving Q-Fund loan that was used to acquire this portion of the line. The total acquisition cost was just under $45 million, including $11 million in State funds (Transit Capital Improvement) and $20 million from Federal transportation funding (HR 2 and ISTEA).

In 1997 the NCRA Board prepared a request for proposal (RFP) seeking a private sector operator to provide freight service and maintenance of the railroad. Proposals were received and Rail-Ways, Inc. of Elgin, IL was chosen to negotiate for the permanent operator. Rail-Ways, Inc. functioned as an interim operator and additionally provided repair services through its construction company, NORCARE. In December 1999, Rail-Ways, Inc sold its investments and interests in the NWP to the chosen permanent operator, Northwestern Pacific Railway Co., LLC (NWPY) and the common carrier freight operations and maintenance responsibilities were fully assumed by NWPY.

Within weeks of reaching an agreement, the El Nino storms of 1998 closed the railroad north of Willits with a series of major landslides. Decades of deferred maintenance, by former owners, left the railroad in a serious state of disrepair. A Federal disaster was declared and FEMA/OES began the task of accessing their applicable damage estimates to support an allocation of grant funds.

Thereafter, due to a number of administrative and accounting issues related to prior disaster relief, the 1998 storm damage funding from both State and Federal sources was delayed. Even some previously approved work was determined to be ineligible although the work had been both authorized and completed. The retroactive application of a policy prohibiting reimbursement for landslide stabilization activities resulted in work totaling in the many hundreds of thousands of dollars being disallowed for reimbursement after the work was completed pursuant to approved projects.

To complicate matters even more, a portion of these new 1998 funds were recaptured, by FEMA, to satisfy past obligations as noted in their audit. Without operating revenues and with the anticipated disaster relief funding significantly altered, NCRA was left with a growing accumulation of liabilities that exceeded $8 million by the end of 1998. Rail-Ways managed to operate freight service south of Willits until Federal Railroad administration (FRA) Emergency Order 21 closed the entire railroad in November 1998.

In the summer of 1998, AB 2782 provided $2 million in funding. This funding allowed NCRA to address the issue raised in audits; namely implement an accounting system that properly tracks project costs. A portion of this allocation provided for administration of the Authority, including the recruitment of an Executive Director. NCRA was able to begin addressing environmental concerns raised by several State agencies, satisfy employee claims for unpaid compensation, pay past claims for payroll tax deposits, and partially address general creditors. A portion of the funds were used to address FRA Emergency Order 21 repairs, and reimburse legal counsel for fees and expert witness costs relating to FEMA appeals and the environmental litigation, that culminated in the Consent Decree agreed to by all parties in 1999.

Finally, an agreement was reached with FEMA and State OES in June of 1999 that allowed storm damage funding to proceed for the 1998 storms. Unfortunately the first allocations of these funds were recaptured by FEMA and OES to satisfy outstanding obligations from past disasters. That left the 1998 storm contractors without payment and increased NCRA's outstanding debt. Even though the initial work remained unpaid, these contractors continued to make repairs to the south end in spite of this debt. Although they did receive payment for subsequent activities, eventually NCRA's inability to provide payment forced a discontinuance of repair work in late 1999.

Serving its own interests, NWPY self-funded completion of the work necessary to reopen the railroad from Lombard to Mile Post 43 near Penngrove (North of Petaluma). NWPY has subsequently claimed reimbursement for their work and that claim was denied by NCRA. The motivation for NWPY to do this work, at its own expense, was their forecasted revenue generation for freight service from shippers along this portion of the line. The FRA approval to resume service was granted on February 1, 2001 for this 40.8 mile portion of the railroad. Freight service was resumed on this portion of the railroad February 14, 2001.

In early 2001 the Surface Transportation Board approved the transfer of the railroad's common carrier certificate of public convenience and necessity to the NWPY where it remains.

Current Status

NWPY ceased operation in September 2001. The lease and operating agreement is in dispute. However, NCRA and NWPY have had several meetings in an attempt to arrive at a mutually acceptable resolution of their differences to avoid the possibility of protracted litigation.

NCRA takes no delight in its chosen course of action. The Board of Directors' goal is to sever all relations with NWPY without incurring any additional cost.

Future Freight Operations

The NCRA has prepared a request for proposals (RFP) for a permanent freight operator replacement. NCRA anticipates completion and distribution of this RFP to all potential operators in April 2002. It is anticipated that proposals will be received by late June and negotiations completed with the selected firm by mid-August. Freight service will be resumed between Lombard and Willits as soon as the selected firm can begin its operation.

AR 04695

Capital Projects and Environmental Consent Decree Assessment

The NCRA expects the Capital Projects Assessment and the Environmental Consent Decree Assessment to be completed by the end of June 2002, and ready for CTC consideration at the August meeting. These assessments are critical for the NCRA because they will provide a clearer picture of what the scope, cost and schedule associated with the reopening, upgrading and long-term stabilization projects will likely be. These projects, when taken cumulatively, form the enduring strategy for the comprehensive rehabilitation of the NWP corridor. Thus, the NCRA will have the necessary data to refine the 2001 Strategic Plan and provide a well-defined approach to complete the overall project.

With the completion of both assessments, NCRA will be well positioned to commence the appropriate environmental review documents. It is anticipated that the environmental review process on the south end will be less complex than on the north end. Consequently, funding approval for projects on the southern portion of the line, separate and apart from funding for projects on the north portion of the line will be a targeted goal upon completion of the assessments. This will enhance the ability to upgrade the southern portion of the line to Class 2 and Class 3 status sooner, thereby taking advantage of the increased utilization commensurate with the improvements made.

Administrative Funding Sources

Schedule A illustrates the potential sources of unrestricted funds for use to address the administrative budget and maintenance of way needs of the NCRA from fiscal year 2002-03 though 2013-14. The revenues sources are categorized as follows.

Property Easement/License Revenues

The NCRA's property revenues comprise the most reliable source of funds that have been identified. The current property revenue account balance is $200,000. According to projections, this revenue source is expected to yield at least $180,000 annually based on the revenues received during the current year from existing agreements for use of NCRA owned property. The amount of $27,900 is committed annually for the next ten (10) years to fund the interest payments to the "debt relief" creditors that chose "payment in full" of all interest over time as identified in the TCR debt repayment process under Option B.

A one-time payment of $18,000 – is due in this current fiscal year (2001-02) which will be taken from the $200,000 beginning balance in the account. This amount is the NCRA contribution as the local match portion of State grant funds in the amount of $150,000 to be provided through the Mendocino County Council of Governments (MCOG) for rehabilitation of the historic Ukiah Depot. The NCRA is working with the Ukiah City Manager's Office on this project. When completed NCRA will be able to utilize a portion of the building for the engineering consulting team, thus reducing the overall cost of the consultant agreement.

NCRA's Property Management Committee has agreed to take a more active part in oversight of property management and will be making sure that all available resources are utilized in aggressively pursuing additional revenue from leases and other uses of property. The NCRA Board recently approved revised fees and directed the Property Manager to bring all leases current.

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FEMA/OES Retention

The NCRA is working with the State Office of Emergency Services (OES) on the release of the retention funds, from the completed south end re-opening project. OES is expected to release $396,000 in fiscal year 2001-02 with an additional $96,000 in fiscal year 2002-03. These funds are unrestricted.

Santa Rosa Effluent Agreement

An Easement has been granted to the City of Santa Rosa. The net revenue to the NCRA is $338,400 and payment has been received. These funds are unrestricted.

Freight and Excursion Passenger Revenues

The Strategic Plan (April 13, 2001) identifies revenue to NCRA in excess of $500,000 per year from freight and $100,000 from excursion passenger service by the second year of operations from the fully restored and upgraded infrastructure. Revenue is projected to increase to nearly $2,000,000 by the fifth year. For the purposes of this report, NCRA takes a conservative approach and assumes operational revenues beginning the second year after re-opening the entire line and increasing modestly to attain the $1,300,000 level over five years. That assumption will result in the following revenue stream:

2001-02 through 2007-08	$ 0
2008-09	$200,000
2009-10	$450,000
2010-11	$700,000
2011-12	$1,000,000
2012-13	$1,300,000
2013 and beyond	$1,300,000

Note: There are no restrictions on the use of these above-stated funds.

Restricted/Allocated Funding Sources

The NCRA has identified the following restricted funding sources which will be used for capital projects, maintenance-of-way, and overall improvements on the line. The NCRA has also identified, where possible, legislation that can be used to redirect funds.

AB 2908 --Old Transit Capital Improvement (TCI)

The NCRA has identified $497,000 of old TCI (AB 2908) funds. These funds are restricted to capital projects and legislation would be required to redirect these funds for either administration, debt reduction or maintenance-of-way.

AR 04697

Governor's Traffic Congestion Relief Program (TCR)

The NCRA has a remaining $42.25 million of unallocated funds from the original $60 million. These funds are very specific in their use.

Federal Funding

NCRA currently has $8.6 million available for capital projects from the ISTEA demonstration funds. Additionally, NCRA will be working with its Federal representatives to secure funding through the re-authorization of the federal transportation funding legislation (TEA-21). This approach will be used to address potential forgiveness of the Q-Fund loan and funding for any shortfall identified in the capital project and environmental remediation assessments currently underway.

Congressional forgiveness of the Q-fund obligation would allow redirection of some $5.2 million in funds currently held in the State Treasury; $5.5 million of which was allocated in the TCRP for repayment of the Q-fund loan and approximately $900,000 from the TCI funding program, less the $1.3 million audit exception that needs to be paid to Caltrans this fiscal year. Those funds, subject to required administrative and/or legislative action, could be reprogrammed to address NCRA's administrative, maintenance of way and/or capital project needs pursuant to the Strategic Plan.

Projecting the current Q-Fund balance forward at the average annual return of the past ten years (5.4942%) produces a potential shortfall of $700,000 when the repayment is due in 2013. NCRA will need to plan for dealing with the potential shortfall. It should be noted, however, that an increase in the average annual return of only 0.5574% to 6.0516% would provide for full payoff on time.

The development of commuter rail in Sonoma and Marin Counties could trigger early repayment of the Q-Fund loan should the track be upgraded beyond the historic level of service. Should that happen, the commuter rail agency would be required to assume any additional cost generated by their activity through a negotiated agreement with NCRA for joint use of the track.

Signal Crossing Maintenance Funding

NCRA receives funds under the California Public Utilities Commission (CPUC) Crossing Maintenance Fund, currently established at $122,000 per year. These funds are expressly reserved for maintenance of specific crossing protection in accordance with CPUC regulations. NCRA has been in contact with staff at CPUC regarding current and future allocations and uses of these funds.

Local Agency Funding

Humboldt and Mendocino Counties have both programmed portions ($500,000 and $1,170,000 respectively) of their 2002 STIP funds for rail/highway crossing improvements. These are funds that will allow for local improvements to streets and highways where there are railroad crossings. Total cost is unknown at this time. NCRA will also work with its local and regional partners in an attempt to generate additional local funding to address administration, maintenance of way, and capital project needs.

AR 04698

Administrative Issues

Fiscal Year 2002-03 Budget

NCRA's preliminary budget for FY 2002-03 is attached as Schedule B. It indicates a significant reduction (approximately $81,000 or about 16%) from the current fiscal year's expenses. The administrative budget provides for the Authority's personnel costs, services, supplies, and contracted services for legal, accounting, and insurance. Although the reduction in both real dollars and percentage is aggressive, both the finance committee, in its recommendation to the board, and the board, in is initial review of the budget, recognize the importance of the commitment to reducing the overall costs, while providing for the necessary services and expenses required to operate the authority.

Maintenance of Way Funding

Until a functioning permanent freight operator is located, NCRA has no means to provide the on going maintenance effort that is required to protect the railroad from the normal degradation associated with lack of use. NCRA has no forces present or available to respond to problems that may occur causing an impact on the public and private road crossings, navigable waterways, and adjacent properties all with the possibility of creating potential safety hazards. Under not all to uncommon circumstances, where public safety concerns arise, certain local and/or state authorities may require an immediate response.

At the present time the maintenance of way functions are being deferred due to lack of available funding. Property revenues are utilized on a very limited basis for providing minimal response to emergency situations. Recognizing NCRA's financial situation, local agencies have been, to a point, willing to provide needed repairs to street and road crossings. Community public works departments have also responded to storm related emergencies. Even adjacent property owners have provided needed maintenance of drainage facilities for the benefit of both the railroad and their property.

The selected freight operator will be responsible for providing all maintenance of way requirements. The previously addressed RFP process will be utilized to determine the ability for future revenues to support this activity in addition to the costs of operation as evidenced by the proposals received. Information developed by the Long Range Marketing Study will be provided to prospective operators to assist in the preparation of their proposals and will, no doubt, be supplemented in great detail by the "due diligence" research conducted by each prospective operator.

The development of Capital Projects will be conducted in a manner intended to best meet the needs of the shipping community in order to minimize the operational and maintenance burden on the operator to the maximum extent possible.

The completion of the Capital Project Assessment and the Long Range Marketing Study coupled with the receipt of proposals for freight operator that are all due by the end of June, will allow NCRA to evaluate the short and long term operational and maintenance needs in conjunction with the development of the Capital Projects. In doing so NCRA will be in a position to make informed decisions regarding the restoration of full service, upgrade to improved status, and

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stabilize landslides to provide the long-term viability required to meet the needs of the shipping community on the North Coast.

Liability Reduction

When the TCRP funding was originally allocated, the amount of $10 million was thought to be the total amount needed to provide complete debt relief. Soon after the debt schedule was completed and approved by the Commission, it became clear that additional debts, beyond those that had not been incorporated into the schedule, existed. Some of those debts required annual payments and some were in the form of long-term debts/promissory notes payable at a future date, or as the result of a specific event. NCRA has been focused on the best way to resolve this shortfall and provides the Commission with further details of the origin, amounts outstanding and the plan for repayment.

Annual Payment Liabilities

There are four (4) debts that require annual payments. The total of these annual payments is $106,375. These debts have various termination dates after which, the funds that are currently dedicated to making the specific annual payment can be reallocated to other uses. The following details the annual payments required by the NCRA in accordance with existing agreements.

- A total of $279,000 for creditors who chose (option B) to get complete interest payments spread out over the long-term instead of a one time pro-rata payment. This will be paid off in ten annual payments of $27,900 per year. Audit exceptions relating to work performed by Herzog Contracting Company, one of the Option B interest recipients, have been noted by Caltrans. NCRA fully intends to address this matter with Herzog in the near future. NCRA anticipates that those discussions could result in a substantial reduction in the amount due Herzog. The net result could allow that the same annual installments retire the remaining interest sooner. That would have the effect of recapturing a portion, if not all, of these funds for use to defray administrative costs at an accelerated rate.

- A balance of $107,000 is owed to the Redwood Region Economic Development Commission (RREDC) for a loan provided to NCRA in 1992. The terms of this loan requires an annual payment of $21,400 through fiscal year 2006-07. This loan was secured by passenger equipment, the sale of which could result in early payoff. The NCRA is currently working through the process authorized by the Board of disposing of various pieces of its surplus equipment. The total revenue that could be realized from the sale of this surplus equipment is not currently known. In addition, NCRA is examining all possible restrictions that may preclude the use of revenues generated from the disposal of this surplus equipment for purposes other than repayment to the funding sources that were utilized in the original acquisition of this equipment.

- The NCRA has a balance of $190,000 for a loan with North Western Pacific Railroad Authority (NWPRA). This loan requires an annual payment of $50,000 through fiscal year 2006-07. Security for the loan is the Ukiah Depot property. The loan agreement stipulates that if the Depot property were to be sold, prior to payoff, proceeds sufficient to satisfy the remaining balance of the loan would be due the NWPRA upon consummation of the sale. However, there is no such plan under consideration by NCRA for the sale of the Ukiah Depot property. With the current legislation AB2224 pending in the Assembly, NCRA fully

intends to work to restructure the easement agreements with NWPRA. Additionally, NCRA will be exploring the forgiveness of this loan since it amounts to costs incurred in making major infrastructure repairs to NWPRA owned property.

- The NCRA has a balance of $63,675 for past locomotive rental from TXL Capital Corporation. This debt requires an annual payment of $7075 through fiscal year 2010-11.

As indicated above NCRA is currently obligated to pay $106,375 per year. In June 2006, the total annual payment will be reduced by $21,400 with further reduction in June 2007 of $50,000. This will leave a remaining annual payment on these debts of $34,975 scheduled to conclude in June 2011.

Long Term Liabilities

These debts are comprised of promissory notes with specific due dates or payment is triggered by a specific event.

- The PALCO promissory notes totaling $170,000 are due 2006. These notes represent loans made to the NCRA in 1995 and 1996. The loans made by a shipper were made during a time when NCRA had no other source of funds sufficient to meet its operating expenses. NCRA intends to negotiate a longer term for payoff of this obligation.

- The Meecham loan totaling $124,000 secured by specific passenger cars. The note requires payment in full upon the sale of this equipment. NCRA anticipates that the equipment will be sold in FY 2002-03. There are no restrictions on the use of any excess proceeds received from the sale of this specific equipment.

Other Liabilities

Liabilities to be forgiven

The Community Disaster Loan regulations provide for forgiveness, the paperwork has been filed, and final approval is expected. The applicable statute can be found in 42 U.S.C. 5184 and it states "Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following a major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation shall be cancelled." The current balance is approximately $800,000 Recent correspondence from FEMA (March 11, 2002) acknowledges the current status as reported here.

Liabilities not considered valid

Boyle Engineering Invoice— Boyle Engineering has submitted invoicing for preparation of bid documents for the Windsor to Willits re-opening project. At the outset, Boyle agreed to provide the services free of charge. Consequently no agreement was approved by the board or entered in to covering this work. Since NCRA was not informed that the contractor would change their position and submit a future invoice it is not considered a valid obligation. The amount invoiced by Boyle is $47,000.

Rail-Ways Bankruptcy— NCRA has rejected the claim and provided notice to the Claimant. A creditors committee has been formed in the Rail-Ways bankruptcy proceeding. The Committee has represented to the court that the Rail-Ways claim "appears to the Committee to lack merit". The NCRA holds a release executed by Rail-Ways. Caltrans legal staff has reviewed this issue and determined that TCRP funds provided to NCRA are not at risk for capture by the bankruptcy proceedings. The amount claimed is $2,000,000.

Rail-Ways/NWPY/Norcare-- NCRA has rejected the claim and provided notice to the Claimant. NCRA Legal Counsel has advised that this is not a valid claim. Identical claims were filed by three separate entities, Rail-Ways, Norcare, and NWP, in an apparent attempt to avoid an argument over which of the three companies, all controlled by the same individual, is the proper claimant. NCRA holds a valid release from Rail-Ways that extends to all of the claims. The amount claimed is $3,546,826.

Mass Electric Claim-- NCRA has rejected the claim and provided notice to the Claimant. NCRA Legal Counsel has advised that this is not a valid claim. NCRA had no contractual relationship with Mass Electric, as they were a sub-contractor to Rail-Ways, Inc. for signal repairs. Rail-Ways, Inc. disputes the amount due Mass Electric. In addition, Mass Electric did not comply with the public agency claims procedure specified by state law. The amount of the claim is $1,328,000.

Caltrans audit exceptions ($500,000)—Caltrans has questioned payment for south end repair under Proposition 116 funding due to confusion surrounding the project description and its relationship with concurrent work funded by FEMA and OES. NCRA is providing a history of events as the background for a technical review by Caltrans to resolve this issue.

Deferred Liabilities

The following is a list of liabilities that will be deferred, receiving no regular payments until such time as the NCRA has unrestricted funding sources that can be used to retire these debts.

- Christopher J. Neary, attorney at law—This amount ($122,000) represents a greatly reduced reimbursement for past legal services as specified in the current agreement for legal services between NCRA and Chris Neary. Mr. Neary has indicated his willingness to wait for discretionary funds to retire this obligation. It was he that requested TCR Debt Reduction funds not be used.

- General Accident Insurance Company--Omitted from the TCR Debt Reduction list in error due to a very similar company name and amount to a debt that was reduced to a judgment—General Star Indemnity. Subsequently determined to be a valid and separate obligation. The amount is $50,000.

- Union Pacific Railroad Car Hire-- This amount ($371,000) represents a projection of prior billings from the UP. However, it is customary in the industry for carhire to be suspended when a rail line is embargoed, as is the case of the northern portion of the railroad where the cars are presently trapped. NCRA is exploring, with the cooperation of UP, a way to fund the purchase of the cars at their depreciated value that would eliminate the carhire claims. It grows at a rate of $186,000 per year, but NCRA understands that it is capped at the depreciated value of the cars. NCRA has contracted with a car hire

accountant and a mechanical car inspector to assist with identifying ways to reduce the obligation.

- Other Railroad Car Hire-- This potential debt ($561,000) has never been invoiced past 12/31/99. It too will be the subject of negotiation for potential purchase of cars at adjusted depreciated values. The potential car hire grows at $280,000 per year and is also capped at the depreciated value. The car hire accountant and car inspector are working on these cars as well. These cars belong to major railroads like Burlington Northern-Santa Fe, smaller railroads like Galveston, foreign railroads like Canadian Pacific, and companies that lease cars like TTX Corp.

- Troutman Sanders Law Firm-- Legal services ($17,000) provided by this Washington, DC legal firm for a negotiated reduction in the car hire paid as part of the TCR Debt Reduction. The original Union Pacific car hire obligation was much higher and NCRA was able to reduce the amount with the assistance of the legal services provided by this firm. They specialize in railroad and interstate commerce litigation.

- Caltrans Audit Exceptions ($166,000)—Items found to not be eligible in an audit of the south end Prop. 116 project. The source of re-payment is subject to further negotiations with the contractor that provided the services questioned. The amount is not in question, but the source of funding for repayment is.

County of Sonoma Accounting

NCRA has contracted with Sonoma County to provide accounting services. The County will also provide payroll services beginning July 1,2002. In the interim, payroll is being provided through the Eureka accounting firm of Aycock and Edgmon. NCRA has provided written procedures for implementation of the Sonoma County agreement and the interim situation.

Status of the Assessments

On March 20, 2002 the NCRA Board received a report from Willdan/HNTB project manager David Anderson. Both the capital project and consent decree assessments are well underway and on schedule. Enough work has been completed to indicate that the funding available will, indeed, be sufficient to provide the information needed from these documents.

Data collection and field investigation activities for the consent decree assessment are 75% complete and a rough draft for internal review is due to be provided to Mr. Anderson by March 27. The final draft will be provided to NCRA and the state agencies on April 4. Bradley Erskine from Kleinfelder is the team leader for this activity.

The capital project assessment team held a kick-off meeting on February 19. Data collection is complete and generated significant information that will be valuable to the assessment strategy. Team leader David Anderson and Doug Christy (NCRA Assistant Executive Director/Project Manager) have made numerous trips to identify accessibility and have produces a map for use by the assessment teams. The geotechnical assessment team began work on March 18, the track and signal assessment team began on March 25.

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Long Range Marketing Study

The Port of Humboldt has solicited proposals for a harbor revitalization plan. A component of the Port's document is a long-range marketing study for the NCRA. Currently, the consultant selection process has screened the proposals submitted down to seven that were interviewed on March 25 and 29. NCRA's Assistant Executive Director/Project Manager Doug Christy is participating on both the interview team and rail technical advisory committee.

Spencer Clifton, Executive Director for the Humboldt County Association of Governments is also participating as the grantee representative. The Harbor District met on April 11 and awarded the consultant contract. The rail study is scheduled for completion in June.

Conclusion

NCRA has identified the funds available and the needs associated with providing for NCRA's administration and debt repayment. As depicted on the accompanying schedules A and B, the discretionary revenue available to NCRA will provide for the administrative needs through fiscal year 2003-04 and more than half of fiscal year 2004-05 while still addressing the debt obligated by existing agreements. Additional funding will be needed to complete 2004-05 and beyond until such time as revenue from operations is projected to become available. That projection is currently FY 2010-11 and will be further analyzed through the completion of the market study and assessments to be completed in June 2002. A total of $1,219,925 will be required from other funds to supplement NCRA's administrative needs until operational revenues become sufficient to provide that need in FY 2009-10. Potential funding sources include additional proceeds from aggressive property management, the re-direction of State funds from forgiveness of the Q-Fund, Federal transportation funding, and local funding through regional agencies.

Needs for maintenance of way will be evaluated upon receipt of the proposals for operators that are expected by the end of June 2002.

Schedule A--Projected Revenue and Expenditure Summary--Does not include Capital Project Revenues or Expenditures

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Balance Forward	**$200,000**	**$914,400**	**$623,525**	**$257,150**	**-$109,225**	**-$475,600**	**-$841,975**	**-$1,136,950**	**-$1,231,925**	**-$1,231,925**	**-$1,231,925**	**-$1,222,875**	**-$182,875**
Annual property revenue	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000
FEMA/OES retention	$396,000	$96,000											
Santa Rosa easement	$338,400												
Freight and excursion revenue								$200,000	$450,000	$700,000	$1,000,000	$1,300,000	$1,300,000
Sale of surplus equipment		$124,000											
Signal crossing maintenance fund		$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000
TCR Admin	$500,000												
Q-Fund	$1,300,000												$10,700,000
Total revenue available	**$2,914,400**	**$1,436,400**	**$925,525**	**$559,150**	**$192,775**	**-$173,600**	**-$539,975**	**-$634,950**	**-$479,925**	**-$229,925**	**$70,075**	**$379,125**	**$12,119,125**
Annual Expenditures													
Property management	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000
NWPRA loan	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000							
RREDC loan	$21,400	$21,400	$21,400	$21,400	$21,400	$21,400							
TXL capital	$7,075	$7,075	$7,075	$7,075	$7,075	$7,075	$7,075	$7,075	$7,075	$7,075			
Option B interest	$27,900	$27,900	$27,900	$27,900	$27,900	$27,900	$27,900	$27,900	$27,900	$27,900			
Administration	$513,845	$430,500	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000	$410,000
Crossing Maintenance	$31,780	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000	$122,000
One Time Payment													
Ukiah depot grant local match	$18,000												
Long-Term Liabilities													
PALCO notes ($170,000)											$170,000		
Meecham Loan ($124,000)		$124,000											
Q-Fund ($12,000,000) (1)	$1,300,000												$10,700,000
Deferred Liabilities													
Neary ($122,000)									$122,000				
General accident ($50,000)									$16,025	$33,975			
UP car hire ($371,000) (2)										$171,050	$199,950		
Other car hire ($561,000) (2)										$200,000	$361,000		
Troutman Sanders ($17,000)									$17,000				
Caltrans Audit Exceptions ($166,000)													
Liability to be Forgiven													
Community disaster loan ($800,000)													
Liabilities not Considered Valid													
Boyle engineering ($47,000)													
Rail-Ways bankruptcy ($2,000,000)													
Mass electric claim ($1,328,000)													
Rail-Ways/NWPY/Norcare ($3,546,826)													
Caltrans Audit Exceptions ($500,000)													
Total expenditures	**$2,000,000**	**$812,875**	**$668,375**	**$668,375**	**$668,375**	**$668,375**	**$596,975**	**$596,975**	**$752,000**	**$1,002,000**	**$1,292,950**	**$562,000**	**$11,262,000**
Ending Balance	**$914,400**	**$623,525**	**$257,150**	**-$109,225**	**-$475,600**	**-$841,975**	**-$1,136,950**	**-$1,231,925**	**-$1,231,925**	**-$1,231,925**	**-$1,222,875**	**-$182,875**	**$857,125**

Notes:

(1) There is potential for shortfall in the Q-Fund payoff depending on the annual rate of return received on the funds held in the Local Agency Investment Fund Shortfall of $700,000 is projected at time of payoff. See page 9 of the text for additional information.

(2) Car hire liability is currently the focus of review by technical consultants. See text (page 13) for the potential annual growth NCRA intends to arrive at a negotiated settlement with the car owners and has had initial discussions with Union Pacific regarding this issue.

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Schedule B

NCRA 2002-03 Preliminary Budget--adopted 3/20/02

DESCRIPTION	2000-01 BUDGET	2000-01 ACTUAL	ADOPTED 01-02	SPENT THRU 12/31	%	PROJ. THRU 6/30/02	%	PROPOSED 02-03	% Change
ADMINISTRATION									
Personnel									
Executive Director	112,000	111,594	117,600	55,797	47.4%	117,600	100.0%	117,600	100.0%
Accountant	25,000	28,662	56,700	18,228	32.1%	18,228	32.1%	0	0.0%
Administrative Assistant	33,000	27,783	29,200	14,586	50.0%	29,200	100.0%	29,200	100.0%
Project Manager	10,000	11,013	15,000	43,575	290.5%	74,000	493.3%	15,000	100.0%
Medical Insurance	13,000	2,204	13,000	3,254	25.0%	7,000	53.8%	6,000	46.2%
Employer payroll taxes (1)	6,000	0	0	0	0.0%	0	0.0%	0	0.0%
Retirement (PERS)	24,500	24,921	30,000	19,717	65.7%	30,000	100.0%	21,000	70.0%
subtotal	223,500	206,177	261,500	155,157	59.3%	276,028	105.6%	188,800	72.2%
Services and Supplies									
Telephone	15,000	8,971	12,000	7,184	59.9%	14,000	116.7%	14,000	116.7%
Rent and Utilities	600	2,522	1,200	2,876	239.7%	6,000	500.0%	6,000	500.0%
Supplies	17,400	11,062	7,000	5,332	76.2%	7,000	100.0%	7,000	100.0%
Office Furniture and Equipment	6,000	1,374	3,000	0	0.0%	0	0.0%	2,000	66.7%
Computer Software License	4,000	2,535	0	0	0.0%	0	0.0%	0	0.0%
Computer Support Svcs.	0	0	2,000	2,456	122.8%	3,000	150.0%	0	0.0%
Travel Reimbursement	12,000	14,300	20,000	8,266	41.3%	16,000	80.0%	16,000	80.0%
Fees and Assessments	5,000	1,865	5,000	2,609	52.2%	5,000	100.0%	5,000	100.0%
Other	3,000	9,000	0	0	n/a	0	n/a	0	0.0%
Business Plan	2,000	0	2,000	0	0.0%	0	0.0%	0	0.0%
Long Range Plan	20,000	0	20,000	0	0.0%	0	0.0%	20,000	100.0%
Janitorial services	2,000	2,007	3,000	1,221	40.7%	2,500	83.3%	2,500	83.3%
subtotal	87,000	53,636	75,200	29,944	39.8%	53,500	71.1%	72,500	96.4%
Professional Services									
Mustola Management	66,000	37,811	0	0	0.0%	16,000	0.0%	0	0.0%
Special accounting projects	26,500	26,238	0	2,869	n/a	36,000	n/a	45,200	n/a
Single year audit	25,000	11,331	25,000	5,513	22.1%	25,000	100.0%	25,000	100.0%
Legal Counsel	45,000	50,724	55,000	32,444	59.0%	65,000	118.2%	55,000	100.0%
Insurance	40,000	2,718	50,000	16,551	33.1%	20,000	40.0%	20,000	40.0%
Board stipend	0	0	12,000	5,100	42.5%	12,000	100.0%	12,000	100.0%
Maintenance of Equipment	0	0	0	0		0		3,000	n/a
subtotal	202,500	128,822	142,000	62,477	44.0%	174,000	122.5%	160,200	112.8%
Capital Expenditures									
Hyrail vehicle	0	30,013	0	5,678	n/a	5,678	n/a	0	0.0%
Computer-copier	0	3,089	0	4,639	n/a	4,639	n/a	0	0.0%
subtotal	0	33,102	0	10,317	n/a	10,317	n/a	0	0.0%
Contingency	0	15,396	21,300	0	0.0%	0	0.0%	9,000	42.3%
TOTAL ADMINISTRATION	513,000	437,133	500,000	257,895	51.6%	513,845	102.8%	430,500	86.1%

See notes on Sheet 2

(1) Employee payroll taxes included in employee salary.

Notes

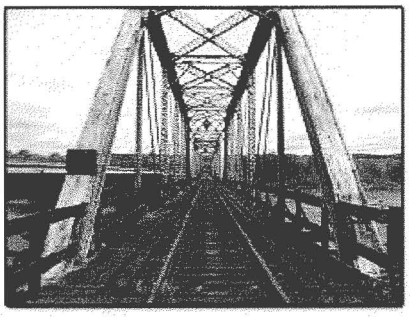
The project manager position as budgeted for the 01-02 fiscal year provided that approximately 80% of the salary would be charged to capital projects and reimbursed from the TCR funds. This assumption was based upon the ability to start some of the capital projects during the FY 01-02. This has not occurred and consequently the majority of the Project Manager's salary is applied against the Administrative Budget. Absent this change, the actual Administrative expenses are projected to 91% of the budgeted amount, a savings of 9% or approximately $44K.

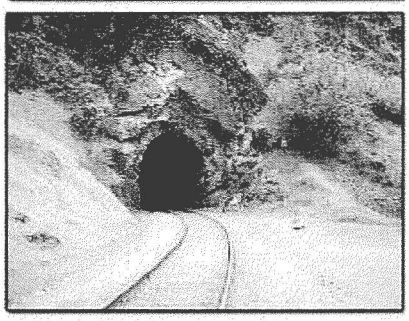
NCRA will be contracting with Sonoma County to provide accounting services. After the initial setup costs of $15,440 that will be paid in 2001-02, there will be an annual saving of approximately $23,000 over the cost of the full time accountant position.

Schedule C--NCRA Liabilities as of May 2002

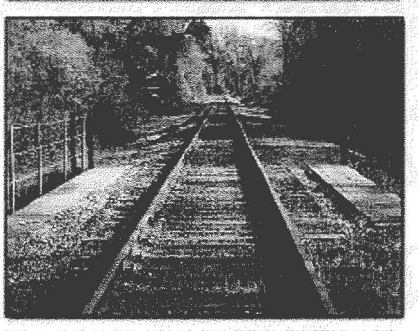
	Annual	Long-Term	To be Forgiven	Not Valid	Deferred
Option B Interest	279,000				
Palco Notes		170,000			
RREDC	107,000				
Meecham Loan		124,000			
Neary					122,000
General Accident					50,000
UP Car Hire					371,000
Other car hire					561,000
Troutman Sanders					17,000
NWPRA Loan	190,000				
Boyle Engineering				47,000	
Caltrans Audit Exceptions				500,000	166,000
Rail-Ways Bankruptcy				2,000,000	
Mass Electric Claim				1,328,000	
Rail-Ways/NWPY/Norcare				3,546,826	
Community Disaster Loan			800,000		
TXL Capital	63,675				
Q-Fund		12,000,000			
Total	**639,675**	**12,294,000**	**800,000**	**7,421,826**	**1,287,000**

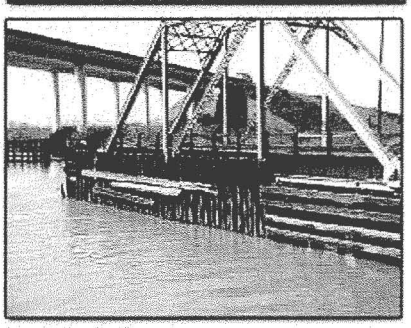
NCRA
Capital Assessment Report

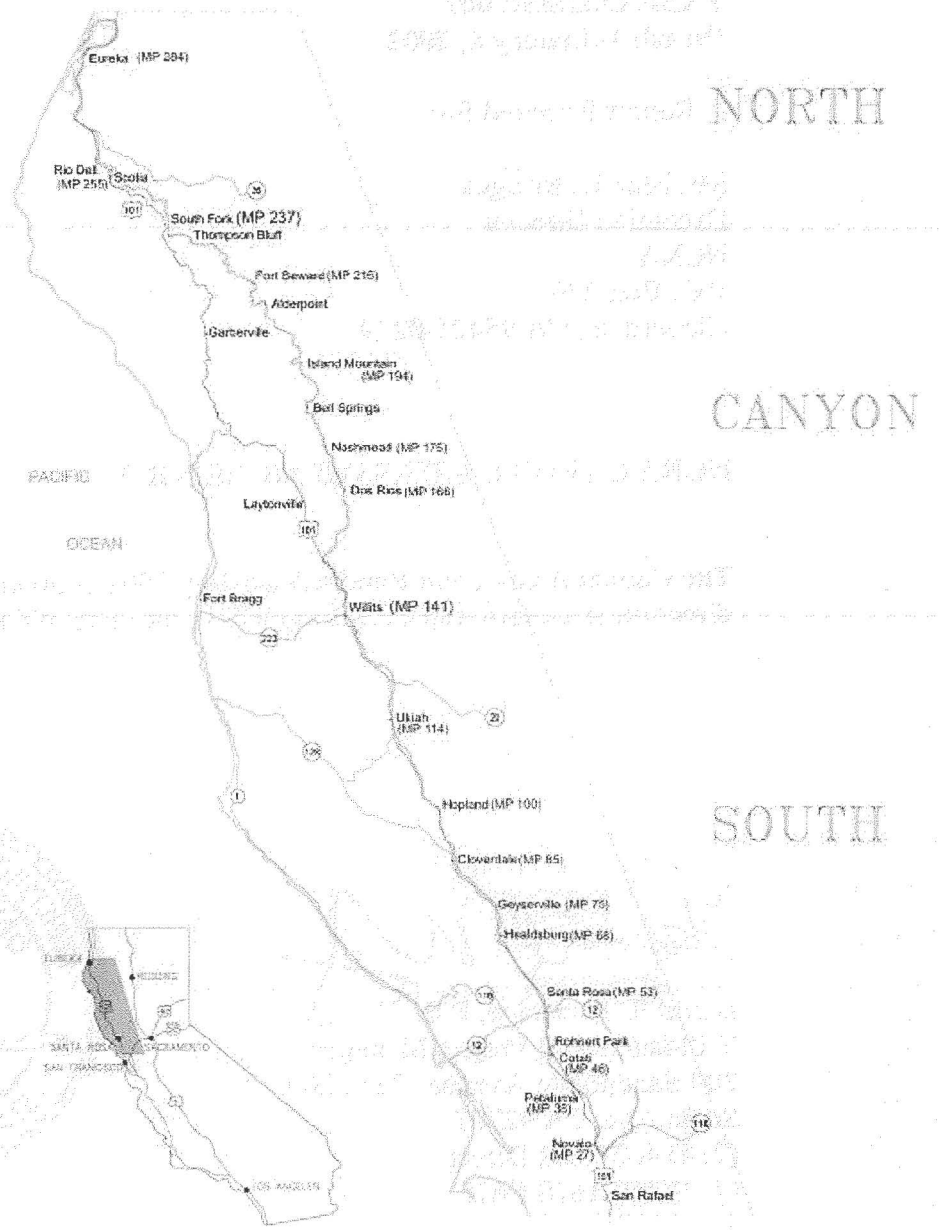












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HNTB

July 2002

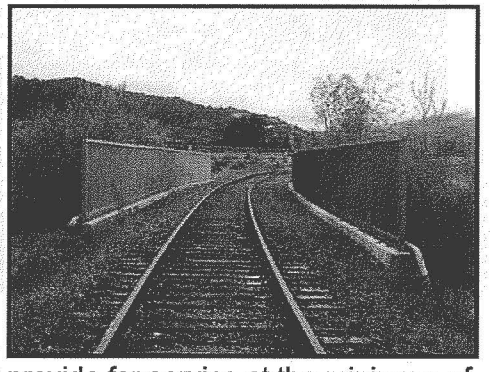
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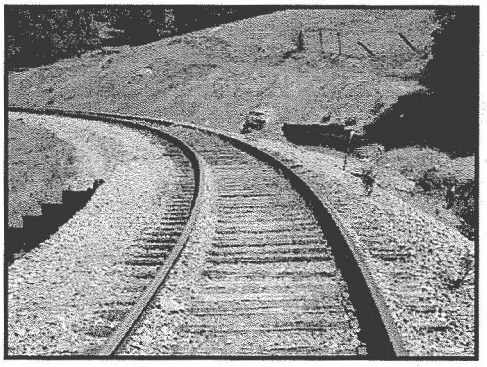
I. Executive Summary

The purpose of this Capital Assessment Report (CAR) is to provide the North Coast Railroad Authority (NCRA) with a comprehensive condition assessment of the entire Northwestern Pacific Railroad (NWP) between the communities of Lombard and Samoa – a distance of over 300 miles – and make recommendations for improvements and measures that are needed to implement the NCRA's strategy to commence rail service at the earliest opportunity. The CAR is intended to be an integral part of NCRA's overall decision-making process to determine the feasibility of providing long-term dependable transportation service to California's north coast region.



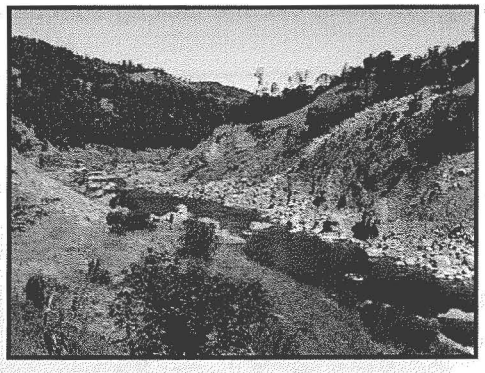
The Willdan/HNTB consultant team performed a focused field reconnaissance effort in Spring 2002. As a result of this effort, the following CAR was developed which documents the methodology, findings and recommendations for future actions to provide the desired railroad service. Despite the rail line being nearly 100 years old and lacking adequate maintenance efforts for nearly the past two decades, the consultant team found NWP's 183 bridges, 30 tunnels and nearly one million wooden ties in remarkably good condition. The notable exceptions are the extensive earth movements and landslides in the Eel River Canyon. The CAR recommends that a very feasible 5-year Capital Improvement Program, requiring the investment of $39.7 million of available funds, be adopted by the NCRA. This would provide for service at the minimum of Federal Railroad Administration (FRA) Class 1 operations with much of the rail system capable of providing for FRA Class 2 and 3 operation levels and achieve an overall average track speed of nearly 30 miles per hour. The CAR also recommends that the NCRA begin the process of identifying funding for a long range, 25-year capital investment program requiring nearly $250 million to continue upgrading and replacing aging and deteriorating facilities.



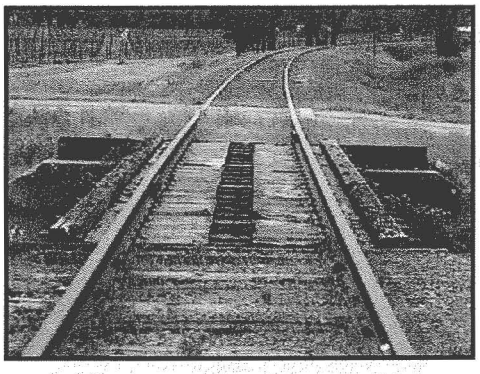


It is important to note that the proposed improvements would also provide benefit to the operations of the Northwestern Pacific Railroad Authority (NWPRA) and future operations of the proposed Sonoma Marin Area Rail Transit (SMART). The 5-year Capital Improvement Program will result in improvements benefiting NWPRA and SMART with an estimated cost of $ 5.7 million. The cost of improvements proposed in the Long Term Capital Program benefiting NWPRA and SMART is estimated at $81.8 million.

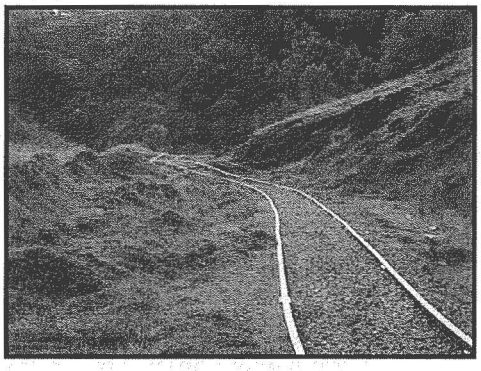
Given the unique geologic and environmental setting surrounding the NWP, the CAR recommends an approach that provides for respect of the environment and embraces the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) principles and processes for making critical decisions. The CAR recommends the pursuit of a combined Environmental Impact Report/Environmental Impact Statement (EIR/EIS) process to address potential impacts created by activities that will commence railroad service reports.



It is anticipated that limited rail service both north and south of the highly environmentally sensitive Eel River Canyon can be established in 2003 with additional railroad service provided spanning the entire length by the year 2006. This can be accomplished by implementing the recommended approach of "living" with the landslides and earth movements using existing state of the art remediation techniques that have proven effective on other railroad properties in the western United States. Rather than attempting to totally abate earth movement, this approach implements a set of measures aimed at slowing the movement to a level that typically can be addressed through maintenance efforts. The result is a lower cost set of solutions that can be readily implemented and have potentially less environmental impact than other methods. Key to the success of this approach is the implementation of a proactive maintenance program which the CAR describes in detail. The program contains recommendations on how to fund the proposed improvements in order to provide continuous and reliable railroad service.



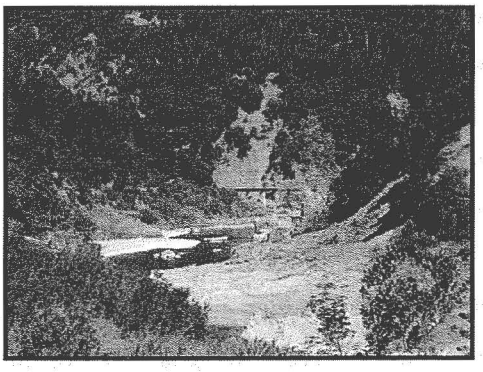
Finally the CAR recognizes that the NCRA entered into a Consent Decree and Stipulated Judgment (Consent Decree) with State of California agencies in 1999 that require certain measures, activities and plans be implemented related to a variety of issues and conditions associated with past actions by the NWP operators'. This includes the removal of hazardous materials, contaminated soil and debris such as discarded wooden ties as well as remediation of landslides to abate water quality issues. In a separate report entitled "*Environmental Consent Decree Assessment",* dated July 2002, a set of actions is identified to bring the NCRA into compliance with the Consent Decree. The CAR recommends that, to the degree practical, both the Capital Improvement Program and the Consent Degree Compliance Program be addressed jointly to minimize costs and take advantage of opportunities to coordinate activities.



Upon acceptance by NCRA of the CAR including its findings and recommendations, the next step in implementation will be for the NCRA to seek concurrence from Caltrans and the California Transportation Commission (CTC) with their action plan. Upon achieving this concurrence, the NCRA will need to make application and seek approval of the necessary funding from CTC to undertake the following: (1) Program Management activities; (2) Preliminary Engineering;(3) Preliminary right-of-way analysis; (4) a variety of environmental studies, reviews, assessments and preparation of reports to support the CEQA/NEPA review process; (5) adoption of various CEQA/NEPA documents, and (6) secure applicable permits from State and Federal resource agencies.

VI. Environmental (CEQA/NEPA) Assessment

A. *Executive Summary*



Due primarily to the nature of the project, the complexities of the processes, and the extent of public disagreements as to the physical effects of the proposed project, it is recommended that a combined document (CEQA and NEPA) be prepared and processed for the Capital Improvement Program that involves facility upgrades, landslide stabilization and reopening of the line between Willits and South Fork. The type of document recommended is an EIR prepared pursuant to the California Environmental Quality Act. It is anticipated that the Federal lead agency, assumed to be the Federal Highway Administration (FHWA), will concur in the recommendation to prepare an EIS to achieve compliance with the National Environmental Policy Act.

The document is to be programmatic as well as project specific in nature. The reason for the programmatic part is to allow for a complete discussion and analysis of cumulative impacts of the project. The document is to include the consideration of the issues of independent utility or logical termini as they concern the implementation of the overall program.

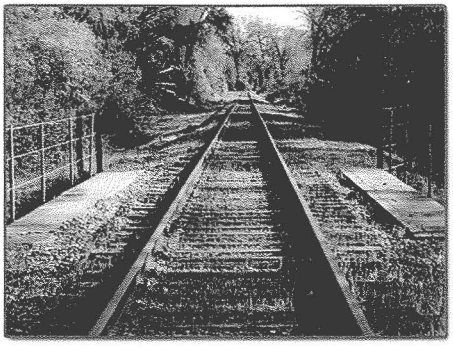
During the course of environmental document creation and processing, numerous agencies are to be consulted, documents are to be prepared, special studies performed and processes undertaken prior to the NCRA's ability to make decisions concerning the commencement of activities on its Capital Improvement Program.

In order to allow the NCRA to continue its most recent operations, and as an early component of the implementation of the above recommendations, the issue of the determination of the possible existence of independent utility or logical termini of different parts of the line are to be addressed and considered. This determination would allow for the consideration of continuing operations on the most recently utilized parts of

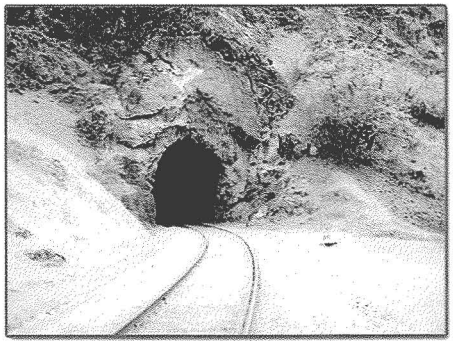
NCRA

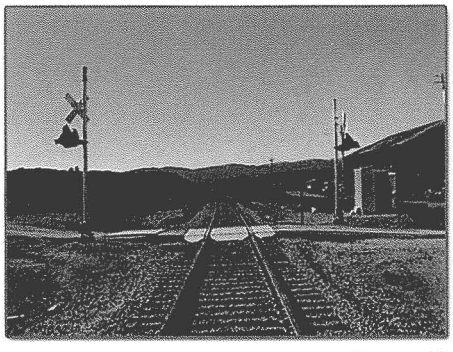
Updated Capital Assessment Report - Russian River Division

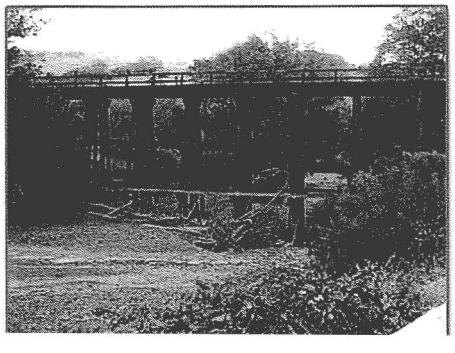
Lombard to Willits

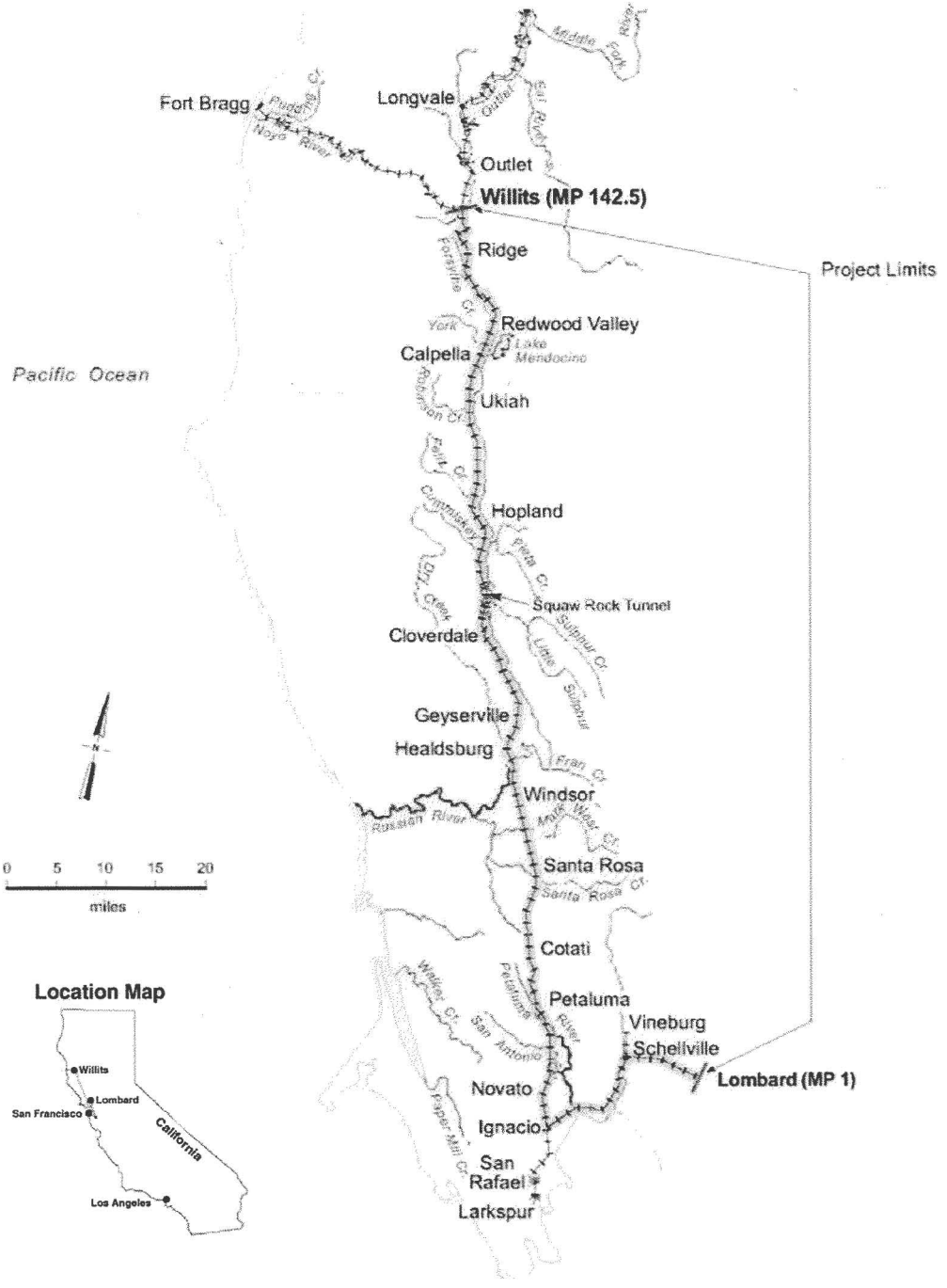












HNTB

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November 2005

AR 06290

I. Executive Summary

The purpose of this Updated Capital Assessment Report is to provide NCRA with a comprehensive condition assessment of the Russian River Division. It provides recommendations for improvements and processes needed for NCRA to fulfill its legislated authority to ensure rail service on the Northwestern Pacific Railroad (NWP). This update report is intended to be an integral part of NCRA's plan to provide long-term dependable transportation service to California's North Coast Region.

CD Contents:

Updated CAR Report Text

2002 CAR Report Text

Approximately 3-1/2 years have lapsed since the 2002 CAR field inspection work. During this time frame:

- NWP has remained closed to operations under FRA Emergency Order No. 21
- No infrastructure improvements have been made other than the fender system repairs at Haystack Landing and Black Point bridges
- The ownership of the NWP from Healdsburg to Lombard has been transferred from Northwestern Pacific Railroad Authority (NWPRA)[2] to Sonoma-Marin Area Rail Transit (SMART)[3]. with NCRA retaining freight rights and maintenance responsibilities
- NCRA has completed the waste and debris clean-up of 9 rail yard sites (all in the Eel River Division except the Willits Yard) as required by the Environmental Consent Decree[4]
- The Federal Emergency Management Agency (FEMA) completed a Final Programmatic Environmental Assessment[5] for the Russian River Division covering much of the physical activities proposed in this Updated capital assessment report

[2] 2002 CAR p.6

[3] AB 2224, as amended, Nation 2002 added Part 16 (commencing with Section 105000) to Division 10 of the State of California Public Utilities Code, relating to transportation.

[4] Case No.: CV80240 Consent Decree and Stipulated Judgment, In the Superior Court of the State of California For the County of Mendocino, People of the State of California, Filed July 14, 1999

- In December 2003 areas along the Russian River Division received about 3 times the monthly average rainfall likely causing some of the additional distress noted in this assessment

- SMART has prepared a Draft Environmental Impact Report to provide passenger rail service on approximately 60 miles of the Russian River Division (Ignacio to Cloverdale) that will be available for review soon

To complete this report, the HNTB/Willdan team performed extensive field inspections in September and October of 2005. An inspection of the Russian River Division was performed to identify any changed physical conditions from the previous inspection performed in 2002 and documented in the 2002 CAR. The Assessment Team performed more detailed inspections of the elements identified as needing more in-depth inspection to determine the level of repairs required and to facilitate the development of realistic cost estimates for these capital improvements. The focus was on capital improvements required to satisfy the conditions of the FRA Emergency Order 21 and to open the line to revenue freight service with a secondary purpose to look at long-term capital needs. Two areas that required more detailed inspection were the highway grade crossing warning devices and the railroad bridges. In general, the following was observed:



- Accelerated deterioration of a number of the timber bridges

- Accelerated deterioration of the crossing warning devices

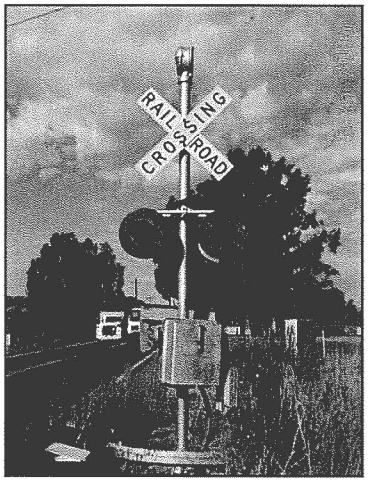
- Moderate additional deterioration of the tunnels with the exception of Tunnel 6

- Largely unchanged movement of existing landslides

[5] Final Programmatic Environmental Assessment South End Alternative North Coast Railroad Authority FEMA 1203-DR-CA, March 2004, October 30, 2005, http://www.northcoastrailroad.org/Acrobat/Documents/Final%20Programmatic%20Environmental%20Assessment.pdf.

- Notable increase in scour at outlets of several drainage culverts and bridge footings
- Significant increase in vegetation removal required
- Moderate change in track structure condition

The detailed findings from this effort were then used to outline a recommendation for future capital and repair activities to enable NCRA to provide rail service at the soonest opportunity meeting FRA Safety requirements and Class 3 track standards. The estimated cost of re-opening the line is presented by consecutive operable blocks. It is estimated that the cost of re-opening the railroad from Lombard to Willits will total $23 million. This cost is in 2005 dollars and includes a 30 percent markup for environmental, engineering and construction management. These costs are substantially higher than the comparable 2002 CAR costs because of the substantial increase in construction costs in these last three years, and the accelerated deterioration of the timber bridges, signals, and ballast effectiveness.



It is recommended that NCRA produce an updated market and probable service needs report. Then in combination with this updated assessment and a funding strategy determine a phased re-opening plan.

It is important to note that SMART and NCRA have overlapping interests and a symbiotic relationship, with SMART as owner of the line from Lombard to Healdsburg, and NCRA having maintenance responsibilities over the same segment. Therefore, there are shared interests in capital improvements, and NCRA needs to explore with SMART timing and possible cost responsibilities for important capital investments such as signals and bridge replacements.

In addition to these immediate improvements, future capital improvements were evaluated to provide NCRA with a long-term view toward lowering overall maintenance costs and increasing the dependability of service. The future capital plan is two-phased including a short-term investment over five years of $11.9 million and a long term investment over 25 years of $58.6 million for a total long-term program cost of $70.5 million to allow NCRA to continue upgrading and replacing aging and deteriorated facilities.

REQUEST FOR PROPOSALS

FOR AN OPERATOR OF RAIL FREIGHT SERVICE AND EXCURSION SERVICE ON THE NORTHWESTERN PACIFIC LINE

NORTH COAST RAILROAD AUTHORITY

January 17, 2006

AR 06593

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AR 06594

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. North Coast Railroad Authority.

The NORTH COAST RAILROAD AUTHORITY ("NCRA") was created by the California Legislature in 1989 by the North Coast Railroad Authority Act, Government Code §§93000-93110 for the purpose of maintaining railroad service to the North Coast of California.

The NCRA Board of Directors consists of two members appointed by the Boards of Supervisors of the Counties of Humboldt, Sonoma and Mendocino and a City representative selected by the cities served by the Northwestern Pacific Rail Line. The Chairman of the Board is Allan Hemphill, a Sonoma County businessman; and the Vice-Chairman is Hal Wagenet, member of the Board of Supervisors of Mendocino County. Also serving as directors are: John Woolley, member of the Board of Supervisors of Humboldt County; Paul Kelley, member of the Board of Supervisors of Sonoma County; Charles Ollivier, a commissioner of the Humboldt Bay Recreation and Harbor District; Peter La Vallee, Mayor of the City of Eureka; and Bob Simonson, a retired locomotive engineer for Northwestern Pacific Railroad.

The purpose of this Request for Proposals ("RFP") is to solicit proposals from operationally and financially qualified firms to provide rail freight service and/or excursion service on the Northwestern Pacific Line.

B. Private-Public Partnership.

NCRA envisions a private-public partnership for reopening the NWP Line. Although the public as a matter of policy funded acquisition of the line to preserve rail service, and continues to dedicate public resources to capital improvement of the line, a private operator was always envisioned. This RFP is issued against the backdrop of emerging demand for rail service for products such as rock, solid waste, and the need to connect North Coast ports to the national rail system, supplementary to the traditional emphasis of the railroad on forest products, and passenger services, including commuter and excursion.

Hence, this RFP solicits the creativity of the private marketplace to connect the dots between public capital, private capital and the emerging new economic justification for this railroad. No restrictions are imposed by this RFP upon the structure for proposals.

Proposals may include either freight service, excursion service or both. Proposals may be for the entire line from Samoa to Lombard, or any portions thereof. Proposers may submit multiple proposals or alternate proposals. Proposers may cobble together a series of joint ventures, or propose a single entity approach.

C. Description of Rail Line.

The Northwestern Pacific Railroad is viewed by the Board of Directors and by the public as one railroad extending from the City of Arcata in Humboldt County (MP 292.5) and Samoa in the North, to the Ignacio Wye at MP 25.8 near the City of Novato in Marin County (MP 26.96) in the South, and Lombard, near the City of Napa in the East. (See Figure 1).

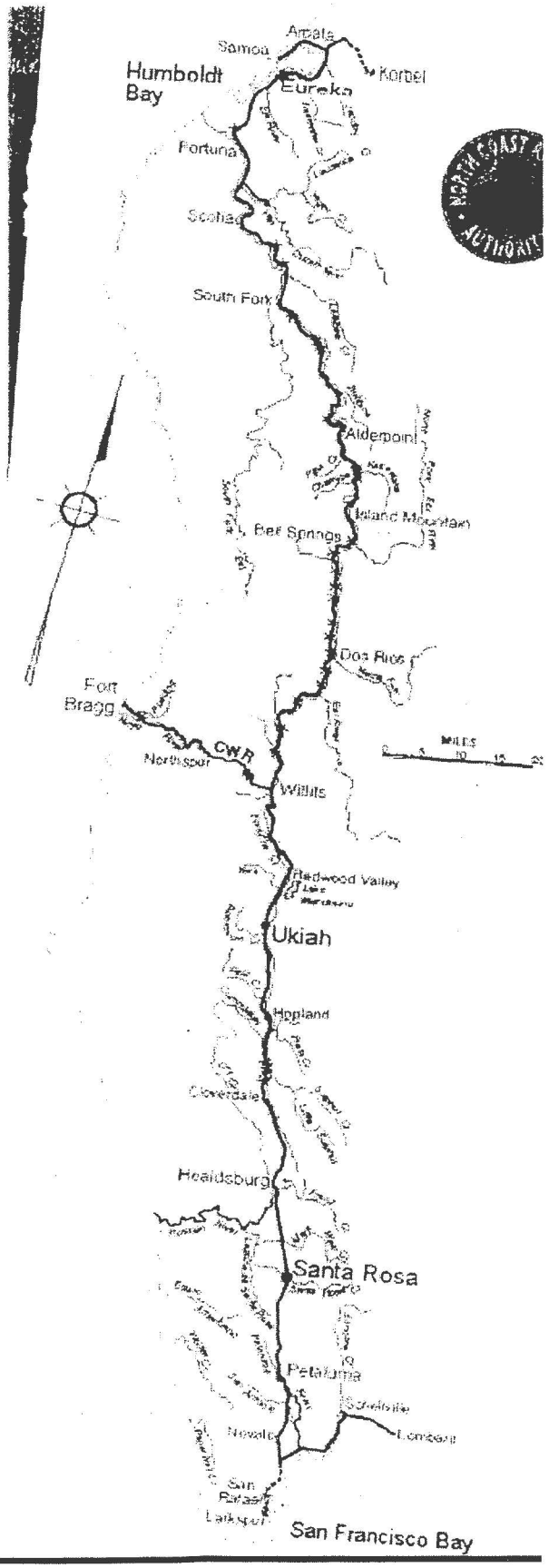


Figure 1 (NWP Line)

NCRA owns the rail line from Healdsburg, California (MP 68.22) to the North in Arcata, either in fee or by easement.

The rail line south of MP 68.22 is owned by the Sonoma-Marin Area Rail Transit District ("SMART"), a regional transit district created by the California Legislature in 2003 to oversee the development and implementation of passenger rail service in Sonoma and Marin Counties. SMART is governed by a twelve-member Board of Directors consisting of elected government officials: two county supervisors from Marin and Sonoma County; three City Council members from each County; and two representatives from the Golden Gate Bridge, Highway and Transportation District.

NCRA holds an exclusive freight easement over that portion of the rail line owned by SMART and limited excursion rights. Likewise, SMART holds an inter-city passenger easement over the rail line owned by NCRA.

Willits, located at MP 139.5 is the geographical center of the railroad and interchange point with California Western Railroad, an excursion operator operating under the firm name and style of The Skunk Train (the "Skunk"). As such, Willits has traditionally been viewed by NCRA and former operators of the NWP as the division point between the Northern Division (also known as the Eel River Division) and the Southern Division. The Northern Division being all points north of MP 142.5 at the northern limit of the Willits Yard, and the Southern Division (also known as the Russian River Division).

AR 06596

SMART proposes to institute commuter transit service from Cloverdale (MP 84.7) south to Larkspur (MP 15.9) through a separate RFP in the future. On November 21, 2005, SMART released its draft Environmental Impact Report ~~in November 2005~~ which is available online at www.sonomamarintrain.org.

D. History of Rail Service.

Rail service on the NWP Line dates back to the 1870s, with the railroad being established from Marin County to Ukiah in Mendocino County in the 1870s, extended to Willits in 1904, and extended to Eureka in 1914. Designated the Northwestern Pacific Railroad ("NWP"), it was jointly owned by Sante Fe Railroad and Southern Pacific Railroad and operated independently as a joint venture until 1929, when Southern Pacific assumed exclusive operating rights. Southern Pacific operated the rail line as a Division known as the Northwestern Pacific Railroad.

The NWP was the only viable means of transportation within the corridor prior to completion of Highway 101, and remained the sole source of substantial freight movement for decades. Southern Pacific sold the Northern Division in 1984 to a start-up rail operator, which operated until December 1986, when it declared bankruptcy. A federally appointed bankruptcy trustee managed the railroad consisting of the Northern Division until 1992. In 1992, Southern Pacific contracted operation of the Southern Division to California Northern Railroad, now Rail America. Also in 1992, NCRA purchased the Northern Division in the Bankruptcy Court proceedings.

In 1996, NCRA and SMART's predecessor acting in concert purchased the Southern Division of the NWP Rail Line from Southern Pacific, with NCRA acquiring ownership of the portion from Willits to Healdsburg, and SMART's predecessor acquiring ownership of the portion south of Healdsburg.

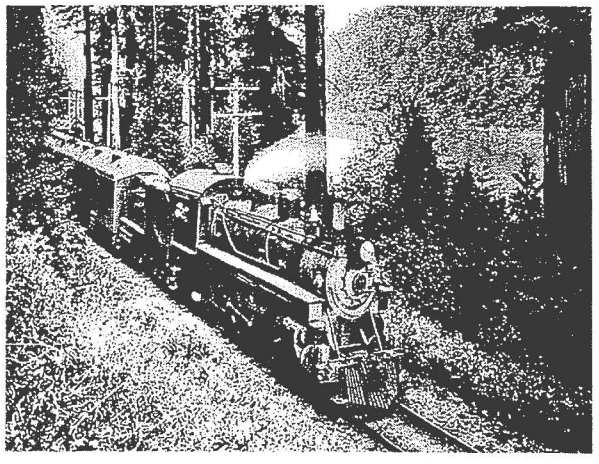


Figure 2 (Locomotive on Eel River, 1914)

Between 1992 and 1998, NCRA operated freight service across the Northern Division owned by it and the Southern Division pursuant to its freight easement and an Operating greement by and between SMART's predecessor (Northwestern Pacific Railroad Authority "NWPRA") and NCRA.

In 1997, the Board issued a Request for Proposals for operation and maintenance of the railroad. Northwestern Pacific Railway Company, LLC, a Colorado limited liability company ("NWPY") was chosen as NCRA's contract operator. Within weeks of reaching this agreement, the El Nino storms of 1998 closed the entire rail line. The Southern Division was reopened in May 1998 by NWPY, which operated freight service until the Federal Railroad Administration through Emergency Order No. 21 closed the entire railroad in November 1998, primarily due to the condition of the signal equipment on the Russian River Division.

NWPY obtained partial relief from Emergency Order No. 21 in 2001 and resumed limited service over 41 miles from Lombard to Penngrove (MP 42) near the City of Petaluma until NWPY ceased operations in September 2001.

In 2002, NCRA entered into an agreement with NWPY reinstating the defaulted Operating Agreement conditioned upon NCRA's approval of a Reopening Plan with demonstrated capitalization. On June 30, 2005 the Operating Agreement with NWPY was terminated. The Agreement with NWPY provides:

> "In the event the [Operating] Agreement is terminated as stated above, the parties are mutually released from any further obligations with regard to the Operating Agreement as of the Termination Date. Upon Termination, the Companies hereby authorize NCRA to record Quitclaim Deeds now held by it to all leasehold interests now held by the Companies as of the Effective Date of the Termination and shall file forthwith at the demand of NCRA all necessary documents to terminate the common carrier privilege and liability in NWP Line so as to substitute in the place and stead NCRA, or its nominee, and in addition to any residual common carrier right as owner of the NWP Line. In such regard, NCRA may designate whomsoever it chooses as the common carrier with full power of substitution."

E. Resources Available for Operation of Northwestern Pacific Rail Line.

1. Roadbed Assets. The Operator will have access to any open portion of the Northern Division by direct grant from NCRA to MP 68.22. From MP 68.22, the contract operator will operate pursuant to NCRA's exclusive freight easement and assignment of NCRA's Operating Agreement with SMART. The assignment of the Operating Agreement will require approval of SMART.

2. Real Property Assets. Beyond the railbed itself, NCRA owns real estate assets which are also available in connection with this RFP.

Eureka Station. Located at 4 West Second Street, Eureka, previously utilized as an administrative center.

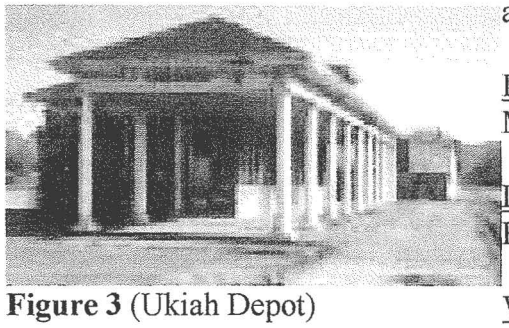


Figure 3 (Ukiah Depot)

Island Mountain Yard. Includes approximately 15% of the Island Mountain Quarry.

Dos Rios. Approximately 20 aces of rock deposit north of Dos Rios (near MP 166.5).

Willits Yard. With associated buildings. (Although NCRA purchased the property in fee, it accepted only a surface easement until Union Pacific meets its contractual obligation to remediate environmental contamination at the site. Improved industrial property is available for sale or lease adjacent to the East of the Willits Yard).

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Ukiah Depot. This site comprises approximately ten (10) acres; the Western half improved with the Ukiah Depot and two warehouse buildings owned in fee; the eastern half over which NCRA holds a surface easement similar to that at the Willits Yard.

Cloverdale Warehouse. A warehouse located immediately north of the Cloverdale Station comprising approximately 2,500 sq. feet with rail spur and approximately 1.0 acres of adjoining land. This is the blue building north of the Depot.

Petaluma. An arrangement with the City of Petaluma and its Redevelopment agency which makes office space in an office building on Washington Street available to NCRA's contract operator at no rental expense, and which includes the promise to develop a warehouse on property immediately South of the existing depot property. A freight depot will also be constructed by the Redevelopment Agency for railroad use.

3. Personal Property Assets. The successful responding party will also have the option of acquiring by lease the personal property owned by NCRA. Proposers may make arrangements to inspect any such equipment by contacting NCRA Staff. The personal property is described as:

Maintenance Equipment

- 430D Backhoe (New)
- 2006 John Deere Excavator (New)
- Portable Compressor
- 2006 4x4 Chevrolet High Rail Truck
- 2000 Rotary Dump Truck
- Brush Cutter (New)
- Various items of used equipment including a rail mounted crane and a backhoe
- Railcars described in Exhibit A attached hereto

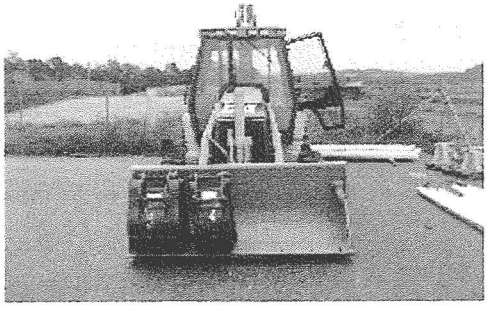


Figure 4 (Backhoe)

Proposals for acquisition or use of this maintenance equipment may be included.

4. Signal Equipment. To address the chronically deficient signal equipment leading to the issuance of Emergency Order No. 21, in November 2005, NCRA purchased signal equipment comprising 70 bidirectional predictors; 70 shunt enhancers; 140+ unable narrow band shunts; 10 gates and related signal equipment. The purchase was $695,482. A detailed inventory is included in the Document Package. It is currently stored in the Cloverdale Yard

AR 06599

Warehouse. Also stored at the Cloverdale Yard Warehouse are the crossing arms for each of the signal crossings on the Southern Division.

5. Reserved Communication. Fiber optic drops at Cahto Peak, Pratt Mountain and Piercy for communications on the Northern Division.

6. Funding Available to NCRA.

Intermodal Surface Transportation Efficiency Act ("ISTEA"). NCRA was allocated $8.6 million as a demonstration project under the Intermodal Transportation Efficiency Act, which requires a twenty percent (20%) match. In 2005 Congress designated NCRA as the lead agency for allocation of these funds in the 2005 Federal Highway Bill.

Traffic Congestion Relief Program ("TCRP"). In 2000, AB 2928, pursuant to the Traffic Congestion Relief Program allocated $60 million to NCRA for a variety of purposes. See figure 2 for the status of the allocation.

Project	TCRP Project #	Available Under AB 2928 & Prop 42	Allocated To Date	Balance
Defray Admin Costs	32.1	$1,000,000	$1,000,000	$0
Re-Opening Willits - South	32.2	$600,000	$600,000	$0
Re-Opening Willits - North	32.3	$1,000,000	$400,000	$600,000
Upgrade to Class II & III Willits, South	32.4	$5,000,000	$100,000	$4,900,000
Environmental Remediation (Consent Decree)	32.5	$4,100,000	$1,146,000 *	$2,954,000
Debt Repayment	32.6	$10,000,000	$10,000,000	$0
Local Match for ISTEA Funds	32.7	$1,800,000	$50,000 *	$1,750,000
Federal Loan Obligations (Q Fund)	32.8	$5,500,000	$5,500,000	$0
Long Term Stabilization Project	32.9	$31,000,000	$0	$31,000,000
TOTALS		$60,000,000	$18,796,000	$41,204,000
		(Total Available)	(Total Allocated by CTC)	(amount subject to suspension and CTC conditions)

Figure 5 TCRP Funds

Other Sources:

1994-95 Transit Capital Improvement Funds ("TCI"): Residual amounts from the approved 1994-95 TCI Funds programmed by the CTC are available;

California Public Utility Commission, Section 130 Funds:The successful responding party assuming maintenance responsibilities will be entitled to receive FHWA Section 130 Crossing Funds in the approximate amount of $89,000 - $125,000 per year;

Property Revenues: NCRA receives approximately $200,000 for crossing revenue and lease income which NCRA reserves for funding its operating expenses.

F. Assumptions for Response.

The Response should assume that $8.6 million of ISTEA funds and available TCRP funds are available for funding improvement and reopening of the rail line.

The Responding party should assume for purposes of response that the NCRA Operating Agreement with NWPY is terminated and that the successful responder would assume common carrier status by petition and notice to the Surface Transportation Board.

II. PROPOSAL CONTENTS, PROCESS AND REQUIREMENTS.

A. Proposal Documents.

This Request for Proposals is constituted by this document and the documents fully described at page14 below (referred to herein as the "Document Package"). Prospective Proposers may inspect the Document Package at the NCRA business office located 419 Talmage Road, Suite M, Ukiah, California, or acquire a hard copy of the Document Package from NCRA for a copying cost of $500.00. Portions of the Document Package will be available on NCRA's website at www.northcoastrailroad.org. Documents not posted on the web page with exception of Vol. 2 of the updated Capital Assessment, and the backup document discs for Vol. 1, are available on compact disc for a copying charge of $25.00.

Respondents should pay particular attention to the updated Capital Assessment Report prepared in November 2005 by NCRA's engineering firm documenting in detail the present condition of the railroad and recommendations for restoring it to Class II and Class III levels of service.

NCRA reserves the right to supplement the Document Package during the Proposal Process. Notice of any supplements will be provided to all potential responding parties who attend the Pre-Proposal Conference on February 15, 2006.

Every effort has been and will be made by the issuer to transmit accurate representations in this document and during the proposal process. However, Responding Parties are responsible for independently investigating the facts upon which their proposal is premised. No warranty should be implied from any representation by the issuer during the proposal process unless a specific representation is identified and designated by the Responding Party in the proposal as one in which the Responding Party requires the issuer to warrant in any resulting contract between the parties.

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B. Proposal Submissions.

A Pre-Proposal Conference for prospective responders will be held on February 15, 2006 at 10:00 a.m. at the Council Chambers, City of Healdsburg. Please call the NCRA Office at (707) 463-3280 to indicate your attendance and the number of participants at the Pre-Proposal Conference. Notes on the Pre-Proposal Conference, written responses to all questions received from attendees and any subsequent amendments to this RFP will be distributed to the proposers attending the pre-proposal conference. All questions in regard to this RFP must be submitted in writing and addressed to: Mitch Stogner, Executive Director, NCRA, 419 Talmage Rd., Ste. M, Ukiah, CA 95482. A written response to all questions received by February 8, 2006 will be made to attendees at the Pre-Proposal Conference.

At the time of the Pre-Proposal Conference, prospective proposers may make arrangements for access to the railroad to assess its condition.

Any questions concerning the proposal process subsequent to the Pre-proposal Conference shall be addressed in writing to Mitch Stogner, Executive Director of NCRA, at NCRA's administrative office. Written responses will then be issued to all persons registering at the Preproposal Conference. No Proposer should rely upon any oral representations of NCRA employees, consultants or agents at any time.

The original and eleven (11) copies of the proposal submitted pursuant to this RFP must be received by NCRA no later than 5:00 p.m. on March 30, 2006 at the following address:

Mitch Stogner, Executive Director
NCRA
419 Talmage Rd., Ste. M.
Ukiah, CA 95482

NCRA is not responsible for delays due to U.S. Postal Service, courier service, or any other delivery service. Proposals received after the deadline will not be considered.

All Proposals submitted in response to this RFP will be screened by NCRA Staff and other NCRA designated representatives. The screening will determine which proposals will be invited to interview. Upon receipt of invitation, the selected proposer must provide NCRA with the key personnel identified in its proposal available to the NCRA interview committee. NCRA reserves the right to make a final selection without an interview, although it is unlikely that NCRA will do so.

C. Proposal Requirements.

Submitted proposals must be clearly labeled as "Proposal for Operator of Rail Service" and must include the following:

1. A transmittal letter including the following information:

   - signature of the person authorized to obligate the company or joint venture making the proposal;
   - Location of the principal office - if activities are to be shared among companies and offices are in different locations, indicate where each office is located and what activities are to be performed in each office;
   - A summary description of the work to be performed by each subcontracting company proposed for the project, if any;
   - Telephone and Facsimile numbers and E-Mail address for the designated representative for each proposal.

2. An organizational chart indicating all participants in the Proposal, showing the proposed relationships between the key personnel and support staff, showing which function each company will be responsible for performing

3. A mobilization plan and a schedule for the start-up of rail service upon issuance of a Notice to Proceed by NCRA to the Operator. The responders should assume that such a Notice to Proceed will not be issued by NCRA until the work is restored to service and relief from any remaining portions of Emergency Order No. 21 issued by the FRA. It is estimated that this work will require twelve to eighteen months for project description, environmental clearance, bidding and performance.

4. A projected Financial Plan.

5. Financial Statements, or Banker's Letters of Introduction, or other documentation demonstrating the proposer's financial capability and the ~~a~~ availability of financial resources that would be utilized to provide the services proposed.

6. Proposal for payments to NCRA, including an estimate of likely payments and the proposed method of calculation.

7. References for proposer. NCRA prefers to receive at least three such references, but proposers submitting fewer than three references will not be disqualified from consideration. Each reference should include the contact's name, title, address and telephone numbers and include an explanation of the relationship giving rise to the reference, and the time frames relevant to such relationship.

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D. Proposal Process Schedule.

1. The schedule for the proposal process is:

• Issuance of RFP	January 12, 2006
• Pre-Proposal Conference	February 15, 2006 10:00 a.m.
• Proposal Submission	March 31, 2006
• Short List Selection	April 10, 2006
• Interviews	Week of April 17, 2006
• Selection By Board of Directors	May 10, 2006 10:00 a.m.
• Complete Negotiations with Selected Firm	June 30, 2006
• Contract Approval	July 12, 2006

E. Modification or Withdrawal of Submittals.

Any proposal received prior to the date and time specified above for receipt may be withdrawn or modified by the written request of the Proposer. To be considered, the modified proposal must be received by the date and time specified for submission.

F. Proposals Are the Property of NCRA.

Any proposal received within the prescribed deadline becomes the property of NCRA and all rights to the contents therein become those of NCRA.

G. Confidentiality.

Before award of the contract, all Proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or, if not awarded, after rejection of all Proposals), all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the Proposals confidential will be regarded as non-effective and will be disregarded to the extent stated herein.

H. Amendments to RFP.

NCRA reserves the right to amend the RFP by addenda before the final proposal submittal date.

I. Non Commitment of NCRA.

This Request for Proposals does not commit NCRA to award a contract, or to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for any services. All products used or developed in the execution of any contract resulting from this Request for Proposals will remain in the public domain at the completion of the contract.

AR 06604

J. Conflict of Interest.

The prospective operator shall disclose any financial interest, or any business or other relationship, that may have an impact upon the Proposal or any services rendered to NCRA. The responding party shall also list any current clients who may have a financial interest in the outcome of this contract. Responding Party has a "financial interest" if it is reasonably foreseeable that the Responding Party may gain material financial advantage as a result of the Party's relationship with any person or entity connected with, or directly affected by, services provided or work performed under any resulting contract. As used throughout this RFP, the term "proposing party" includes every owner and employee of such party, including their immediate families. If requested by NCRA, the responding party, its owners and key employees will be required to file a completed "Fair Political Practices Commission ("FPPC") Form 700 - Statement of Economic Interests" with NCRA in accordance with NCRA's Conflict of Interest Code, as such Code may be amended from time to time.

K. Non-Discrimination.

The contract rewarded as a result of this Request for Proposals ("RFP") will be awarded without discrimination based upon race, color, religion, age, sex, sexual preference, or national origin. The successful proposer must comply with Government Code § 8355 in matters relating to providing a drug-free workplace.

L. Excursion Proposals.

NCRA is contractually obligated to collect a franchise fee of $134,937 from any successful excursion proposer on the Russian River Division effective upon approval of a proposal for excursion service as follows: (1) $44,979 due thirty (30) days after contract execution; (2) $44,979 due upon the annual anniversary date of the contract; and (3) $44,979 due upon the second annual anniversary of the contract, together with interest at the rate of seven percent (7%) per annum.

III. OPERATOR SELECTION AND CONTRACT NEGOTIATIONS.

The selection of the Operator of rail service shall be made by NCRA in accord with the selection criteria contained in Part A below.

At the conclusion of the Proposal ranking process, NCRA may offer a contract to the highest-ranked Proposing Party and negotiate final contract terms with that party. If agreement cannot be reached with the highest-ranked Proposing Party, NCRA may terminate such negotiations and commence negotiations with the next-highest ranked Proposing Party. If necessary, NCRA may repeat this process until a final contract has been negotiated.

NCRA reserves the right to bifurcate the selection and select a proposal for excursion service and a separate contract for freight service. In such case, the acceptance of bifurcated proposals will be deemed to include a condition precedent of the satisfactory negotiation of a

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Coordination Agreement between the two successful responding parties, and neither responding party shall have any contractual liability to NCRA without such condition being met.

NCRA reserves the right to disqualify any proposal submitted by a proposer, or affiliate of a proposer, engaged in active litigation with or claim against NCRA, either directly or indirectly. NCRA reserves the right to waive disqualification upon the dismissal with prejudice of such litigation of claim.

A. Selection Criteria for Proposer Qualifications.

Set forth below is each criterion upon which Proposals will be evaluated and the qualifications of proposers determined, and the relative points to be assigned to each:

1. Evidence of Sufficient Capitalization to initiate reopening and operations in accord with the proposal. (25 pts)

2. Experience and competence of key members of proposer's team. (25 pts).

3. Comprehensiveness of Plan and Proposal (25 pts.)

5. Flexibility of Plan (10 pts).

6. Commitment Date for Restoration of Service. (15 pts.)

    a. Rapidity of Phased Service (7.5 pts)
    b. Certainty of Restoration of Service (7.5 pts)

The Capitalization criterion will weigh the proposer's willingness to commit private capital in the spirit of the public-private partnership and to determine the ability of the proposer to fund proposed private capital contributions.

The Experience and Competence criterion of the proposer's key team members will be weighed in the same manner as a Request for Qualifications.

The Comprehensiveness of Plan criterion will be weighed upon the detail of the proposal, with recognition that the prevailing proposal will require further contract negotiation to determine the nature of any resulting contractual arrangement. Proposers may submit a proposed integrated contractual document for discussion, but no deduction will be made for failure to submit such a proposed contract. Also weighed shall be the inclusion of a franchisee fee proposal to fund NCRA operations in accessing and supervising the expenditure of public funds to reopen and improve the railroad.

The Flexibility of Plan criterion will weigh the proposer's demonstrated recognition that NCRA holds this corridor and its property for the public interest and full utilization of the corridor is viewed by NCRA as being in the optimal public interest. For example, a proposal for

freight service should recognize the likelihood of concurrent excursion-inner city service either concurrently, or by future award by either NCRA or SMART. The Flexibility criterion will weigh the proposer's willingness to accommodate such public interest as may be exercised now or in the future.

The Commitment Date criterion will weigh the balance between the proposer's date for resumption of service against the certainty that it will be achieved. The proposer should carefully outline any condition precedents to contractual obligation. It will be permissible to tie commitment dates for service to identified benchmarks.

B. Overarching Preference.

It is NCRA's vision to open the entire railroad from Samoa in the North to the point of interchange with the National Railroad System at Lombard. As an overarching criterion, preference will be given to credible proposals to reopen both the Russian River Division and the Eel River Division, either at the commencement of service, or in identifiable phases at identifiable milestones.

C. Selected Terms and Conditions.

1. Term of Agreement. The Agreement shall be for an initial period of five (5) years unless sooner terminated by the provisions of the Agreement, with two consecutive five (5) year options to extend the term of the Agreement on the same terms and conditions. Longer terms may be negotiated pursuant to compliance with State Bond requirements.

2. Maintenance. Responding party shall, at no cost to NCRA, maintain the trackage at all times in a minimum of FRA Class I condition.

3. Reservation of Non-Proposed Service. NCRA reserves the exclusive right to provide, or have a designated third party operator, provide any and all service not covered by the successful responding party's proposal.

4. Compliance with August 1996 Agreement. In August 1996, NCRA contracted with NWPRA, the predecessor agency to SMART, for exclusive operating rights for freight rail over the rail line commencing at MP 68.22 and all points south and east. Any resulting agreement between NCRA and responding party must be consistent with that Operating Agreement, by which the Responding Party assumes the responsibilities of NCRA in that Agreement. As noted above, the approval of the Responding Party by SMART will be required pursuant to the terms of the August 1996 Agreement. Responding Party should incorporate the August 1996 Agreement into its proposal; or where applicable, designate deviations from the terms of the August 1996 Agreement should be separately stated and will require concurrence by SMART. Briefly stated, the Operating Agreement describes the Easement Premises; provides for an indefinite term; states the nature of permissible rail services; states the goals for maintenance of the Easement Premises; states accounting and reporting requirements; procedure for making

AR 06607

modifications and improvements; states the obligations of the parties including insurance requirements set at $25 million; reserved rights of SMART; disfeasance and other matters. A copy of this Agreement is, as amended, included in the Proposal Package.

5. Audit. NCRA reserves the right to determine if a pre-award audit is required. If a pre-award audit is required, it will be conducted in accord with generally accepted governmental auditing standards as promulgated by the United States General Accounting Office and may be conducted by CalTrans, Division of Audits. Such pre-award audit would be necessary if the proposal contemplates direct work by the proposer utilizing public funds. The scope of any required audit will consist of such tests as auditors consider necessary to ensure the satisfactory compliance with the following requirements:

1. Demonstrated ability to accumulate and segregate reasonable and allowable costs on a differentiated lineal basis;

2. The ability to record and report financial data in accord with generally accepted accounting principals and the Code of Federal Regulations, Title 48, Federal Acquisition Regulation Systems ("FAR"), Chapter I, Part 31;

3. The ability to accumulate and segregate reasonable and allowable costs through the use of a cost accounting system;

4. A system of record keeping to ensure detailed invoicing supported by adequate documentation in compliance with the terms of the contract and applicable federal and state regulations;

5. Procedures to retain accounting records and source documentation as will be required by the terms of the contract;

6. System of internal control which provides reasonable assurance that assets are protected;

7. Financial data, records and statements are reliable;

8. Errors and irregularities are promptly discovered, reported and corrected; and

9. The ability to maintain inventory control of any public assets held by contractor;

10. The contractor must have the financial viability to perform the identified work;

11. The costs proposed must be reasonable and, for some projects, consistent with the State Contracting Manual. The State Contracting Manual is online at www.ols.dgs.ca.gov.

6. **Compliance with Law.** Circumstances where prevailing wage, DBE requirements are applicable to contractor.

IV. DOCUMENT PACKAGE

A. Documents provided with the Proposal Package (the "Document Package") are:

- A Capital Assessment Report prepared by HNTB/Willdan, NCRA's on-call engineering contractor, prepared July 2002, also available at NCRA's website.
- An updated comprehensive Capital Assessment Report - Russian River Division, prepared by HNTB/Willdan in November 2005. This is a comprehensive condition assessment of the railroad from Lombard to Willits prepared by HNTB/Willdan, NCRA's engineering firm. The updated Capital Assessment provides recommendations for improvements and processes to reopen the railroad. The Assessment documents in detail capital repairs, deferred maintenance, storm related repairs and related environmental requirements to reopen the railroad, 2 vols.
- The Consent Decree Assessment, also available at NCRA's website.
- FRA Emergency Order No. 21 and amendment documents
- Policy Institute Report on California Global Gateways published in 2004 by the Public Policy Institute of California documenting that California's international trade could soar to three times its 2004 level by the year 2020 which is particularly relevant to the potential resurgence of the Port of Humboldt Bay
- Contractual documents, freight easements for the Lombard and Healdsburg Segments
- NCRA-NWPRA (SMART) Operating Agreement
- Sonoma County's comprehensive report on its long term solid waste disposal alternatives issued January 17, 2006, "Assessment of Long-Term Solid Waste Management Alternatives" prepared by Brown, Vence & Associates, January 2006. This Report may be downloaded from the Sonoma County web page at: www.sonoma-county.org.
- Inventory of Automatic Highway Crossing Warning Layouts and Warning Control Systems acquired by NCRA and available for installation.
- Contemporaneously with the release of this document, the County of Sonoma Department of Public Works, will be releasing an Alternatives Analysis of the County's long term options for solid waste disposal, which report will be available separately from Sonoma County

EHIXIBIT A - RAIL CARS

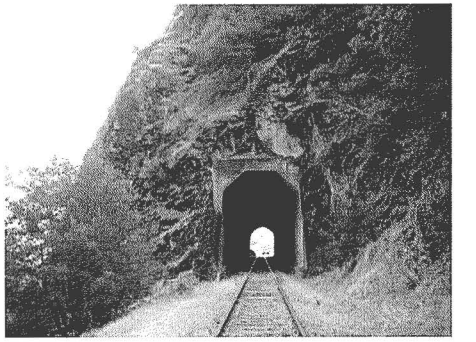
NCRA Number	Name	Type	Builder	Built	Location
4011	Golden State	Coach	Bud	1954	Willits
3125	Paul Revere	Buffet Lounge	PS	Unknown	Willits
1016	N/A	Long Distance Gallery	PS	1958	Willits
1023	N/A	Long Distance Gallery	PS	1958	Willits
1210	N/A	Power-Baggage	?	?	Willits
156	Lake	Diner	PS	1951	Asti
151	Hidden Lake Ranch	Lunch Counter Diner	ACF	1951	Asti
500	San Joaquin	Coach	PS	1949	Willits
507	Shasta	Parlour/Lounge	PS	1949	Willits
510	Tuolomme	Coach	PS	1949	Healdsburg
511	Stanislaus	Coach	PS	1949	Willits
1542	Sonoma	Coach	PS	1949	Scotia
544	Mendocino	Coach	PS	1954	Scotia
546	Humboldt	Coach	PS	1954	Scotia
None	Hercules	Steam Generator Car	Unknown	Unknown	Willits
Unknown	N/A	Baggage Car	?	?	Willits
508	Solano	(Parts)	PS	1949	Willits
641	N/A	Lunch Counter-Diner	St. Louis	1959	Willits
642	N/A	Lunch Counter-Diner	St. Louis	1959	Willits
668	N/A	Diner	?	?	Willits
53	Whitefish Lake Ranch	Lunch Counter-Diner	ACF	1951	Willits

Additionally, NCRA owns thirty-five (35) box cars, purchased in 2005 at a cost of approximately $3.4 million, manufactured in 2005, 2743 c.f. with 286,000 GWR and numbered CVGX 101-139, inclusive, which are available for delivery, or alternatively available for trade for rail equipment of comparable or better value.

AR 06610







California Transportation Commission
NCRA Quarterly Report and
TCRP Application Presentation

North Coast Railroad Authority

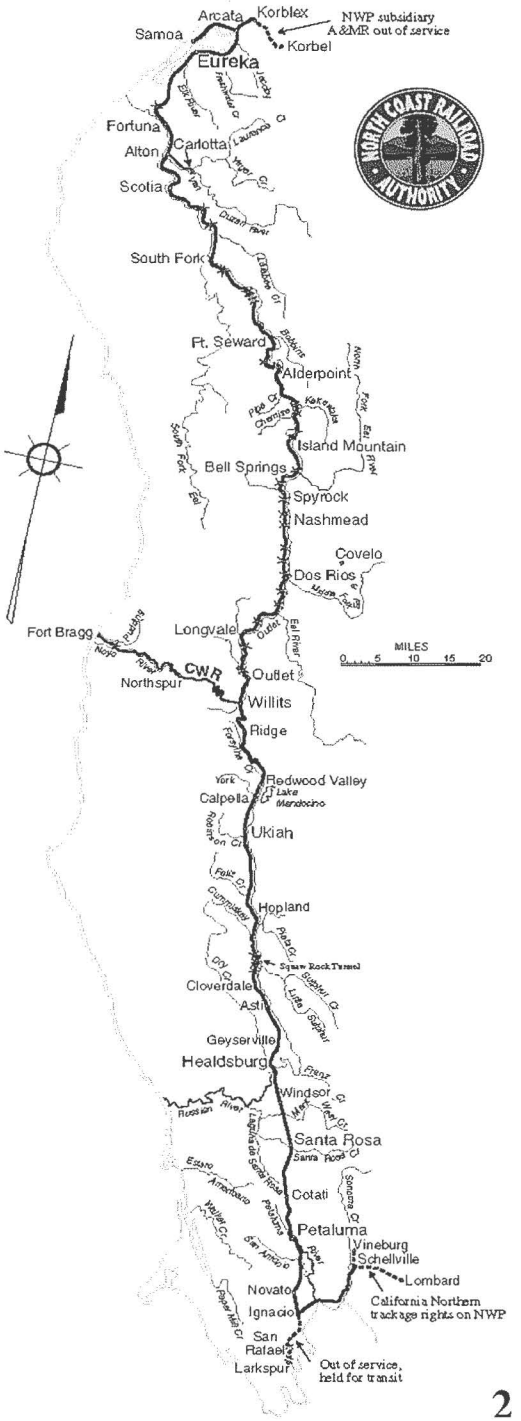
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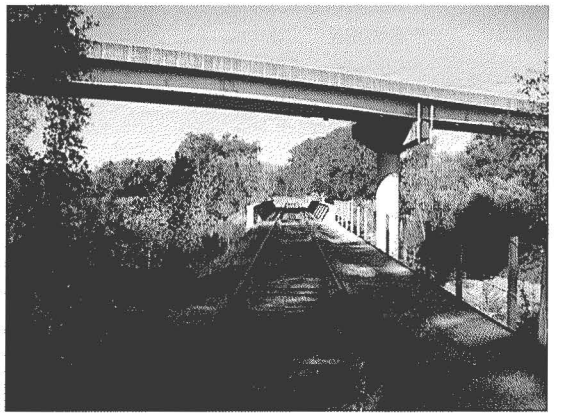
Introduction

- Created in 1990 by legislature to preserve and promote rail service between Humboldt County and the national rail interchange east of Novato
- Public/Private Partnership with the public sector (NCRA) securing public dollars for capital repairs and the private sector operating the trains and maintaining 316 miles of railroad
- Absence of NCRA operational revenue has made it difficult to effectively secure capital dollars and manage repairs, but NCRA has made recent progress toward achievement of the public/private mandate.





AR 06629

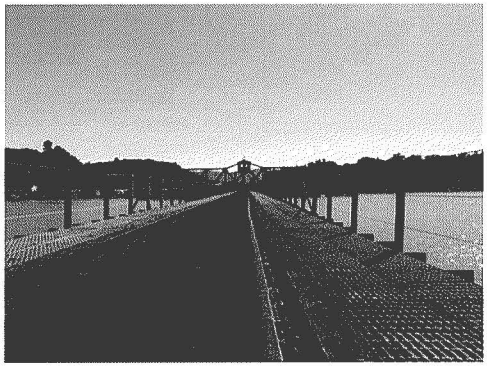


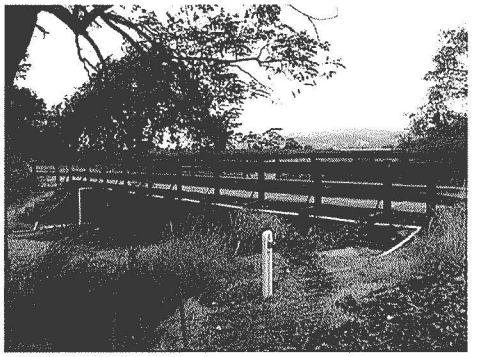


Progress Since NCRA Last Addressed the CTC in 2004

- Completed surface clean-up of 9 maintenance facilities as required by the court-ordered Environmental Consent Decree (ECD) thanks to $1.146 million in TCRP funding
- Completed drawdown of $7.9 million FEMA/OES grant for repair of bridges, acquisition of crossing signal equipment, heavy equipment, and rolling stock
- Secured forgiveness of a $12 million federal loan under federal legislation HR 3
- Sponsored legislation (SB 792) to use TCRP funds set aside to repay the loan for NCRA's operational costs and ECD effort
- Named as lead agency for $8.6 million in previously authorized ISTEA funding
- Released an RFP for a new operator on 1/17/06, with a response deadline of 3/31/06

AR 06630





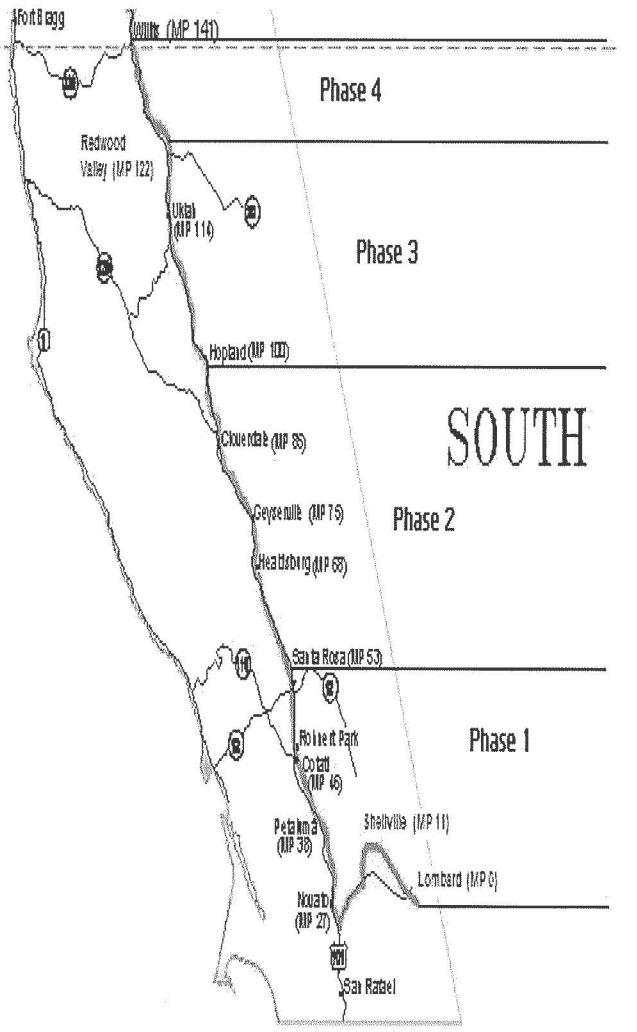
New Opportunities for NWP Rail Operator

- **Island Mountain Aggregate Haul:** prime-grade aggregate quarry in the permitting process w/estimated production of 6 million tons/yr to generate $20 million in operator revenue/yr.
- **Goods Movement Port/Rail Opportunities:** Reestablishment of rail service provides the opportunity for a variety of manufacturing or bulk commodity shipping businesses to relocate or expand to California.
- **Sonoma County Garbage Haul:** estimated 12 railcars/day to generate revenue of approximately $1.9 million/yr for the selected rail operator.
- **South-End Traditional Clients:** Historically, NWP has served lumber mills, granaries, wood and building products, and produce. Future year estimates of 7,000 cars/yr result in revenue of $3.5 million/yr to operator.
- **New Markets:** Dependable rail service will draw new shippers that specifically locate warehouses and distribution centers along the line to take advantage of alternate shipping opportunities.

AR 06631

2006 Strategic Plan
Initial Focus Re-opening South-end

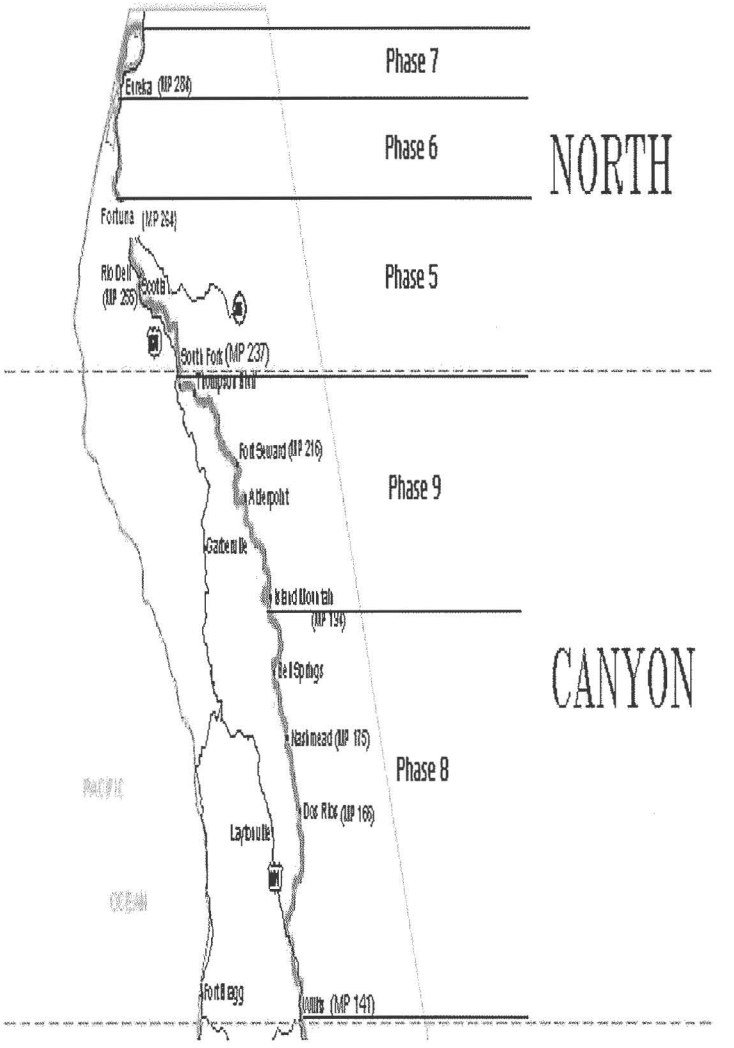
- Initial Program: Re-open the railroad Lombard to Willits
  - Process an environmental document (mitigated Negative Declaration of Environmental Impact) consistent with CEQA using existing FEMA EA and SMART EIR documents
  - Improvements/Repairs to address culverts, invasive vegetation, debris and scour, bridge and roadbed strengthening, and signal upgrades (a portion included in the current application in agenda item 67)
  - Coordinate with SMART
  - Potential shippers: Sonoma Waste, resource companies



AR 06632

2006 Strategic Plan
Re-opening North and Canyon

- Operator Driven Re-opening in the North and Canyon
  - A mitigated negative declaration environmental document for the North, full EIR for the Canyon
  - Opening the North (Ph 5-7) allows shipping to Humboldt Port from local distributors
  - Opening the Canyon (Ph 8-9) connects the entire line
  - Island Mountain quarry located in the Canyon estimated to produce six million tons/year



NORTH COAST RAILROAD AUTHORITY

AR 06633

2006 Strategic Plan
Cumulative Costs and Funding Sources

Cumulative Cost by Phase (Costs in Millions)					Funding Sources (in Million)					
Phase	Division	Cost by Phase	Cumulative Cost		TCRP [1]	ISTEA [2]	Meas M [3]	Private [4]	Other [5]	Total
Phase 1	South	$ 13.0	$ 13.0		$ 1.8	$ 8.2	$ 3.0			$ 13.0
Phase 2	South	7.2	20.2		1.0	0.4	0	2.9	2.9	7.2
Phase 3	South	2.6	22.7		0.4			1.1	1.1	2.6
Phase 4	South	2.3	25.0		0.4			1.0	0.9	2.3
Phase 5	North	8.9	33.9		1.3			3.8	3.8	8.9
Phase 6	North	20.4	54.3		.7			4.0	15.7	20.4
Phase 7	North	10.6	64.9		1.7			4.4	4.5	10.6
Phase 8	Canyon	22.7	87.7		7.5			7.6	7.6	22.7
Phase 9	Canyon	18.3	106.0		7.5			5.4	5.4	18.3
Total		$ 106.0	$ 106.0		$ 22.3	$ 8.6	$ 3.0	$ 30.2	$ 41.9	$106.0

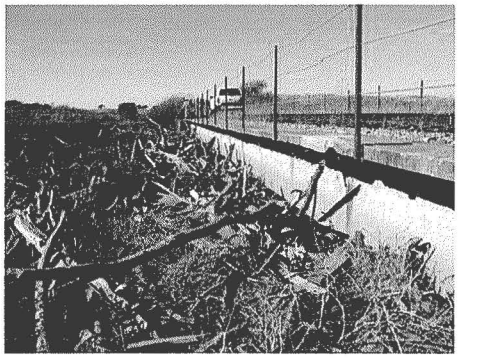
[1] The TCRP funds include $0.6 million for 32.3, $4.9 million for 32.4, $1.8 million for 32.7 and $15 million, which is half of the funds for 32.9.
[2] NCRA has been designated as the lead agency for this funding.
[3] SMART and the County of Sonoma have agreed to use the $3.0 million designated in Measure M for railroad signals for this scope of work.
[4] Private funding will be arranged by the operator with the assistance of NCRA.
[5] Humboldt Bay Port Demonstration Bond proceeds and funding being pursued under the Governor's proposed infrastructure bond, Railroad Rehabilitation and Improvement Financing through the FRA, and future grant opportunities for Goods Movement projects.

AR 06634





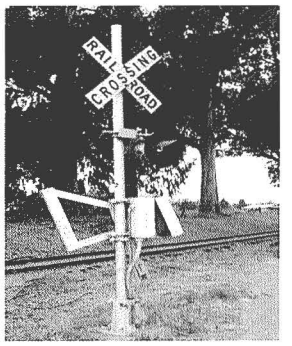


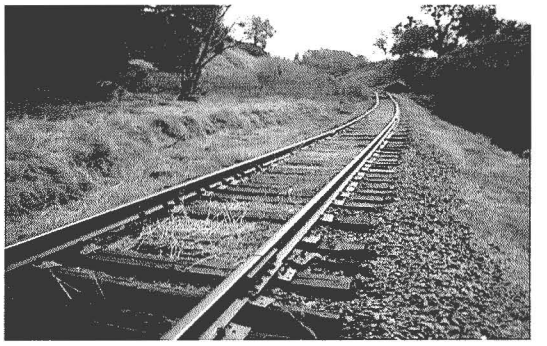


Immediate Public Safety Repair Needs and Second Phase of the ECD

- NCRA is requesting $2.954 in programming for the next phase of ECD work
- NCRA is also requesting programming of $4.9 million for urgent repairs including debris removal, scour repairs, culvert repairs, vegetation control, and repairs to strengthen the roadbed where it acts as a levee
  - If deferred, these conditions may create an increasing public safety risk and could significantly increase future improvement costs
  - The repairs listed in this application are the highest priority projects toward bringing the track up to Class 2 or 3 standards

AR 06635



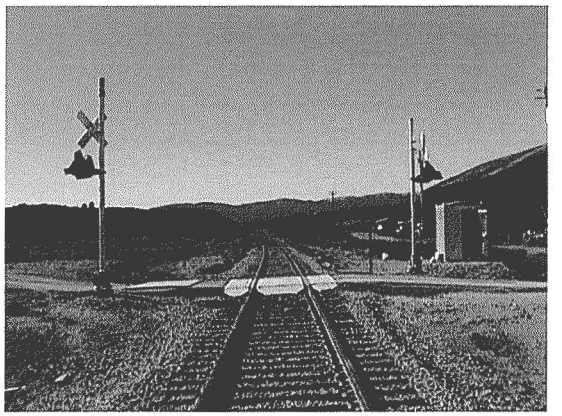


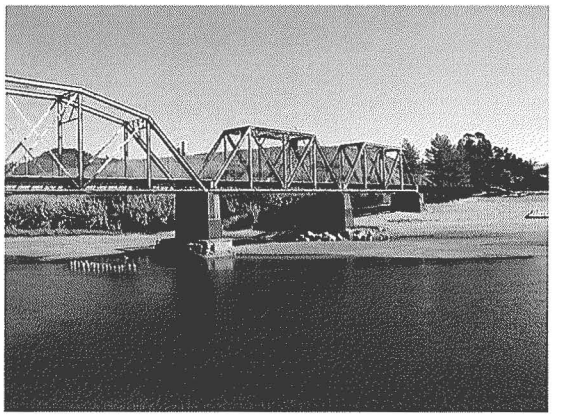


Quarterly Report Summary

- Debt load reduced $11.2 million from FY 04-05 to FY 05-06
- Prop 116 repayment plan set forth in NCRA Resolution 2004-06 adopted 8/18/04, and accepted by the CTC 9/15/04
  - Scheduled payments of $24,000 have been made
  - $140,886 outstanding at end of FY 2005-06
  - Repayment schedule: $12,000/yr FY 04-05 to FY 06-07, $42,962/yr FY 07-08 to FY 09-10
- NCRA's FY 2004-05 revenue sources included: Property leases, permits and fees, interest earnings
  - Additional FY 2005-06 revenue sources: Rail car lease payments, FEMA project management reimbursement
  - Additional FY 2006-07 Funding Sources: Counties on NCRA Board, Interest earnings on NCRA funds in Q-Fund, Public Transportation Account

AR 06636





Quarterly Report Summary

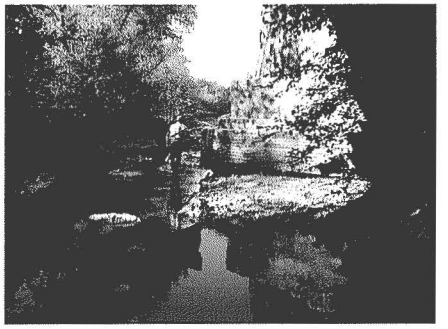
- County of Sonoma handles NCRA's accounting and NCRA's last three audits have had no exceptions
- NCRA is in the process of developing an indirect cost plan with the County of Sonoma, similar to the plan recently approved for SMART
- NCRA's Policy and Procedures manual was adopted in 2002, and is undergoing minor improvements and updating in preparation of a Caltrans audit
- A DBE Policy and Program has been submitted to Caltrans District 1, and are anticipated to be ready for public review in June 2006
- NCRA intends to request a Caltrans audit in April 2006

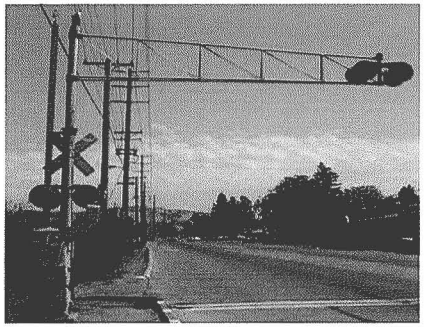
AR 06637

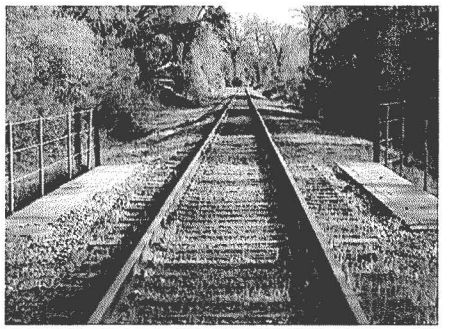
Quarterly Report ECD Compliance Efforts

- NCRA has completed waste and debris clean-up at the following sites: Eureka, Scotia, South Fork, Fort Seward, Alderpoint, Island Mountain, Dos Rios, Willits and Hopland as required by the ECD
- Site characterization at the same sites has been initiated
- Items 68 and 71 on the agenda represent continued consensus building with the State Agencies and request funding for the next phase of work towards completing the ECD remediation
- The cost for remediation effort cannot be quantified until site characterization is completed
- Portions of the Consent Decree work have been mutually agreed to be postponed until rail service is available in the Canyon

AR 06638







Conclusion

- NCRA is steadily overcoming financial constraints through efforts such as the Q-Fund forgiveness and rail car leasing
- NCRA is making every effort to address its legislated responsibility to maintain a transportation corridor for the economic vitality of the North Coast region
- Lack of TCRP funding has delayed right-of-way improvements and subsequently the ability to attract a viable operator
- The current applications before the CTC are requests to:
  - Continue work on the Environmental Consent Decree (Item 68 and 71)
  - To fund repairs for re-opening the rail line to service and also address public safety issues (Item 67 and 71)
- The Humboldt Bay Port and NCRA's rail assets are currently underutilized and offer an incredible opportunity to provide statewide goods movement relief and entice the establishment of additional manufacturing, shipping and distribution centers in northern California

AR 06639

THE
WOODSIDE
CONSULTING
GROUP

March 30, 2006

Mr. Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

Dear Mr. Stogner,

This Proposal is submitted on behalf of NWP, Inc. in response to the North Coast Railroad Authority's January 17, 2006 Request For Proposals for an Operator of Rail Freight Service and Excursion Service on the Northwestern Pacific Rail Line.

This is a Proposal for NWP, Inc. to become the operator of the entire Northwestern Pacific Rail Line (NWP Line) from Lombard to Samoa, CA. NWP, Inc. proposes to be the sole and exclusive operator of all freight trains, work trains, and passenger excursion trains on the NWP Line.

NWP, Inc. intends to form a wholly owned subsidiary, NWP Construction Co., that will exclusively plan, manage, and implement the rehabilitation of the NWP Line on behalf of NCRA in order to ensure that the rehabilitation work is performed correctly and in accordance with best railroad engineering practices and applicable FRA standards and environmental requirements that may apply to NWP, Inc., NWP Construction Co., and NCRA.

NWP, Inc.'s principal office and contact information at this time are as follows:

John H. Williams, President
The Woodside Consulting Group, Inc.
385 Sherman Avenue, Suite 1
Palo Alto, CA 94306-1840
Phone: (650) 289-9850
Fax: (650) 289-9856
Email: JHW@woodsideconsulting.com

I have been authorized to negotiate all aspects of this transaction with NCRA on behalf of NWP, Inc., its related companies, its owners and investors, and all of the principals of the NWP, Inc. transaction who will collaborate to rehabilitate, reopen and resume continuing rail freight and passenger service on the entire NWP Line. Please let me know if there are questions.

Thank you for your consideration of our Proposal. We look forward to working with the NCRA to come to an acceptable agreement as the operator of the entire NWP Line.

Sincerely,

John H. Williams
President

JHW/ja

Enclosures

THE
WOODSIDE
CONSULTING
GROUP

THE
WOODSIDE
CONSULTING
GROUP

PROPOSAL FOR OPERATOR OF RAIL SERVICE OF THE NORTHWESTERN PACIFIC RAIL LINE

Prepared For:

North Coast Railroad Authority

Prepared By:

NWP, Inc.

Date Due:

March 31, 2006

385 Sherman Avenue • Suite 1 • Palo Alto, CA 94306-1840 • (650) 289-9850 • FAX: (650) 289-9856

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List of Attachments

A. Resumes of Board of Directors:
   - H. Skip Berg, Berg Holdings
   - J. T. Wick, Berg Holdings
   - R. Allen Ennis, Evergreen Natural Resources
   - Roger R. Green, Evergreen Natural Resources
   - Douglas H. Bosco, Attorney

B. Brochure of The Woodside Consulting Group, Inc.

C. Corporate Organization Chart

D. Organization Chart for NWP, Inc.

E. Proposed Distribution of Public Funds

F. Organization Chart for NWP Construction Co.

G. Resumes for Engineering Staff of NWP Construction Co.

H. Projected NWP, Inc. Income Statement For Years 1-3 Operations of the Russian River Division

I. Demonstrated Financial Capability
   - Berg Holdings
   - Evergreen Natural Resources
   - The Woodside Consulting Group, Inc.

I. Executive Summary

The purpose of this Proposal is to respond to the North Coast Railroad Authority's (NCRA) January 17, 2006 Request for Proposals (RFP) for an Operator of Rail Freight Service and Excursion Service on the Northwestern Pacific Line (NWP Line).

A. The Proposed Transaction

Upon acceptance by NCRA of this Proposal, a new company, NWP, Inc., will be incorporated in California with its stated objectives being to lease, manage, operate, and maintain the entire NWP Line from Lombard to Samoa in accordance with its contract with NCRA. NWP, Inc. proposes to be the sole and exclusive operator of all freight trains, work trains, and passenger excursion trains on the NWP Line. NWP, Inc. proposes that the lease and/or contract governing its relationship with NCRA shall have an initial term of twenty-five (25) years, with three consecutive twenty-five (25) year options to extend the term on the same lease and/or contract terms and conditions.

Additionally, upon acceptance by NCRA of this Proposal, NWP, Inc. will form a wholly owned subsidiary, NWP Construction Co., that will exclusively plan, manage and implement the rehabilitation of the NWP Line on behalf of NCRA. The principal goal of NWP Construction Co. will be to ensure that all of the rehabilitation work performed on the entire NWP Line is performed correctly in accordance with best railroad engineering practices and applicable FRA standards and environmental requirements that may apply to NWP, Inc., NWP Construction Co., and NCRA.

B. Corporate Objectives

The combined corporate objectives of NWP Inc. and NWP Construction Co. are to:

1. Rehabilitate the entire NWP Line to Class 2/3 FRA standards so that it may efficiently sustain increasing volumes of freight and passenger traffic in future years, providing both transportation and economic benefits to communities along California's North Coast;

2. Restart railroad operations on the Russian River Division beginning in July 2007 from Lombard to Windsor and in November 2007 from Windsor to Willits, and on the Eel River Division beginning in July 2008 from Willits to Island Mountain and in November 2008 from Island Mountain to Samoa; and

3. Operate the entire NWP Line efficiently, profitably, reliably and safely to ensure its long term financial stability and viability.

C. Ownership of NWP, Inc.

The group of individuals and entities that will own NWP, Inc. is best equipped to meet the objectives stated above because of the combined financial strength, relevant experience, and strategic partnerships that its members bring to the organization. Key members include:

- **H. Skip Berg:** As owner of Berg Holdings, which is the Property Manager and Developer of Port Sonoma, Mr. Berg will be an owner, investor, and member of the NWP, Inc. Board of Directors.

- **R. Allen Ennis Jr.:** Chief Executive Officer of Evergreen Natural Resources, developer of the Island Mountain Rock Quarry, President and Chief Executive Officer of Sierra Pacific Packing, Inc., Mr. Ennis will be an owner, investor, and member of the NWP, Inc. Board of Directors.

- **John H. Williams:** President of the Woodside Consulting Group, Inc., will be an owner, investor, and member of the NWP, Inc. Board of Directors and will be responsible for the rail rehabilitation and operations of NWP, Inc.

D. Capital Availability

NWP, Inc. has extremely strong financial backing by its owners. This transaction has been carefully structured to provide to NCRA its desired public-private partnership for reopening and resuming service on the entire NWP Line. Accordingly, the capital required to rehabilitate the NWP Line will be provided from both public and private sources, although all of the funds required to operate the Line will be provided by private capital through NWP, Inc.

E. Railroad Operations and Maintenance Experience

The NWP, Inc., operations team is led by John Williams, President of The Woodside Consulting Group, Inc. John Williams' 42 year career in the railroad industry includes employment with Southern Pacific, Conrail, and the FRA. He is also intimately familiar with the NCRA and NWP Line, as he was Executive Director of the North Coast

Railroad Authority in the mid-1990s. John Williams will lead a veteran team of experts in railroad construction, maintenance, engineering, and operations that will be working within NWP, Inc. This team includes Jerry Danzig, Alan DeMoss, Richard Mahon, James Mahon, and Richard (Dick) Carter, whose combined experience spans work on various aspects of the Union Pacific, Southern Pacific, and NWP Lines. Their experience in railroad engineering will commit to this task a level of expertise that is unparalleled in the history of the NWP Line.

In addition to a top team of railroad experts, NWP, Inc. and NWP Construction Co. will have unique advantages in the navigation of the logistical challenges inherent in rehabilitating the railroad. As General Counsel, Doug Bosco will help ensure the reimbursement process for rehabilitation funding goes smoothly and that strong relationships of trust are built with the public agencies. J. T. Wick, an expert in the fields of environmental mitigation and entitlements, will serve as an advisor on all issues pertaining to the inevitable physical, environmental, and other entitlement-related challenges of the rehabilitation process.

F. Strategic Freight Service Advantages

The future viability of the NWP Line will hinge on the ability of the operator to quickly establish new freight traffic from the North Coast. The most immediate of the potential new traffic opportunities are the solid waste haul for Sonoma County and the rail shipment of aggregates needed to supply California's growing transportation infrastructure.

NWP, Inc.'s owners have an **exclusive** right to negotiate with Nevada Resource Recovery Group, LLC in Nevada for use of its solid waste disposal site. Using this site that has a capacity of about 200 million tons, NWP, Inc. would be able to provide Sonoma County and adjacent counties with a viable solid waste disposal destination for more than 200 years. NWP, Inc. is committed to assist Nevada Resource Recovery Group, LLC with the final phase of its permitting process in Nevada, and in securing the financing for appropriate transfer facilities. NWP, Inc. will also arrange for the permitting and financing of transfer stations in Sonoma County.

NWP, Inc. also brings **exclusive** ownership, by owners of NWP, Inc., of the mineral rights to Island Mountain, an aggregate source which once entitled will produce up to six million tons of aggregate annually. All aggregate produced from Island Mountain will be transported by rail and will generate significant rail traffic in the NWP Line corridor.

A third strategic freight service advantage that is **exclusive** to NWP, Inc. is Port Sonoma, whose Property Manager and Developer is Berg Holdings. Port Sonoma will be an invaluable asset for rail freight shippers, because it will allow them to move goods such as aggregate from the North Coast directly to locations around the Bay Area and as far inland as Stockton by barge. The NWP Line is contiguous to Port Sonoma.

G. Strategic Passenger Service Advantages

Similarly, Port Sonoma provides NWP, Inc. with an **exclusive** strategic passenger service advantage. Port Sonoma has been allocated federal funding to be one of thirteen new ferry terminals on the San Francisco Bay. With the first ferries currently expected to launch by 2009, the NWP Line represents an extension of the passenger transportation solution that Port Sonoma will provide and will aid Northern California toward establishing a more diverse transportation infrastructure. At such time as the ferry service at Port Sonoma is instituted, visitors from San Francisco could connect to the NWP Line at the Port and be transported north for day trips or even longer journeys. Since the NWP Line literally traverses the property of several important wineries and goes through some of the most spectacular scenery in the State, excursion service could be developed as a profitable secondary use of the NWP Line. The owners of NWP, Inc., with significant experience in land use planning, are committed to working with local agencies to make rail connected to ferry service at Port Sonoma a reality.

H. Conclusion

The remainder of this Proposal contains the details of our technical and financial plan for the rehabilitation, reopening, and continuing operation of the entire NWP Line. We believe that NWP, Inc. has assembled a team that has unsurpassed financial capability, technical knowledge, operations experience, business skills, and political expertise. NWP, Inc. has significant strengths and strategic advantages in the ability to attract new freight business as well as the financial capability to support its development. We are confident that NWP, Inc. possesses the necessary components needed to successfully restore operations on the NWP Line quickly and reestablish it as a vital part of the trade and transportation infrastructure along California's North Coast indefinitely into the future.

II. Overview of the Transaction

This Proposal is submitted on behalf of NWP, Inc. in response to the North Coast Railroad Authority's January 17, 2006 Request For Proposals For an Operator of Rail Freight Service and Excursion Service on the Northwestern Pacific Rail Line. NWP, Inc.'s physical examination of the present condition of the Line has been curtailed by limited access to the more remote segments. Additionally, important aspects of the reopening plan are dependent on the availability of public funds, as outlined in the Request for Proposals. Accordingly, NWP, Inc. reserves the right to negotiate contract provisions that accurately reflect the physical condition of the NWP Line and the availability of public funds.

This is a Proposal for NWP, Inc. to become the exclusive operator of the entire Northwestern Pacific Rail Line (NWP Line) from Lombard to Samoa. Upon acceptance by NCRA of this Proposal, NWP, Inc. will be incorporated in California, with the stated objectives being to lease, manage, operate, and maintain the NWP Line in accordance with its contract with NCRA. NWP, Inc. proposes to be the sole and exclusive operator of all freight trains, work trains, and passenger excursion trains on the NWP Line.

NWP, Inc. will form a wholly owned subsidiary, NWP Construction Co., that will exclusively plan, manage, and implement the rehabilitation of the NWP Line on behalf of NCRA in order to ensure that the rehabilitation work is performed correctly and in accordance with applicable FRA standards and environmental requirements that may apply to NWP, Inc., NWP Construction Co., and NCRA. NWP Construction Co. will be incorporated in California at the same time NWP, Inc. is incorporated.

Following are the principals in the NWP, Inc. transaction:

- **H. Skip Berg**, Owner of Berg Holdings, which is the Property Manager and Developer of Port Sonoma, will be an owner, investor, and member of the NWP, Inc. Board of Directors;

- **R. Allen Ennis, Jr.**, Chief Executive Officer of Evergreen Natural Resources (developer of the Island Mountain Rock Quarry), and President and Chief Executive Officer of Sierra Pacific Packaging, Inc., will be an owner, investor, and member of the NWP Board of Directors;

- **Douglas H. Bosco**, Attorney, will be NWP, Inc.'s General Counsel and a member of the NWP, Inc. Board of Directors; and

- **John H. Williams**, President of The Woodside Consulting Group, Inc., will be an owner, investor, member of the NWP, Inc. Board of Directors, and will have responsibility for the rail rehabilitation and operations of NWP, Inc.

Resumes for Messrs. Berg, Ennis, and Bosco are contained in Attachment A and the resume for John Williams is in Attachment B.

As a part of this transaction, John H. Williams and The Woodside Consulting Group, Inc. have agreed to grant an option exercisable for a three-year period to H. Skip Berg/Berg Holdings and Evergreen Natural Resources to purchase all of their equity interest in NWP, Inc. The parties to this transaction anticipate that option will be exercised near the end of Year 3, when the high volume movement of Island Mountain aggregate is expected to begin. The parties' current expectation is that John H. Williams will continue as a member of the Board of Directors and as a railroad advisor indefinitely following the exercise of the option. However, a fully qualified management team will be installed at NWP, Inc. prior to the commencement of the movement of high volumes of Island Mountain aggregate, in order to efficiently and effectively manage the continuing operations on the NWP Line, regardless of whether the option is exercised.

NWP, Inc. proposes to lease and/or contract to operate all of the assets listed in the NCRA RFP. These include:

- All Roadbed Assets, including NCRA's exclusive freight easement and the assignment of the NCRA Operating Agreement with SMART;
- All Real Property Assets, including all station buildings and yards, the Island Mountain Yard (including NCRA's portion of the Island Mountain Quarry), and the 20 miles of rock deposits located north of Dos Rios, near MP 166.5;
- All Personal Property Assets, including all railcars and equipment;
- All Signal Equipment Assets, including all crossing arms; and
- All Communications Assets, including the fiber optic drops at Cahto Peak, Pratt Mountain, and Piercy.

NWP, Inc. proposes that the lease and/or contract governing its relationship with NCRA shall have an initial term of twenty-five (25) years, with three consecutive twenty-five (25) year options to extend the term on the same lease and/or contract terms and conditions. The RFP references five-year terms in compliance with State Bond

requirements. However, significant private financing, as required to rehabilitate the entire NWP Line, will not be available on a short-term contract basis.

This transaction has been carefully structured to provide to NCRA the desired public-private partnership for reopening and resuming service on the entire NWP Line. To that end, the capital required to rehabilitate the NWP Line will be provided from both public and private sources. However, all of the funds required to operate the Line will be provided by private capital through NWP, Inc.

This Proposal by NWP, Inc. has been planned to rehabilitate and reopen the Russian River Division in July 2007 from Lombard to Windsor and in November 2007 from Windsor to Willits, and also to plan, rehabilitate, and reopen the Eel River Division in July 2008 from Willits to Island Mountain and in November 2008 from Island Mountain to Samoa. A transition from the start-up phase of the Russian River Division to that of a high volume rail freight carrier operating over the entire NWP Line is planned to occur about three years after NCRA has contracted with NWP, Inc. and given approval to proceed with the transaction.

III. Organization Structures and Key Personnel

This section of the Proposal addresses the organizational structures and key personnel of NWP, Inc. and NWP Construction Co.

A. Corporate Structure

Attachment C shows the Corporate Organization Structure of the entities that will execute the lease and/or contract with NCRA. As shown in Attachment C, Berg Holdings, Evergreen Natural Resources, and The Woodside Consulting Group, Inc. will be the owners and investors in NWP, Inc., the entity responsible for all railroad operations and maintenance on the NWP Line. NWP Construction Co., a wholly owned subsidiary of NWP, Inc. will be responsible for all railroad construction on the NWP Line.

A Board of Directors will establish policies and guide the progress of NWP, Inc. Members of the Board will include:

- H. Skip Berg, of Berg Holdings;
- J. T. Wick, of Berg Holdings;
- John H. Williams, of The Woodside Consulting Group, Inc.;
- Douglas H. Bosco, Attorney;

- R. Allen Ennis, Jr., of Evergreen Natural Resources; and
- Roger R. Green, of Evergreen Natural Resources.

Resumes for Messrs. Wick and Green are included in Attachment A.

B. NWP, Inc. Organization Structure and Responsibilities

Attachment D is an Organization Chart showing NWP, Inc.'s organization structure, which will consist of four executive management personnel, two NWP, Inc. officer employees, and four specialized subcontractors.

John H. Williams, as President and Chief Financial Officer, will be responsible for the overall management of NWP, Inc., including its relationship with NCRA.

As shown by Attachment D, Alan D. DeMoss, Vice President, Maintenance of Way & Structures (MofW&S), and Jerry C. Danzig, Vice President, Construction and Maintenance, will jointly oversee all aspects of NWP, Inc.'s MofW&S activities. Day-to-day management of the MofW&S function, including making all required FRA track inspections, will be the responsibility of the Manager, MofW&S, subject to the policy direction and guidance of Messrs. DeMoss and Danzig. NWP, Inc.'s Manager of MofW&S, an officer position, will be selected at a later date.

In combination, the two Vice Presidents and the Manager of MofW&S will be responsible for complying with the requirements of the Consent Decree and FRA EO-21, as well as with all other laws, rules, and regulations that apply to the NWP Line's MofW&S. In addition, they will provide advice, recommendations, and coordination with the NWP Construction Co. as to the rehabilitation requirements, plans, and schedules for reopening and retaining the NWP Line at its designated FRA class standards.

NWP, Inc. will use on-call subcontractors as necessary for specific MofW&S work and for all signal work, including maintenance and required FRA inspections of grade crossing warning systems. These subcontractors will be selected by NWP, Inc. through a competitive bidding process. The work of both subcontractors will be directed by the Manager, MofW&S, subject to oversight by Alan D. DeMoss and Jerry C. Danzig.

NWP, Inc. will initially operate train service three days per week using a two-person officer crew comprised of a Manager of Train Service and the Manager of MofW&S. The Manager of Train Service will be responsible for operation of the train service, placing cars on and pulling cars from shipper tracks, interchanging with the California Northern and California Western Railroads, and ensuring that locomotive and

freight car inspections and maintenance are performed as required. The Manager of MofW&S will be responsible for opening and closing the drawbridges and assisting the Manager of Train Service.

DieselMotive Co. has been designated as the subcontractor to provide maintenance and all required FRA inspections for the two locomotives initially required by NWP, Inc. DieselMotive Co. and its President, Mr. Matt Monson, own nine of the locomotives currently located on the NWP Line.

NWP, Inc. also expects to subcontract its required freight car inspection and repair activities. In the interest of efficiency, NWP, Inc. intends to utilize the same subcontractor now handling California Northern's freight car inspection and repairs. Moreover, because California Northern already inspects most cars at its interchange with Union Pacific at Suisun, NWP, Inc. proposes to coordinate with California Northern, so that only those cars that have not been inspected at Suisun by the California Northern will be inspected by NWP, Inc. at Lombard or Schellville. NWP, Inc. will also utilize this subcontractor for either the repair of rail cars that are damaged or become bad order for any reason while located on the NWP Line, or to prepare such cars for movement to an AAR approved freight car repair facility.

As shown by Attachment D, Judith H. Roberts will serve as Vice President, Marketing Services and Administration, for NWP, Inc. Judith Roberts and John Williams will be responsible for all aspects of marketing the rail services provided by NWP, Inc. to the shipping public. Judith Roberts will also be responsible for oversight of marketing administration, including placement of car orders, payment of car hire, and shipper billing.

Until such time as the expansion of NWP, Inc. necessitates additional clerical forces, all of the NWP, Inc. administrative functions will be provided by The Woodside Consulting Group, Inc. These include the accounts receivable, accounts payable, bookkeeping, and accounting functions.

C. NWP Construction Co. Organization Structure and Responsibilities

According to the RFP, NCRA has a total of $49.8 million available for the rehabilitation of the NWP. Of that total, $8.6 million are ISTEA funds (not including the 20% required match) and $41.2 million are TCRP funds.

NWP, Inc. proposes that substantially all of the rehabilitation of the NWP's Russian River Division be undertaken using the available public funds in accordance with the proposed distribution of public funds shown in Attachment E.

Based on experience, we are fully aware that the project management of public funds in accordance with the requirements of Caltrans and other public agencies is an extremely detailed, painstaking process. The process requires all of the following project management functions, which are subject to audit:

1. Plan Program;
2. Write project specifications;
3. Solicit bids;
4. Award contracts;
5. Oversee contractor construction;
6. Manage/monitor detailed project documentation;
7. Prepare reimbursement requests to public agencies, with supporting documentation;
8. Monitor public agencies' reimbursement process; and
9. Pay contractors.

Because NWP, Inc. will be NCRA's rail service contract operator with responsibility for reopening and operating the NWP in accordance with all FRA and regulatory standards, NWP, Inc. is not willing to delegate to any other entity the planning and management of the NWP Line rehabilitation. Accordingly, we propose to establish the NWP Construction Co. as a wholly owned subsidiary of NWP, Inc. as shown in the organization chart in Attachment C.

It will be the exclusive responsibility of the NWP Construction Co. to perform all of the project management functions listed above, subject only to NCRA's oversight. All of the project management services for portions of the project financed by public funding would be paid from those public funds. As shown by the organizational chart in Attachment F, we expect the program planning for the NWP Line rehabilitation to be developed primarily by the following five individuals:

- Jerry C. Danzig, Vice President, Construction and Maintenance;
- Alan D. DeMoss, Vice President, MofW&S;
- Richard R. Mahon, retired Chief Engineer of Southern Pacific;
- James C. Mahon, retired Manager of Track Programs of Southern Pacific; and
- Richard (Dick) Carter, retired Manager of Structural Projects of Union Pacific and Southern Pacific.

Resumes for Messrs. Danzig and DeMoss are contained in Attachment B. Resumes for the three Engineering Staff experts, Messrs. R. Mahon, J. Mahon, and Carter, are contained in Attachment G.

NWP Construction Co.'s staff would, if necessary, include as many as three full time field inspectors with expertise in grade crossing warning protection devices and signals, track, and structures, respectively, so as to ensure contractor compliance with all of the funding agencies' requirements.

Woodside has thoroughly reviewed NCRA's *Updated Capital Assessment Report – Russian River Division,* dated November 2005 ("Updated CAR"), as prepared by HNTB/Willdan Consultants. Woodside is impressed with the completeness of the several assessments, including the rehabilitation measures recommended by the Updated CAR for reopening the Russian River Division. Subject to NWP, Inc.'s in-depth field inspection review of the Updated CAR assessment and recommendations, it is expected that specifications for work to be performed by contractors can be readily prepared and issued based on the information contained in the Updated CAR.

In total, according to the Updated CAR, the completion of all of this work is estimated to cost $25.0 million, including an allowance of 30% for project incidentals defined by the Updated CAR as:

> "Program management, environmental documentation, permitting, preliminary engineering, design and plan preparation, construction easement cost, construction management and engineering . . ." (See Updated CAR, page 110).

This Proposal to NCRA is also a competitive bid by NWP Construction Co. to conduct the project management and construction management functions for all of the public funds to be expended on the NWP Line for a fixed percentage fee of 15 percent of the total invoiced cost of approved projects. The 15 percent fixed percentage fee is based on our analysis of the 30 percent fee for "project incidentals" referenced in the Updated CAR (see page 110) as well as on our knowledge and experience.

Given the magnitude of the required work in the Updated CAR, we anticipate that at least three requests for proposals and contracts would be let for the following disciplines, as defined by the Updated CAR:

- Structures and Tunnels;
- Roadway and Geotechnical; and
- Signals.

Based on the Updated CAR, it is our opinion that the single most important work element that would permit the reopening of the Russian River Division is the completion of the drawbridge signals and grade crossing warning system signals improvements

necessary to bring the railroad into conformance with CPUC requirements and FRA Emergency Order No. 21. According to the Updated CAR, the immediate capital investment required to bring the signal systems into compliance is $8.3 million for the grade crossing warning systems and $1.5 million for the drawbridge signals. Adding to that total of $9.8 million a 30 percent factor for project incidentals (as estimated in the Updated CAR) would bring the total to $12.7 million. This Proposal assumes that NCRA will request an allocation of TCRP funds in this amount so that this work element, which is on the critical path for reopening the Russian River Division, can be started immediately. NWP, Inc. will assist the NCRA staff in this regard, and also believes SMART should be willing to expend its available funds for signal work that will be mutually required for the NWP, Inc.'s and SMART's operations.

Based on the signal estimates in the Updated CAR, we judge that the time needed for a qualified signal contractor to complete the required work on the Russian River Division is about 192 crew weeks. Assuming the contractor would utilize four crews, it would take about one year (i.e., four crews times 50 weeks per crew per year) in order to complete all of the required signal work on the Russian River Division. Using the same estimates and also assuming that four signal crews were working simultaneously, it is our view that the portion of the Russian River Division signal work between Lombard and Windsor could be completed in not more than eight months.

In order to obtain contractual assurance for both NWP, Inc. and NCRA that the grade crossing warning signals are fully rehabilitated and will comply with FRA's standards, we propose to execute a three-year design, build and maintain Signal Contract with the signal contractor selected through a competitive bidding process. NWP, Inc., having assumed maintenance responsibilities for the grade crossing warning systems, would agree as a part of that Signal Contract to pay to the Signal Contractor all of the FHWA Section 130 crossing funds received by NCRA for the maintenance of the rehabilitated grade crossings during the three-year period. At the conclusion of the three-year period, NWP, Inc. would assume the responsibility for maintaining all of the grade crossing warning systems and drawbridge signals on the NWP Line and would expect to retain all subsequent FHWA Section 130 crossing funds received by NCRA for maintenance of the grade crossings.

E. Experience of Key Personnel

The management team of NWP, Inc. and NWP Construction Co. will consist of four individuals:

- John H. Williams, President and Chief Financial Officer;
- Alan D. DeMoss, Vice President, MofW&S;

- Jerry C. Danzig, Vice President, Construction and Maintenance; and
- Judith H. Roberts, Vice President, Marketing Services & Administration.

The brochure for The Woodside Consulting Group, Inc. in Attachment B contains more complete resumes of these four individuals and describes the breadth of their consulting expertise for the wide variety of listed clients.

Other key advisors will be Douglas H. Bosco, General Counsel, on public funding issues and J. T. Wick of Berg Holdings on environmental matters and entitlements.

1. John H. Williams, President and Chief Financial Officer

John H. Williams will be President and Chief Financial Officer of NWP, Inc. He holds B.A. and M.B.A. degrees, both from the University of Illinois. His experience extends over 42 years in the railroad industry, including employment by Southern Pacific and Conrail, as well as by the Federal Railroad Administration. As John Williams' resume demonstrates, he has broad experience in railroading, extending across the functional areas of operations, finance, and all areas of executive management. His on-the-ground railroad operating experience has included positions as a track laborer, fireman, brakeman, assistant trainmaster, and trainmaster.

In 1986, John Williams was a key participant in the formation and start-up of the Dakota, Minnesota and Eastern Railroad (DM&E), a 1,000-mile long regional railroad generating more than $40 million of annual revenues. He was actively involved as a consultant to the DM&E in its early years, and completed its turnaround during his tenure as Chairman of the Board.

From 1993-1995, as NCRA Executive Director, John Williams was actively involved in the management of the Eel River Division of NCRA and its operating subsidiary, the North Coast Railroad. Subsequently, he assisted NCRA as a consultant during the negotiations that led to the purchase of the Russian River Division of the NWP Line in 1996.

2. Alan D. DeMoss, Vice President, MofW&S

Alan D. DeMoss will be Vice President, MofW&S for NWP, Inc. In that capacity, he will be responsible for all of the engineering and maintenance aspects of the NWP Line. He will also provide advice and assistance on the operational aspects of NWP, Inc.

Alan DeMoss was employed by Southern Pacific for 42 years in positions that included Vice President of Operations and 20 years as a Maintenance of Way and Engineering Officer. He is thoroughly familiar with railroad fixed facilities – freight and passenger, has broad experience in developing and implementing rail freight and passenger operations plans, has prepared, evaluated and implemented capital expenditure and rehabilitation proposals and plans, and has extensive experience in railroad operations and maintenance. Many of Alan DeMoss's engineering and operations responsibilities as an SP Officer encompassed the NWP. Beginning in 1993, he has provided engineering assessments and capital project programs for NCRA, so that he is thoroughly familiar with the more recent physical aspects and operations of the NWP Line.

In his long and distinguished career as a railroad engineering, maintenance, and operations officer for Southern Pacific, combined with his consulting work on behalf of the Peninsula Corridor Joint Powers Board, Southern California Regional Rail Authority, San Joaquin Regional Rail Commission, Santa Cruz County Transportation Commission, and some two dozen regional railroad systems, Alan DeMoss has acquired and consistently demonstrated the levels of knowledge and practical railroad engineering experience required by NWP, Inc.

Alan DeMoss's railroad engineering and operations experience has included overall management responsibility for major construction projects on Southern Pacific (e.g., line construction/relocation, equipment maintenance and other facility construction, mainline and yard track rehabilitation programs, subgrade stabilization programs, and natural disaster and accident response/recovery programs), as well as planning/estimating responsibility for the annual and long range maintenance and/or upgrading and operation of over two dozen U.S. regional railroads.

Alan DeMoss's railroad engineering and operations experience includes:

- Positions of General Track Foreman, Division Engineer, Assistant Engineer of Systems Maintenance, Division Operating Superintendent and Vice President of Operations of Southern Pacific;

- Development of construction, maintenance and encroachment standards;

- Development and administration of right of way encroachment and construction and maintenance agreements;

- Development, negotiation and interpretation of operations and maintenance aspects of trackage rights agreements;

- Development of long range capital needs for infrastructure improvement (track, bridges, tunnels, etc.);

- Resolving issues between railroads and government agencies (e.g., FRA, CPUC, USFS, etc.) by establishing cooperative efforts that provided compliance;

- Assessment/review of the engineering and maintenance plans of other regional rail/transit systems and other agencies for compliance with standards and determination of impacts on rail operations;

- Evaluation of system route/alignment alternatives;

- General condition assessments of track, bridges, tunnels, subgrade and drainage for adherence to prescribed maintenance practices and regulatory requirements;

- Planning, layout and cost estimation of trackage changes, connections, etc.;

- Development of equipment maintenance facility requirements for operational access/control; and

- Consultation on emergency responses (e.g., derailments, floods, washouts, earthquakes, fires, sabotage and vandalism).

Alan DeMoss is thoroughly familiar with the following relevant regulatory and other standards:

- American Railway Engineering and Maintenance-of-Way Association (AREMA) Standards (i.e., Manual for Railway Engineering);

- Federal Railroad Administration (FRA) Track Safety Standards (i.e., 49 CFR Section 213) and associated Inspection Requirements;

- California Public Utilities Commission (CPUC) General Order Nos.:

  - 26D Clearances on Railroads;
  - 72B Standard Types of Pavement Construction at Railroad Grade Crossings;
  - 75C Protection of Railroad Grade Crossings;
  - Overhead Electric Line Construction;

- Construction, Reconstruction and Maintenance of Walkways; and Control of Vegetation Adjacent to Railroad Tracks.

- General Code of Operating Rules for Western Railroads; and

- Other "Best-Practice" railroad engineering, construction and maintenance standards.

Alan DeMoss is a recognized expert in railroad engineering and operations matters as evidenced by the following:

- He has provided expert witness testimony on railroad operations, route alignments, construction, and maintenance before the Interstate Commerce Commission and the California Public Utilities Commission;

- He represented Southern Pacific on the Operating/Technical (OT) General Committee and the Research Committee of the Association of American Railroads; and

- He is a Life Member of the American Railway Engineering and Maintenance-of-Way Association.

Alan DeMoss holds a Bachelor of Arts Degree in Mathematics from Sacramento State University and received an Alfred P. Sloan fellowship to the Graduate School of Business at Stanford University.

3. Jerry C. Danzig, Vice President, Construction and Maintenance

Jerry C. Danzig will be Vice President, Construction and Maintenance, of both NWP, Inc. and NWP Construction Co. He holds a B.S. degree in Mechanical Engineering from The University of Washington and an M.S. degree in Transportation Planning from Stanford University. He has over 33 years experience in the railroad industry, including substantial budgeting, cost control and project and contract management experience for both freight and commuter railroads. He was Assistant to the Chief Engineer of Southern Pacific, responsible for control of all financial resources in Southern Pacific's Maintenance of Way and Engineering Department and was on the SP's "Tunnel Fire" Team at Island Mountain in the late 1970's.

4. Judith H. Roberts, Vice President, Marketing Services and Administration

Judith H. Roberts holds a B.A. in Mathematics from Vassar College and M.S. degrees in Transportation Planning and Operations Research from Stanford University. An expert in systems and the analytical aspects of railroading, she has over 25 years experience in the railroad and consulting industries, as is more completely described in her resume in Attachment B. She has developed and evaluated the marketing projections and plans for more than two dozen regional railroads, and has evaluated a similar number of capital and rehabilitation plans.

For NCRA between 1993 and 1995, she assisted John Williams in his duties as Executive Director and Chief Financial Officer and, as a part of the Project Administrator function, was instrumental in interacting with, and preparing invoices and project status reports for, the funding agencies. Judith Roberts will work with John Williams to manage the marketing, financial, and administrative functions of NWP, Inc and of NWP Construction Co., as shown in the organization charts in Attachments D and F.

5. Douglas H. Bosco, General Counsel

Douglas H. Bosco, General Counsel of NWP, Inc. and of NWP Construction Co., will be an advisor on all public funding matters. Mr. Bosco will assist in the interface between NWP Construction Co., the NCRA, and the funding agencies in order to ensure that all aspects of the public funding process are properly adhered to by NWP Construction Co. and that the public agencies' reimbursement funding flows smoothly through NCRA to NWP Construction Co.

6. J. T. Wick, Advisor, Environmental Matters

J. T. Wick, of Berg Holdings, will be an advisor to NWP Construction Co. on environmental matters and entitlements. He has extensive experience dealing with such issues on behalf of Berg Holdings' real estate development projects, and he is responsible for converting the Port Sonoma marina into a premier multi-model transit center linking ferry, rail, and bus service to the Bay Area.

IV. Schedule For Resumption of Rail Service

Based on the Proposal Process Schedule contained in NCRA's RFP, our assumption is that NCRA will approve its contract with NWP, Inc. and issue to NWP, Inc. a Notice to Proceed subject to conditions on July 12, 2006. Discussed below and subject to NCRA's timely issuance of that Notice To Proceed is NWP, Inc.'s proposed schedule for resumption of rail service on the entire NWP Line.

NWP, Inc.'s schedule for the resumption of service is contingent upon receiving from NCRA and the funding agencies the authorization to spend the available public funds in accordance with our proposed construction schedule. For the Russian River Division, the expected spending rate is about $2.0 million per month to a total of $25.0 million over one year. For the Eel River Division, the spending rate for public funds is expected to be about the same.

A. Russian River Division

It is NWP, Inc.'s objective to reopen that portion of the Russian River Division from Lombard to Windsor as soon as possible after receipt from NCRA of the Notice To Proceed. Because all of the Russian River Division's known traffic will originate or terminate between Lombard and Windsor, rehabilitation in that area will receive the highest priority. As each of the several work elements between Lombard and Windsor is completed, NWP, Inc.'s contractors would continue north to and including Willits.

Given these rehabilitation priorities, we propose the following schedule for reopening and starting up train service on the Russian River Division:

1. July 12, 2006: Receive contract approval from NCRA;

2. August 12, 2006: Issue RFP to signal contractors for rehabilitation of drawbridge and grade crossing warning system signals;

3. September 1, 2006: Issue RFP to Structures (including Tunnels) and Roadway (including Geotechnical) contractors;

4. October 1, 2006: Execute Signals Contract;

5. October 15, 2006: Execute Structures and Roadway contracts;

6. January 1, 2007: Execute DieselMotive Co. subcontract;

7. March 1, 2007: Complete Roadway Contract work, Lombard – Windsor;

8. April 1, 2007: Establish business relationships with NWP Line shippers, California Northern, California Western, and Union Pacific Railroads, and passenger excursion train operators;

9. April 15, 2007: Negotiate business arrangements with key suppliers;

10. May 1, 2007: Execute Freight Car Repair, MofW&S and Signal subcontracts;

11. May 15, 2007: Hire NWP, Inc. employees;

12. June 1, 2007: Complete Signals and Structures Contract work, Lombard – Windsor;

13. June 15, 2007: Complete FRA inspection, Lombard – Windsor;

14. **July 1, 2007: Receive Notice To Proceed from NCRA and resume rail service, Lombard – Windsor;**

15. July 1, 2007: Complete Roadway Contract work, Windsor – Willits;

16. October 1, 2007: Compete Signals and Structures Contract work, Windsor – Willits;

17. October 15, 2007: Complete FRA inspection; and

18. **November 1, 2007: Resume rail service, Windsor to Willits.**

B. Eel River Division

Because of the importance and magnitude of the potential revenue stream projected from the movement of large volumes of aggregate from Island Mountain, NWP, Inc. will reopen the portion of the Eel River Division from Willits to Island Mountain as soon as possible after receipt from NCRA of a Notice To Proceed. Below, we have projected what we believe to be a reasonable schedule for completion of the environmental review and rehabilitation project construction, extending from Willits to Samoa. However, because there is not an updated CAR for the Eel River Division and the last assessment of the rehabilitation needs on the Eel River Division was made in 2002, this projected schedule is necessarily subject to revision as events unfold.

Based on the best information now available, we project that rail service can be resumed between Willits and Island Mountain on July 1, 2008, and between Island Mountain and Samoa on November 1, 2008, with milestones as shown below:

1. October 1, 2006: Complete project definition and scope of work, Willits – Island Mountain;

2. November 1, 2006: NCRA executes Environmental Impact Report Contract;

3. January 1, 2007: Complete project definition and scope of work, Island Mountain to Samoa;

4. July 1, 2007: Complete Environmental Impact Report Contract;

5. August 1, 2007: Receive Notice To Proceed from NCRA and begin rehabilitation project, Willits – Island Mountain – Samoa;

6. June 1, 2008: Complete rehabilitation project, Willits – Island Mountain;

7. June 15, 2008: Complete FRA inspection, Willits – Island Mountain;

8. **July 1, 2008: Resume rail service, Willits – Island Mountain;**

9. October 1, 2008: Complete rehabilitation project, Island Mountain – Samoa;

10. October 15, 2008: Complete FRA inspection, Island Mountain – Samoa; and

11. **November 1, 2008: Resume rail service, Island Mountain – Samoa.**

The above schedule assumes that the Environmental Impact Report (EIR) will be completed by NCRA's consultant in nine months and that it will rely on the project definition and scope of work defined in Item No. 1 above (i.e., with an updated CAR similar to that completed for the Russian River Division) in order to evaluate the environmental impacts of completing rehabilitation and reopening of the Eel River Division. Our NWP, Inc. Proposal contemplates that NWP Construction Co. would provide the project definition and scope of work to NCRA for use by NCRA's EIR contractor.

NWP, Inc. recognizes the near-term possibility of initiating local rail service on the Scotia-Samoa portion of the NWP Line, prior to connecting the Eel River and Russian River Divisions through the Eel River Canyon, as soon as the required EIR and the necessary rehabilitation have been completed. NWP, Inc. has held discussions with

owners of the Fairhaven and Blue Lake power plants who have expressed interest in rail transport of biomass, and we are enthusiastic about this marketing possibility. Potential also exists to haul logs or finished lumber products in the area, including to the Port of Humboldt Bay, which is serviced by rail. NWP, Inc. is committed to actively pursuing freight customers in this area and will utilize public and private funds for local service commensurate with the projected freight volume.

C. NWP Line Compliance Plan

The level of experience of the key railroad personnel who will work for NWP, Inc. and for NWP Construction Co. demonstrates and provides assurance of NWP, Inc.'s ability to comply with the requirements of the Consent Decree and FRA EO-21, as well as the requirements of all other public agencies involved with the NWP Line. As a part of NWP, Inc.'s Compliance Plan, this section also describes how NWP, Inc. will operate and maintain the NWP Line in compliance with all of the applicable rules, regulations, and requirements of the various public agencies.

NWP, Inc. will be the operator of the NWP Line for the NCRA, which is a "Railroad," as defined by the Federal Railroad Administration (FRA). As an operator for a Railroad, NWP, Inc. will comply with all FRA regulations (49 CFR Parts 209 through 240, Parts 171.15, 172.7 and 174, and the National Grade Crossing Inventory), as well as all current applicable California Public Utilities Commission (CPUC) General Orders, including GO 26D, 72-B, 75-C, 95 and 118.

NWP, Inc. will adopt the current General Code of Operating Rules (GCOR) published by the General Code of Operating Rules Committee of the U.S. Western Railroads. NWP, Inc.'s Compliance Plan will consist of the following:

- Safety will be the most important element in performing duties. "Injury free" and "accident free" will be the goals of each day's operations. Obeying the rules will be essential to job safety and continued employment.

- NWP, Inc. will issue a Timetable and Special Instructions, which will include the NWP, Inc. Rules and Regulations.

- All managers, employees and subcontractors will be issued copies of the GCOR and NWP, Inc.'s Timetable and Special Instructions (which by reference incorporate the GCOR, FRA, and CPUC Regulations).

- All managers, employees and subcontractors will be required to meet NWP, Inc.'s employment requirements and to meet the qualifications and

certifications required by the FRA for the craft to which the person is assigned.

- NWP, Inc. will provide an initial training program for managers, employees and subcontractors that will include over-the-line familiarization of the NWP Line. Subsequently, each craft will be provided with a periodic refresher-training program. Train service employees will receive Hazmat training per 49 CFR Part 172.7, as appropriate.

- NWP, Inc. management will make periodic efficiency tests of each craft, as well as inspections of trackage, rollingstock, right-of-way, etc., to assure compliance with NWP, Inc.'s rules and regulations and FRA inspection requirements for signal, track, and rollingstock. Tests also include safety apparel, hard hats, safety glasses, boots, reflectorized vests, etc.

- NWP, Inc. will prepare a System Safety Program (SSP) patterned after existing railroad SSP's, but designed for the NWP Line's operations and location. The Plan will include an Emergency Call List for city, county and state emergency response units, and a Call List for NWP, Inc. and NCRA officials. The SSP will include responses to such conditions as heavy rains, earthquakes, hazardous material spills, and highway grade crossing incidents.

The following publications and forms will be maintained in the NWP, Inc.'s corporate office at all times:

- NWP, Inc.'s Timetable and Special Instructions;

- General Code of Operating Rules;

- All Applicable Federal and State Regulations;

- CRWQCB Consent Decrees;

- NWP, Inc.'s approved program for operational tests, inspections and record keeping, per 49 CFR 217.9;

- NWP, Inc.'s approved Roadway Worker Protection program, per 49 CFR Part 214;

- NWP, Inc.'s approved Alcohol and Drug Use and Drug and Alcohol Testing Programs, per 49 CFR, Part 219;

- NWP, Inc.'s Certification of Employee Hazmat Training, per 49 CFR 172.7;
- NWP, Inc.'s approved Qualification and Certification of Locomotive Engineers Program, per 49 CFR Part 240;
- AAR Bureau of Explosives Tariff 6000 Q;
- Guidelines for Train Yard Inspection of Freight Cars;
- Accident Reporting Forms, per 49 CFR 225.21;
- NWP, Inc.'s Hazardous Material Training Booklet;
- Applicable Dispatching Records, including authorities, clearances, train speed restrictions, flagging, underfoot conditions, etc.; and
- FRA required inspection records for track, signals, locomotives, and cars.

V. Projected Financial Plan

This section of NWP's Proposal is responsive to the RFP request for a projected financial plan. It addresses the projected traffic base and revenue, service plan and expenses, net income, rehabilitation funding, and contracts with other passenger train operators.

Both NCRA and NWPRA acknowledged the maintenance requirements of the NWP Line south of Willits in their 1996 Agreement that stated as follows:

> NCRA and NWPRA "...acknowledge that the freight revenue stream generated by traffic south of Willits has been **inadequate** either to fund the Normalized Maintenance requirements of the NWP Line south of Willits, or to maintain it to the FRA Track Classes specified by Schedule 3.03A of the California Northern Lease..." (Principles of Agreement Pertaining to Freight Operations on the NWP Railroad Right-of-Way," May 1996)

The need for a larger traffic base and revenues has been clear since the California Northern Railroad's operations were terminated in 1996, as reported in the following Memorandum by a former NCRA Executive Director:

"...David Parkinson would stay if State funds were made available to CFNR for maintenance of the railroad from Willits to Lombard. Without direct access to State maintenance funding, it made little or no sense to keep running this segment of the railroad based on freight revenues. This part of the railroad can never be maintained out of the present revenue base. Southern Pacific couldn't do it, and we can't either..." (Memorandum by E.J. McLaughlin, February 1996)

A. Traffic Base and Revenue

Based on recent history, there is no more important component of the NWP, Inc. projected financial plan than the development of a robust traffic base that will generate sufficient revenues for the NWP, Inc. operator to become and remain financially viable. With the long closure of rail operations on the NWP Line, many former rail shippers located both south and north of Willits have disappeared. Those potential rail customers who remain have, of necessity, converted their former rail movements to truck. Thus, it will be NWP, Inc.'s challenge and marketing responsibility to convert back to rail those former rail customers of the NWP Line, as well as to develop and market rail service on the NWP Line to new customers. In addition, in order to restart commercial rail service on the NWP Line, NWP, Inc. will be required to restore frayed commercial relations with connecting rail carriers, including the California Western, California Northern, and the Union Pacific. Because of our extensive rail experience, we are confident that NWP, Inc. can do so.

Attachment H is a projected NWP, Inc. income statement for Years 1 – 3 operations of the Russian River Division. Our assessment of the former rail shippers who remain on the NWP Line is that some 1,800 – 2,000 carloads annually can be generated in a full year of normal operations, after those rail customers' confidence in the continuing service of NWP, Inc. has been restored. As shown by Attachment H, we project that this volume of traffic would generate annual revenue in Year 2, the second full year of operations, of $1,134,000.

It is our experience that start-up of a new rail carrier is both slow and costly. Because re-starting operations on the NWP Line will be occurring for the second time with the third operator in a decade, we expect that volume and revenues will increase slowly until NWP, Inc. gains credibility as an effective operator that will stay in business. For this reason, we estimate that in the first year of operations, NWP, Inc. will achieve a total carload volume of only about one-half of the 1,800 – 2,000 potential carloads that will be realized in Year 2. As shown by Attachment H, that volume of 900-1,000 carloads will generate an estimated revenue of only $579,000 in Year 1.

In our opinion, the most likely near-term addition to the traffic base of the Russian River Division is the movement of Sonoma County solid waste. We have thoroughly reviewed the Sonoma County report on the volume and revenue potential of that traffic and believe its projections of about 4,056 carloads generating revenue of $2,023,000 annually are reasonable. As shown in Attachment H, that amount of additional revenue has been included with the traditional rail customer traffic in the total revenue projection of $3,157,000 in Year 3.

Developing and marketing the Sonoma County solid waste traffic requires both political success within Sonoma County and technical railroad marketing success with the Union Pacific and California Northern Railroads. Based on our knowledge of Union Pacific's handling of similar commodities, we believe that a single weekly unit train movement of Sonoma County solid waste over a long haul distance into the Nevada disposal site would be attractive to Union Pacific.

Executing a long-term contract for handling Sonoma County solid waste will be a high priority for NWP, Inc. during the first two years of its operations. NWP, Inc. has a significant advantage over other potential carriers responding to NCRA's RFP because of its **exclusive** right to negotiate to use a solid waste site in Nevada owned by Nevada Resource Recovery Group, LLC that has a capacity of about 200 million tons. NWP, Inc.'s longer term objective would be to meld solid waste haulage from Mendocino County, and eventually from Marin County and Humboldt County, with that of Sonoma County to the Nevada disposal site which could accommodate all of those counties' solid waste for more than 200 years. Although NWP, Inc.'s traffic volume and revenue would be increased, no allowance for additional solid waste traffic other than that of Sonoma County has been included in the NWP, Inc. projections contained in Attachment H.

So far as the Eel River Division's traffic base and revenues are concerned, the extent and permanency of traffic erosion away from the NWP Line during the decade that it has been closed is unknown to all parties. However, what is known is that some important shippers on the NWP Line north of Willits are no longer in business and that others have substituted truck or barge service for rail service or concentrated their marketing efforts toward geographic areas that are not well suited to rail transportation.

According to the report entitled *The Long Term Financial Feasibility of the NWP,* dated July 2002, there is an insufficient traffic base on the Eel River Division, based on the number of historic rail customers and their potential volume, to ensure the financial viability of that portion of the NWP Line. Therefore, the future of rail service on the Eel River Division is dependent on the development of additional traffic volume and revenue that would be new to the NWP Line.

It is our opinion that the best near-term prospect for additional traffic is the Island Mountain aggregate haul. As demonstrated by this Proposal, in which Evergreen Natural Resources (ENR) is an **exclusive** participant, ENR is actively involved in the permitting process for developing a prime-grade aggregate quarry that would have an estimated production rate of up to six million tons per year. Clearly, the movement of Island Mountain aggregate, which NWP, Inc. and ENR are both committed to achieve, would generate a substantial annual traffic volume with revenues that NCRA has estimated at $20 million per year for the railroad operator.

A second potential rail market would result from the development of the Port of Humboldt Bay's capacity for handling both bulk commodities and containers in order to provide relief to other, increasingly congested California ports. Because of the large traffic volumes that would be generated by the Port, the availability of continuing rail service over the entire NWP Line would be required for the realization of the increased traffic volume and revenues. NCRA has estimated that this increased traffic could be as much as $130 million per year, if the NWP Line has been rebuilt to Class 2/3 standards and is operating efficiently.

NWP, Inc. will assist NCRA in seeking the additional public funds that would be required to rehabilitate and improve the NWP Line to make available the large amount of capacity required to handle this volume of Port traffic. In addition to such public funding, NWP, Inc. expects to utilize some of the net cash flow generated from the NWP, Inc. movement of Island Mountain aggregates in order to fund a portion of the rehabilitation and improvement of the NWP Line north of Island Mountain to the Port of Humboldt Bay.

B. Service and Expenses

We propose to establish NWP, Inc. train service that will be operated reliably and efficiently to handle the volume of traffic of its rail customers. A hallmark of NWP, Inc.'s train operations will be reliability. We intend to buy or lease sufficient locomotives so that trains will not be canceled because of locomotive failures, and to operate trains according to schedules, even if traffic volumes are small on any particular day. Equally important, NWP, Inc. will take all possible steps to ensure that train service will not be canceled because of track maintenance problems. In order to achieve this objective, NWP, Inc. will commit to maintain the track and structures of the NWP Line to the appropriate FRA Class 2/3 standards, and in no event to less than FRA Class 1 standards.

Providing reliable service to NWP, Inc.'s shippers also means that all possible actions must be taken to ensure that the NWP Line will not be closed again. We are convinced that, if the shipping public is to continue to use rail service, then closure of the

Russian River Division of the NWP Line for more than a few days in the future will not be tolerated. Accordingly, we propose to establish a "Russian River Division Reserve Fund" (RRDRF) in the amount of $500,000, funded through NWP, Inc. operations, that would be immediately available in emergencies to keep the NWP Line open between Lombard, Windsor, and Willits. The size of the RRDRF has been established based on California Northern's experience with storm damage during the winter of 1995.

When the NWP Line north of Willits is reopened, NWP, Inc. will establish an "Eel River Division Reserve Fund" (ERDRF) in the amount of not less than $1,500,000, funded through operations, in order to provide readily available cash to keep the northern section of the NWP Line open during emergencies. The minimum size of the ERDRF has been established based on our experience with managing that portion of the NWP Line.

When the NWP Line has been restored to FRA Class 2/3 standards between Lombard and Windsor, NWP, Inc. will operate three round trip trains each week. The proposed train service would operate between Lombard and Windsor on Mondays, Wednesdays, and Fridays. Service between Windsor and Willits will be provided as required.

With the reopening of the NWP Line north of Willits to Island Mountain, NWP, Inc. expects to operate between six and twelve aggregate trains daily in each direction between Island Mountain and selected stations on the Russian River Division. Through train schedules between Eureka and Lombard for lumber, other merchandise, and Port of Humboldt Bay traffic are projected to be at 12 hours or less, assuming that the NWP Line north of Willits is restored to FRA Class 2/3 standards.

The expenses projected in Attachment H are based on the number and associated costs of employees and subcontractors shown on the organization chart in Attachment D and on the proposed service plan. All remaining expenses have been based on our knowledge and experience not only with the North Coast Railroad, but also with other regional and short line railroads, and we believe that they are realistic and achievable.

C. Net Income

Attachment H is the "Projected NWP, Inc. Income Statement For Years 1-3 Operations of the Russian River Division". We project the following NWP, Inc. Net Income (Loss) Before Income Taxes from operation of the Russian River Division, as shown by Attachment H:

- Year 1: $(413,740)
- Year 2: $93,360
- Year 3: $1,207,070

These projections assume a full year of operations at FRA Class 2/3 standards in each of the three years after the resumption of rail service on the Russian River Division.

D. Rehabilitation Funding

None of the parties, including NWP, Inc., knows the total cost of rehabilitating the entire NWP Line at this time. According to NCRA, the best available estimate of the total cost is $106.0 million, of which $25.0 million would be spent on the Russian River Division and the remaining $81.0 million spent on the Eel River Division. Based on our review of the Updated CAR, we believe that the $25.0 million estimated cost of rehabilitating the Russian River Division appears to be reasonable for the type of traffic that has historically moved on that portion of the NWP Line.

Funding the $81.0 million of rehabilitation on the Eel River Division will be accomplished by a combination of private and public funds. NCRA has identified the public funding sources that are currently available as ISTEA and TCRP funds totaling $24.8 million. In addition, NCRA has stated that it continues to seek funding through avenues such as the Governor's proposed infrastructure bond, Federal Railroad Administration (FRA) Railroad Rehabilitation and Improvement Financing (RRIF) loans, and Humboldt Bay Port Demonstration Bond proceeds. The use by NWP, Inc. of FRA Railroad Rehabilitation and Improvement Funding (RRIF) loans may have particular appeal as a railroad-oriented public lending program. Private funding is expected to be available from the sale of revenue bonds that will be secured by and based on the free cash flow to be generated by the Island Mountain aggregate movement and by the Port of Humboldt Bay traffic.

NWP, Inc.'s proposed schedule for the rehabilitation of the Russian River Division assumes a spend rate of about $2.0 million per month in order to complete the $25.0 million rehabilitation project within a one-year period. Because both the ISTEA and TCRP funding is reimbursement funding, NWP, Inc. will advance funds for the payment of contractor invoices while awaiting reimbursement by the funding agencies. The amount of such advances should be as little as $2.0 million, if payments are made promptly within 30 days by the funding agencies, or could be as much as $6.0 million, if payments require as long as 90 days. The parties contemplate that the cash advances that will be required for all such reimbursement funding will be advanced by NWP, Inc. through the duration of the rehabilitation project.

E. Contracts With Passenger Service Operators

NWP, Inc. is committed to complying fully with the terms and conditions of the August 1996 agreement between NCRA and NWPRA, the predecessor agency to SMART. We are of the opinion that the operation of the rail commuter service proposed by SMART would be beneficial to NWP, Inc.'s own freight operations, so long as full coordination between the rail commuter and rail freight service operator occurred.

NWP, Inc.'s first priority will be to restore freight service on the NWP Line; however, NWP, Inc. may seek NCRA's approval to renegotiate the contract with SMART to permit excursion passenger train service. Since the NWP Line literally traverses the property of several important wineries and goes through some of the most spectacular scenery in the State, excursion service could be developed as a profitable secondary use of the NWP Line. At such time as the ferry service at Port Sonoma is instituted, visitors from San Francisco could connect to the NWP Line at the Port and be transported north for day trips or even longer journeys. Planning for this will obviously have to be coordinated with freight traffic, which will become substantial upon activation of the aggregate quarry project.

If NWP, Inc. decides not to operate rail passenger excursion service on portions of the NWP Line, then subject to NCRA's approval, NWP, Inc. will contract with not more than two excursion and/or intercity passenger train operators. Potential passenger train operators must be operationally and financially qualified, as judged by NWP, Inc., must not unduly interfere with NWP, Inc.'s freight train schedules and operations, and must fully compensate NWP, Inc. for all of its associated costs, including risk and liability. In order to avoid duplicate passenger train excursion services, NWP, Inc. will not agree to permit the operation of more than one excursion passenger train operator over any single section of its trackage.

VI. Demonstrated Financial Capability

In order to provide equity capital to fund NWP, Inc.'s operations in Years 1-3, a cash investment of up to $1,000,000 will be made by John Williams through The Woodside Consulting Group, Inc. The letter contained in Attachment I demonstrates that Mr. Williams has available assets substantially in excess of that amount.

Initial cash requirements for NWP, Inc.'s operations will arise primarily from funding start-up costs estimated at $350,000 and projected net losses of $413,740 in Year 1 of Russian River Division operations, or a total of $763,740. In addition, because of

NCRA's and the financial difficulties of prior operators, we project that working capital in the amount of $100,000-$200,000 will be required by NWP, Inc. for payment of its contractors and suppliers in advance of revenue receipts. The total of these amounts is within the committed cash investment that will be available to NWP, Inc.

As shown by the projected income statement contained in Attachment H, the amount of capital required to fund operations beyond Year 3 should be minimal, as a positive cash flow from operations will be generated. However, any funding that will be required for operations after Year 3 and any private capital required in order to complete the rehabilitation of the NWP Line would probably be a combination of equity and debt provided by NWP, Inc., Berg Holdings, and Evergreen Natural Resources.

The letters contained in Attachment I state that Skip Berg/Berg Holdings has a substantial net worth and that Allen Ennis/Sierra Pacific Packing, Inc. has substantial assets. In combination, these two owners and investors have adequate resources to support the projected future operations of the entire NWP Line.

VII. Proposed Payments To NCRA

We understand that NCRA's funding needs are about $500,000 annually. In response to this need, NWP, Inc. proposes that the annual Net Income Before Income Taxes earned from operations over all of the NWP Line shall be shared equally between NCRA and NWP, Inc., based on NWP, Inc.'s audited financial statements, subject to a maximum annual payment of $500,000. Our Proposal assumes that all of the property lease revenues will be retained by NCRA. The boxcar lease revenues will be retained by NWP, Inc. in all years after annual payments of $500,000 annually have been made to NCRA by NWP, Inc.

Based on our projections presented in the previous section of this Proposal, NWP, Inc. would make payments to NCRA in the following amounts:

- Year 1: $0
- Year 2: $46,680
- Year 3: $500,000
- Year 4 on: $500,000 annually

We propose that in Year 3 and subsequent years, the boxcars currently leased by NCRA and the lease itself would be transferred to NWP, Inc. It is likely that NWP, Inc. would then trade the boxcars for other rail freight cars that could be better utilized by NWP, Inc.'s rail customers.

VIII. Project Experience and References

Responsive to the RFP, this section describes three projects and provides the requested references.

A. Services Provided to Western Farm Services, Inc., 1996-1998

In 1994, BNSF issued a notice of abandonment for the 5-mile long Alpaugh Spur, located about 50 miles north of Bakersfield, California.

Western Farm Services (WFS), the only carload shipper located at the end of the line, appealed to the California Public Utilities Commission. Subsequently, The Woodside Consulting Group was engaged to assist WFS, which received carloads of hazardous materials, including anhydrous ammonia, phosphoric acid and ammonia nitrate, used for making fertilizer for San Joaquin and Salinas Valley farmers.

The problem for BNSF was that the Federal Railroad Administration classified the Alpaugh Spur as "Excepted Track," which, because of the hazardous materials traffic, restricted train speeds to 10 mph or less and restricted train length to a maximum of five cars. This was a very expensive operation for BNSF, since it took almost a full day for a train and engine crew to switch the WFS plant. The entire five miles of track was laid with 1896 Carnegie 60 lb. rail with cracks in almost every joint bar. The number of defective crossties was about 1200 per mile, or almost 50%, and many were defective ties under rail joints.

Woodside proposed a plan of action for the survival of WFS and the Alpaugh Spur, as follows:

- Purchase the right-of-way and trackage from BNSF based upon the Net Liquidation Value of the trackage and the land;
- Create a Class III railroad with the approval of the Surface Transportation Board;
- Purchase a locomotive and obtain a qualified operator for locomotive maintenance and train and engine crew service;
- Rehabilitate five miles of FRA "Excepted Track" with replacement rail and crossties in order to establish an FRA Class 2 (25 mph) track;

- Apply to the FRA for the following on behalf of WFS:
  - Become a member of US DOT Research and Special Programs;
  - Become a member of Chemtrac;
  - Maintain on file AAR Tariff 6000 Q in regard to hazardous materials;
  - Adopt the General Code of Operating Rules for western railroads;
  - Require the operator and the train and engine crew to be trained in HM126 Hazardous Materials;
  - Prepare a railroad timetable and special instructions tailor made to comply with all FRA and CPUC regulations applicable to the class and nature of the Alpaugh Spur territory, including joint facilities for interchange purposes;
  - Establish all operational test, inspection, and record keeping programs per FRA regulations;
  - Establish Drug and Alcohol control program per FRA regulations;
  - Establish a Roadway Worker Protection Program and qualify track inspectors and track maintainers per FRA regulations;
  - Establish a Qualification and Certification of Locomotive Engineers per Federal regulations; and
  - Construct a locomotive under-carriage inspection pit, as required by FRA.

The process of creating an operating Class III railroad included recruitment and training of the train and engine crews. Woodside wrote track rehabilitation specifications and a Request For Proposals. Thereafter, a successful track contractor bid was obtained and the track was rehabilitated to FRA Class 2 standards within the Woodside cost estimate for the rehabilitation work.

At the same time, Woodside negotiated with BNSF for purchase by WFS of the right-of-way and improvements. BNSF further agreed to furnish the track materials for rehabilitation and, thereafter, to repay WFS for the rehabilitation work with a per carload refund over a five-year period.

In addition, Woodside negotiated on behalf of WFS a switching charge payment by BNSF to WFS for each car received at the Alpaugh Spur. The negotiated switching charge covered the costs of crew, fuel and locomotive maintenance.

WFS's new Class III railroad, "West Isle Line Inc.," constructed a new spur track and storage facilities. These facilities will permit increased volumes of carloads of fertilizer materials that are well above the break-even level of the negotiated terms of the contract. Thus, WFS is profiting from the existence of its own railroad, which enables WFS to obtain as many switches per day and interchanges of rail cars per week as are required for its plant operations.

When the entire operation was in place, safety officers from both FRA District 7 in Sacramento and the California Public Utilities Commission reviewed and approved all of the documentation, certification, trackage, and operations of WFS's railroad.

Inquiries as to Woodside's responsibilities for and performance of these tasks on behalf of WFS may be directed to:

Merle Engleka
General Manager
Western Farm Service
P.O. Box 148
Alpaugh, CA 93201
Phone (209) 949-8476

B. NCRA Operations and Rehabilitation, 1993-1995

From 1993 to 1995, John Williams served as the Executive Director, Chief Financial Officer, and Project Administrator of the North Coast Railroad Authority and the North Coast Railroad. During that time period, he gained the following experience relative to the NWP Line:

- Working with The Woodside Consulting Group team, he prepared the 1993 Business Plan for the North Coast Railroad, which encompassed a rehabilitation plan, projections of freight service and passenger service revenues and operating expenses, and financial statements. The freight and

passenger revenue projections made by John Williams and Judith Roberts utilized information from interviews with NCRA Board Members, railroad management, and principal shippers;

- As Executive Director, John Williams provided policy oversight of the day-to-day operations of both NCRA and the North Coast Railroad;

- As Project Administrator for Proposition 116 and TCI projects, 1993-1995, he managed all aspects of the planning, implementation, funding, and invoicing for these CTC/Caltrans projects;

- He also managed the planning, implementation, invoicing, and funding of FEMA/OES projects from 1993 to 1995, including NCRA's successful application for a Community Disaster Loan;

- As Chief Financial Officer of both the North Coast Railroad and the NCRA, he planned and managed all aspects of NCRA's financial affairs, including handling the extensive demands of NCRA's overdue creditors;

- He was NCRA's primary staff negotiator during 1994-1995 for NCRA's successful acquisition of the southern portion of the NWP and conceived the use of FHWA Q Funds for the NWP acquisition in exchange for ISTEA funds to upgrade the railroad; and

- In 1997 and 2002, he prepared "Proposals For The Operation and Maintenance of the NWP" that included train schedules, planned personnel by department, volume and revenue estimates, locomotive and freight car requirements, and a projected income statements.

As a result of the above, John Williams possesses unique knowledge and experience in most aspects of NCRA and its railroad operations and maintenance requirements, particularly from a managerial and financial perspective.

Alan DeMoss, former Vice President of Operations of Southern Pacific, is intimately familiar with the former Northwestern Pacific Railroad properties, including not only its current operations but also major periodic reconstruction and repair efforts that have taken place since the mid-1960's. In the late 1970's, Alan DeMoss directed disaster control operations for SP during the infamous Island Mountain Tunnel fire.

In 1993, Alan DeMoss surveyed and assessed the then-current condition of NCRA's tunnels, bridges, trestles, culvers and track structure, and prepared an initial four-phase NCRA Rehabilitation Program of $11.44 million. That NCRA Rehabilitation

Program encompassed the use of Proposition 116 and TCI funds. Alan DeMoss and John Williams then integrated the NCRA Rehabilitation Program into the *1993 Business Plan for the North Coast Railroad*, which was submitted to the California Transportation Commission.

In 1995, Alan DeMoss assessed the then-current track conditions and level of maintenance performed on the former NWP between Lombard and Willits. In that same year, at the request of NCRA, he surveyed and assessed the winter storm damage to NCRA's lines at more than two dozen locations.

Subsequent implementation of the NCRA Rehabilitation Program and of the OES/FEMA-funded storm damage restoration work was managed from 1993 to 1995 by John Williams in his capacity as Executive Director, Chief Financial Officer, and Project Administrator of NCRA. Judith Roberts assisted in the planning, controlling and monitoring of the NCRA Rehabilitation Program and the OES/FEMA storm damage restoration work on NCRA throughout the same time period.

Inquiries as to Woodside's responsibilities for and performance of these tasks on behalf of NCRA may be directed to:

Allan J. Hemphill, NCRA Director
Hemphill and Associates
P.O. Box 1088
Geyserville, CA 95441
Phone (707) 857-3944

C. Services Provided to the Alaska Railroad Corporation, 1999-2002

In May 1999, Woodside was awarded a contract to prepare plans for the improvement of the Alaska Railroad's (ARRC) Anchorage and Fairbanks Yards and of ARRC's 300-mile long main line between those two terminals. In December 1999, Woodside delivered to the ARRC Board of Directors a five-volume Final Report containing our plans and recommendations which was approved. Subsequently, we worked with the ARRC Management Team to prepare a recommended and prioritized list of capital projects to be undertaken through the year 2005 that were in accord with the plans and recommendations contained in our Final Report. We recommended a list of 14 ARRC capital projects and estimated their total cost at $219.3 million.

The foundation for those capital plans was the long range strategic traffic projections of ARRC's rail passenger and freight traffic that were made by John Williams and Judith Roberts. Our approach included analyses of past ridership and volumes,

interviews of major customers, analyses of key econometric projections and their correlation with ARRC's passenger and freight traffic, and the application of our own knowledge and experience. Implementation of the proposed capital plans by ARRC will permit the handling, in future years, of additional tourist, commuter, and airport passenger traffic, as well as freight traffic.

Subsequently, in 2001-2002, at the direction of the ARRC Board of Directors, Woodside conducted an Annual Performance Audit of the Execution of the Locomotive Fleet Plan prepared by ARRC in 1997. Our assessment evaluated the purchase of 16 new SD-70 MAC units and the effect that their purchase had on locomotive assignments and the efficiency of the ARRC locomotive fleet. Woodside also recommended a series of locomotive-related initiatives that would improve ARRC's efficiency of operation and quality of service.

Inquiries as to Woodside's responsibilities for and performance of these tasks on behalf of ARRC may be directed to:

James B. Blasingame
Vice President, Corporate Affairs
Alaska Railroad Corporation
327 W. Ship Creek Avenue
P.O. Box 107500
Anchorage, Alaska 99510-7500
Phone (907) 265-2680

AR 06681

Attachment A

Berg Holdings
Company Profile

Skip Berg

Skip completed his undergraduate and graduate work from the University of Southern California in 1964 and 1966 respectively, earning his Bachelors of Science in Finance and an MBA in General Management. Shortly after becoming the youngest Vice President of NYSE listed CNA Financial Corporation and the only corporate officer under 30, Skip set out as an entrepreneur.

Skip's 35 year career as a real estate investor/developer has spanned across a multitude of property types and geographic regions. In total Skip has acquired or developed 3600+ residential units, 325,000+ square feet of office space, and 175,000 square feet of industrial space spanning from California to Florida. Skip's 1971 Spyglass Hill residential development won the prestigious Golden Nugget Award.

Skip also acquired and repositioned Sears Point Raceway, an industrial site and 800 acre racetrack, from a backwater fifth-rate track to one of the most desirable road courses in the country. The track had bankrupted its previous three owners, but Skip successfully repositioned and sold the track in 1998 to NYSE listed Speedway Motorsports.

In one recent twelve month period, Skip acquired over $100 million in commercial property without partners.

Skip has served as a State Assembly-appointed member of the California Coastal Commission, a member of San Francisco Bay Conservation and Development Commission, President of the Board of Directors of the Marin County Suicide Prevention Center, as a professor of Advanced Real Estate Finance and Investments at the University of California at Berkeley, and as a member of the Board of Directors of the Marin Community Foundation Child Care Scholarship Fund.

Berg Holdings

Skip created Berg Holdings as a management and development company for a growing portfolio of real estate assets. Since it's founding, Berg Holdings has assembled a team of experienced professionals in the fields of real estate law, entitlements, finance, and marketing. Background companies of members of the Berg Team include Trammell Crow, Hancock, Rothert & Bunshoft, Colony Capital, and a former Marin County Development Chief.

The current portfolio owned by the company includes 962 multifamily units, 325,341 square feet of office space, 152 marina slips and an additional 640 acres of agricultural land under management.

Berg Holdings
Key Personnel

J.T. Wick, Director of Entitlements

J.T. Wick leads Berg Holdings in entitlements, government and public affairs, and site acquisition. Educated as an attorney, J.T. has practiced as a planner in California for 25 years. In 1996, he left his position as Development Chief of the County Marin to work for CSW/Stuber-Stroeh Engineering Co., Inc., a civil engineering and planning firm. In 1999, after making partner, J.T. helped found the firm's first Sonoma County office and made it a financial success. His responsibilities included representing clients, including Berg Holdings', in project applications in Marin County.

In his three years with Berg Holdings, J.T. has secured $20 million in Federal funding for Port Sonoma. He is responsible for converting the Port Sonoma marina into a premier multi-modal transit center linking ferry, rail, and bus service to the Bay Area. Port improvements will enhance transit ridership and generate significant revenues for investors. Wick is also responsible for developing a food and wine center on a ranch managed by the company. Additionally, J.T. is spearheading the design and conversion of existing office sites to mixed use developments.

J.T. maintains a strong civic presence in the North Bay by serving as President of the Petaluma People Services Center, past President and present Transportation Subcommittee Chair of the Petaluma Area Chamber of Commerce, PACC Governmental Affairs Committee Member, Santa Rosa Chamber of Commerce Transportation Committee Member, Bank of Marin Petaluma Advisory Board Member, Sporting Healthy Active Kids in Education (SHAKE) Member, and Run Club Parent at McNear Elementary School.

EVERGREEN NATURAL RESOURCES
525 Airport Parkway
Oroville, CA 95965
530-533-1058
aennis@sppkg.com

RESUME

R. Allen Ennis, Jr.
Chief Executive Officer
Evergreen Natural Resources

R. Allen Ennis, Jr. is Chief Executive Officer of Evergreen Natural Resources, the Company that holds the mineral rights to the Island Mountain Quarry. He is also President and Chief Executive Officer of the highly successful Sierra Pacific Packaging, Inc.

Allen graduated in 1991 from California State University at Chico in the top five percent of his class with a B.S. in Construction Management. He graduated in 1994 in the top five percent of his class with a J.D. from the University of the Pacific, McGeorge School of Law with Great Distinction and induction into The Order of the Coif. He also served as Editor-in-Chief of the Transnational Lawyer, McGeorge's International Law Journal.

While he was still in law school, Allen wrote the business plan for Sierra Pacific Packaging, Inc. which he founded in 1993.

In October of 1994, initial construction began on a 38,000 square foot manufacturing facility in Oroville, California, and limited production of finished boxes began in early 1995.

Today, Sierra Pacific Packaging, Inc. is a high quality supplier of printed folding cartons and specialty corrugated boxes serving primarily the beverage and food sectors. The current production facility is 100,000 square feet that is supported by an additional 30,000 square feet of off-site warehousing and distribution. Sierra Pacific Packaging, Inc. has invested more than $25 million in equipment and facilities and is projecting sales in excess of $30 million in 2006.

Sierra Pacific Packaging, Inc. serves customers primarily in the western United States, but also services customers in Alaska, Hawaii and the mid-west. Sierra Pacific Packaging, Inc. proudly employs in excess of 100 full time equivalent employees.

EVERGREEN NATURAL RESOURCES
525 Airport Parkway
Oroville, CA 95965
530-533-1058
rgreen@sppkg.com

RESUME

ROGER R GREEN
President
Evergreen Natural Resouces

Roger has years of experience in mining. He was owner/operator of Green Rock Quarries, a mining company in Oroville, California. Green Rock Quarries employed 100+ people and produced ballast for railroad track beds and many other types of crushed stone. It shipped an average 1.1 million short tons each year to national and international locations. It was the number 1 supplier for the Union Pacific Railroad. The quarry was sold to Martin Marietta in 1996.

Under Roger's direction, Green Rock Quarries was responsible for the total construction of 25 miles of track through the Feather River Canyon leading to the quarry at Table Mountain, Oroville. Green Rock provided superior rock ballast for hundreds of miles of railroad line including the Union Pacific Railroad line from Wyoming to Southern California to Portland OR; and the Southern Pacific line through western states including Salt Lake City, Utah. *See "Keeping it Simple", Pit & Quarry, November, 1990.*

Current Position: President, Evergreen Natural Resources. Roger is also serving as the Commissioner of Mining for Butte County, California.

Roger owns the CalNique Mine in Fallon, Nevada, a mine dedicated to health solutions. CalNique is a powdered calcium supplement of Evergreen Mining Inc. Evergreen has been in business for 28 years. Roger and staff are committed to maintaining the highest degree of quality in their products and customer service.

Roger is currently involved in the business development & planning of a potential mining operation in Trinity County, California. The *Island Mountain Mining and Reclamation Plan*, submitted to the Trinity County Planning Department, had recently been circulated to fifty state agencies and was heralded by environmental groups, such as Friends of the Eel River, for development of a "well thought plan." The Island Mountain Quarry will bring much needed revenue to Trinity county.

Past Achievements: For many years, Roger worked for the Southern Pacific Communications Company (now known as Sprint), as a construction planner. He was responsible for building the infrastructures that support telecommunications throughout California and the Western regional states.

Recognition: In 2005, the board of directors of the National Stone Association, Washington, DC., formally invited Roger to assume the presidency of the association.

RESUME

Douglas H. Bosco
Attorney at Law
37 Old Courthouse Square, Suite 200
Santa Rosa, CA 95404
Tel: 707-525-8999
dbosco@boscolaw.com

Douglas H. Bosco practices law in Santa Rosa, California. Formerly a partner of the international firm Holland & Knight, Mr. Bosco currently serves as counsel to California's largest private landowners, handling legal, regulatory and legislative matters. He represents Fidelity Financial, a major national finance entity. His practice includes environmental toxic waste remediation and litigation.

Mr. Bosco serves as Chairman of the California Coastal Conservancy, a public board responsible for disbursing hundreds of millions of state bond dollars to worthy environmental projects. He is a former Member of the Industrial Welfare Commission with responsibilities for setting the state's wage and employment regulations. From 1978-82, he served in the California Legislature, and from 1982-90 represented the First District in the United States Congress.

His experience with the North Coast Railroad dates back to proceedings before the California Public Utilities Commission where he successfully worked to prevent Southern Pacific from abandoning and dismantling the line. In 1987, he initiated the process by which the federal and state governments purchased the railroad. Mr. Bosco has appeared before the Congress, the Legislature, the California Transportation Commission and many other public and private entities in support of the North Coast Railroad Authority.

Attachment B

AR 06687

THE WOODSIDE CONSULTING GROUP

AR 06688

Founded on the values of experience, knowledge and integrity, The Woodside Consulting Group is uniquely prepared to offer its diversified, yet integrated experience to solve problems in worldwide transportation.

The combined backgrounds and the interaction between the principals make the group a strong, professional, and innovative consulting team. In addition to its experts in railroading, The Woodside Consulting Group also draws upon a number of specialists in various disciplines who are available to work on specific projects to meet individual client needs.

The Woodside Consulting Group is well prepared to assist with professional analyses, problem solving, opportunity identification and providing the kinds of directional expertise that will be necessary for success in the twenty-first century.

We would welcome your inquiries.

385 Sherman Avenue
Suite 1
Palo Alto, CA 94306-1840

(650) 289-9850
Fax: (650) 289-9856

E-Mail: wcg@woodsideconsulting.com

JAMES W. McCLELLAN

Has Joined The Woodside Consulting Group as Vice President, Effective December 2003

Jim McClellan has over 40 years experience in the railroad industry, with special expertise in public-private partnerships, strategic planning, mergers and acquisitions, infrastructure investment and disinvestment, the operation of passenger trains on freight railroads, rail alliances, and intermodal marketing. A long-time employee of Norfolk Southern and its predecessor companies, Jim retired as Senior Vice President-Planning, in which capacity he reported directly to the Chairman of NS. He was deeply involved in a number of strategic initiatives by NS, including the negotiated split-up and acquisition of Conrail, the transition of NS from a carrier focused on bulk commodities to one specializing in the high service needs of automotive and intermodal traffic, and the creation and implementation of NS's high service quality Thoroughbred Operating Plan. Jim was also chairman of the Infrastructure Team that oversaw NS's investment in new capacity, and managed NS's investments in its 6,000-mile feeder network.

Jim has extensive experience in dealing with other railroads, including Class I, regional carriers and short lines, with passenger operators, and with government entities, including the STB, U.S. DOT/FRA and state DOTs. Using his experience at Amtrak and the U.S. DOT, Jim led NS's efforts to create and implement multiple public-private partnerships, many of which channeled public money into rail infrastructure projects, and to establish cooperative arrangements with Amtrak and commuter agencies. His proven ability to bridge the gap between the private and public sector demonstrates his unique skills melding public and private interests into workable solutions. Having also led NS's efforts to extend its network through marketing and operating agreements with other railroads, Jim knows what makes an alliance work and what pitfalls exist in the process.

As the first Marketing Trainee hired by the Southern Railway, Jim then moved to the New York Central, where he was involved in a number of marketing initiatives. Later, he was a member of the core team at U.S. DOT/FRA that created Amtrak and developed its basic route and service plan, and, as one of Amtrak's first employees, he was responsible for pricing, scheduling, and train consists. At U.S. DOT and USRA, he was also a key member of the team that restructured the Northeastern rail network by creating Conrail. At the Association of American Railroads, Jim worked with U.S. DOT to restructure the Midwestern railroads. Returning to the Southern Railway, he was a key member of the team that created Norfolk Southern through the merger of the Norfolk & Western Railway and the Southern Railway. He was responsible for managing the subsequent 3,500-mile downsizing of the Norfolk Southern system through abandonments and transfers to short line and regional carriers in the 1980's. He also negotiated several alliances with Conrail and was involved in NS's acquisition of North American Van Lines.

JOHN H. WILLIAMS

President of The Woodside Consulting Group, has an extensive background in all aspects of the railroad industry, with special expertise in litigation support, mergers and acquisitions, regional railroads, finance, economics, marketing, and policy analyses. A consultant since 1981, his practice has encompassed each of these specialties. He began his career in 1963 with the Southern Pacific Transportation Company, where his primary assignments included responsibility for line operations, the design of management information systems, economic analyses, corporate planning, mergers, and litigation support. Other highlights of Mr. Williams' over 35 years in the transportation field include participation in the early development of the Federal Railroad Administration and direction of strategic analysis for the Consolidated Rail Corporation. His achievements for the FRA ranged from the development of FRA's first network model to formulation of that Agency's economic research program. At Conrail, he developed a plan for dividing and selling Conrail's properties that was adopted by the U.S. DOT and that he subsequently helped Norfolk Southern implement. His consulting assignments have been wide-ranging, and include the presentation of expert testimony before the Interstate Commerce Commission and the Surface Transportation Board in railroad cases, the conduct of more than three dozen regional railroad projects on behalf of financial institutions or investors, managerial positions in selected regional railroads, participation with several California public agencies in their acquisition and/or joint use of railroad rights-of-way, international projects for the privatization of railroad services and the commercial operations of the Eurotunnel, and the development of actions that would improve service, reduce costs, and better define CSXT and NS responsibilities in the Conrail Shared Assets Areas. He has served as Chairman of the Dakota, Minnesota & Eastern Railroad and as Executive Director of the North Coast Railroad Authority. He holds B.A. and M.B.A. degrees, both from the University of Illinois.

ALAN D. DEMOSS

Principal, is an expert in the railroad and motor carrier industries. His service began as a railroad Maintenance of Way and Engineering Officer including General Foreman, Division Engineer and Assistant Engineer of System Maintenance which included management of Southern Pacific Transportation Company's 13,000-mile rail, crosstie, bridge and other maintenance programs. After 25 years' experience in maintenance of way, he served as Division Superintendent and later as SP's Vice President of Operations during a critical period of economic expansion which required the upgrading of SP's primary rail lines and the revision of its locomotive and rail car maintenance procedures. Mr. DeMoss also served in the Purchasing and Executive Departments as a Vice President, where he led management teams in negotiating subsidies for passenger services, mergers and acquisitions, the sale of subsidiary rail lines, and spin-offs of surplus properties. After a distinguished career of 38 years in railroad service, Mr. DeMoss successfully turned around SP's money losing trucking subsidiary in the face of deregulation and a severe recession, and it became profitable in 1984 ($3.5 million net) after a loss of $22 million in 1981. Since retiring from Southern Pacific after 42 years of service, Mr. DeMoss has consulted for the railroad industry for more than 15 years by preparing operating plans for regional railroad spin-offs of Class I railroads and net liquidation valuations of railroads for use by investors. He has also consulted for ports, counties developing rail transit operations, and has provided oversight of operations and maintenance for heavy rail commuter authorities. More recently, Mr. DeMoss assisted four rail commuter agencies and a short line railroad in successful negotiations with Class I railroads for right-of-way, trackage rights agreements, capital investment upgrades, compliance with FRA and CPUC regulations and operating plans. Mr. DeMoss holds a B.A. degree in mathematics and received an Alfred P. Sloan fellowship to the Graduate school of Business at Stanford University.

JERRY C. DANZIG

Vice President, has over 35 years experience in the railroad, trucking and airline industries, primarily in the areas of strategic and financial planning, business development, cost and operations analysis, budgeting, contract agreements, and project management. In his more than 14 years with Southern Pacific Transportation Company, Mr. Danzig was responsible for directing the development of strategic plans for both the rail and trucking subsidiaries of the Company, including formulation of corporate objectives, assessment of future competitive and market environments, and development and analysis of alternative business strategies and new business ventures. His experience includes the evaluation of rail and trucking mergers, acquisitions and divestitures, and support of merger proceedings. Mr. Danzig was also responsible for annual and long range corporate budgeting, including capital program planning and financial analysis of major investment alternatives involving equipment acquisition, plant rehabilitation, and facilities expansion. He is the co-author of several federally sponsored research reports on railroad costing methodology and urban rail relocation planning, and has testified in legal proceedings and before regulatory commissions. His consulting experience includes the development/evaluation of business plans for some fifteen regional railroads, project team management in Class I railroad merger cases, contract development and operations oversight for regional commuter railroads, and rail management assistance provided to foreign governments/railroads. Prior to his career with SP and The Woodside Consulting Group, Mr. Danzig was with United Airlines, with responsibilities for fleet planning, aircraft acquisition program management, and design engineering. He holds a B.S. degree in mechanical engineering from the University of Washington and a M.S. in transportation planning from Stanford University.

JUDITH H. ROBERTS

Vice President, has experience in the areas of economic and operational analyses, finance, project management, policy planning, transportation research, and analytical aspects of railroading. As a consultant since 1982, a principal focus has been railroad merger and acquisition analysis, with emphasis on economic analysis, litigation support, acquisition and operations contract negotiations, traffic studies, and computer analysis. With more than 25 years of transportation industry experience, Ms. Roberts has been involved in Southern Pacific Transportation Company's acquisition of the Tucumcari Line, other railroad mergers, marketing analyses of more than two dozen regional railroads, negotiation and implementation of public agencies' acquisition and joint use of railroad rights-of-way in California, oversight of selected station and operations functions of the San Francisco-San Jose Caltrain commuter rail service, project administration of large construction and rehabilitation projects for the North Coast Railroad Authority, and Conrail split-up marketing analyses and transitional planning. Other assignments have included appraisal of the economic life of commuter rail equipment, assessment of markets for new train technologies, and analyses of the impacts of proposed passenger train services on freight train operations. Ms. Roberts' railroad experience at Southern Pacific encompassed analyses of prospective railroad mergers, acquisitions, and sales, as well as litigation support and economic analyses in regulatory cases involving SP's commuter rail operations. Earlier, Ms. Roberts was an analyst in rail, highway, and water transportation planning projects at Stanford Research Institute. She received a B.A. in mathematics from Vassar College and M.S. degrees in both transportation planning and operations research from Stanford University.

The Woodside Consulting Group offers a broad range of transportation and management consulting services:

- Mergers and acquisitions
- Strategic planning
- Litigation support
- Commuter rail system planning and operations oversight
- Regional railroad plans and evaluations
- Financial analyses and projections
- Marketing research
- Forecasts of traffic demand
- Pricing and profitability evaluations
- Cost analyses and models
- Investment and operations economics
- Operations assessments

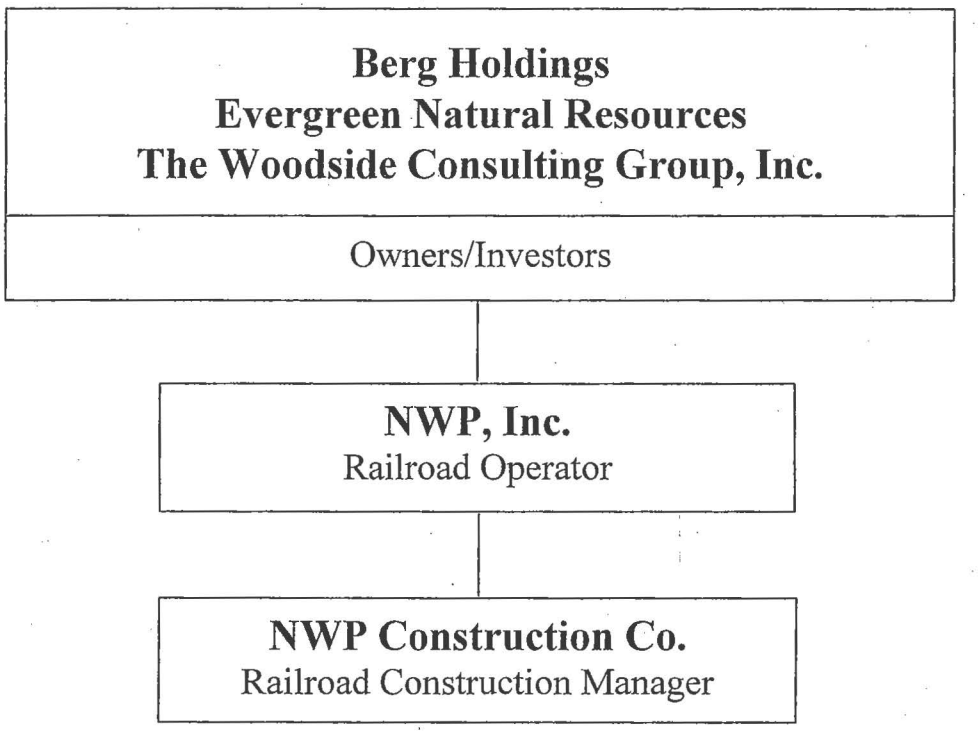
Since its establishment in 1980, The Woodside Consulting Group has solved problems in worldwide transportation for more than one hundred clients including:

- Alaska Railroad Corp.
- Association of American Railroads
- Burlington Northern Railroad Co.
- California Public Utilities Commission
- Canadian Pacific Railway Co.
- Chicago & North Western Transportation Co.
- Consolidated Rail Corp.
- CSX Transportation, Inc.
- Dakota, Minnesota & Eastern Railroad Corp.
- Eurotunnel Group
- Federal Railroad Administration
- The Greenbrier Companies
- Hunter Valley Rail Project (Australia)
- Kansas City Southern Industries
- Norfolk Southern Corp.
- North Coast Railroad Authority
- Peninsula Corridor Joint Powers Board
- Santa Clara County Valley Transportation Authority
- Southern California Regional Rail Authority

Attachment C

AR 06694

Attachment C
Corporate Organization Structure



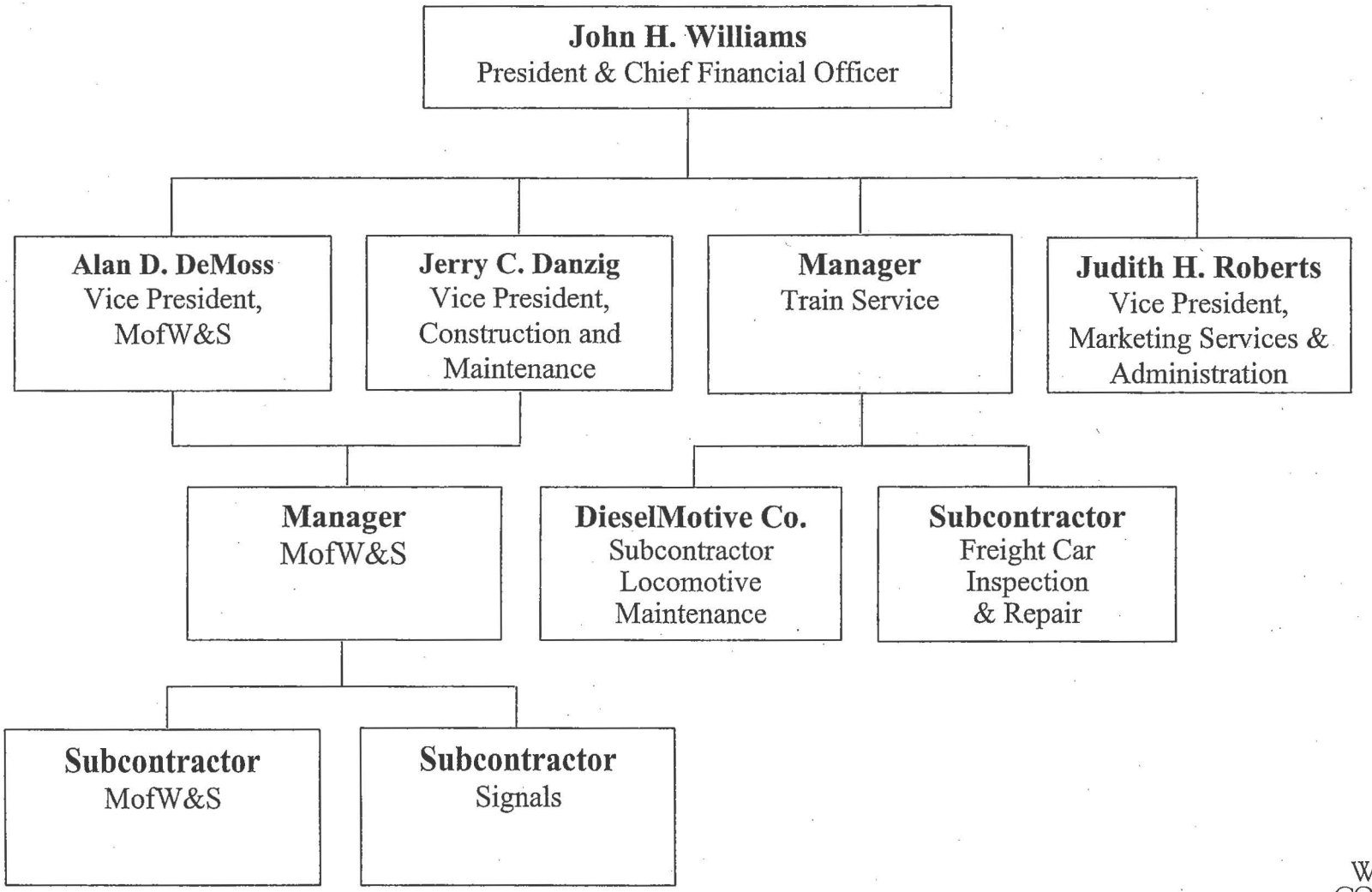
AR 06695

Attachment D

AR 06696

Attachment D

Organization Chart for NWP, Inc.



THE WOODSIDE CONSULTING GROUP

AR 06697

Attachment E

Attachment E
Proposed Distribution of Public Funds

I. **Total Public Funds Available**	**Millions**
ISTEA (w/o 20% Match)	$8.60
TCRP	41.20
Total	$49.80

II. **Distribution to the Russian River Division**	
A. Funds Required:	
Reopen to Class II/III, per Updated CAR (p. 110)	$23.05
Drawbridge Signals, per Updated CAR (p. 87) + 30%	1.95
Total	$25.00
B. Funds Used:	
ISTEA: Improvements	$7.00
TCRP: ISTEA match @ 20%	1.75
TCRP: Stabilization	9.40
TCRP: Upgrade to Class II/III	4.90
TCRP: Drawbridge Signals	1.95
Total	$25.00

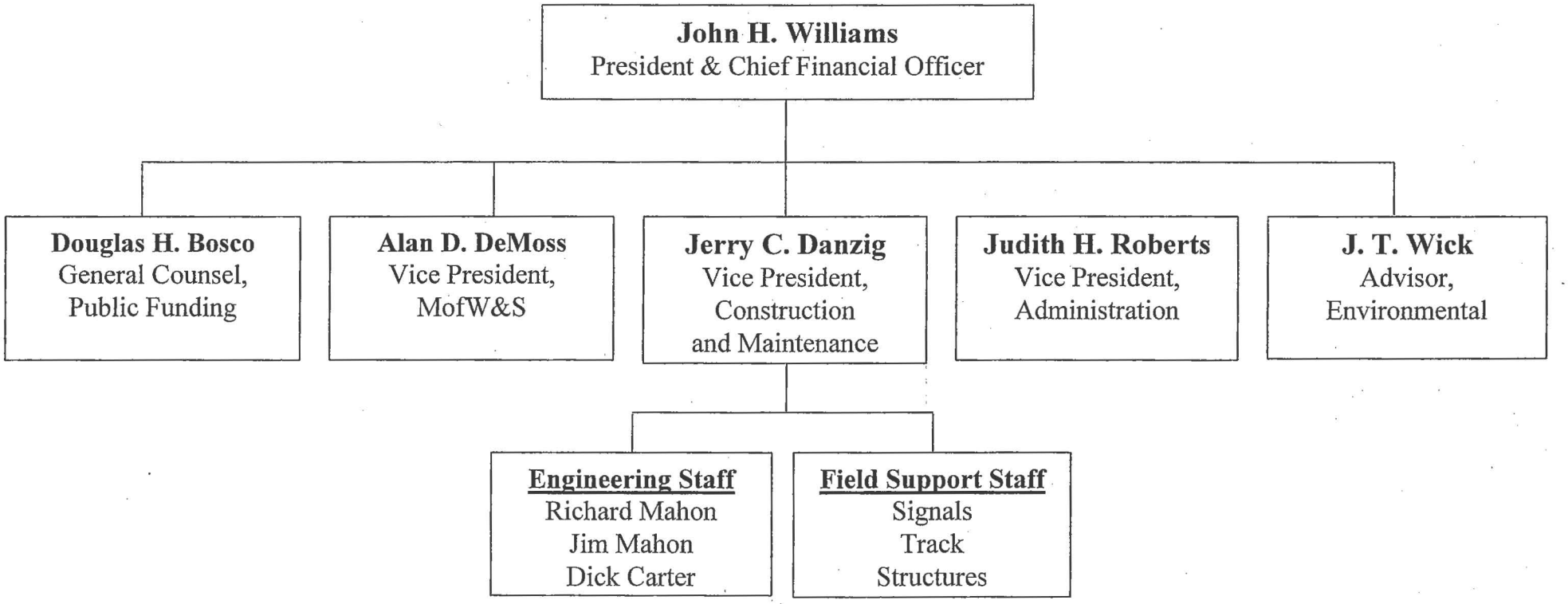
III. **Distribution to the Eel River Division**	
ISTEA: Environmental Studies	$1.60
TCRP: Reopen Line	0.60
TCRP: Consent Decree	2.95
TCRP: Stabilization	19.65
Total	$24.80

THE WOODSIDE CONSULTING GROUP

Attachment F

Attachment F

Organization Chart for NWP Construction Co.



AR 06701

THE
WOODSIDE
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GROUP

Attachment G

NEWS FROM SOUTHERN PACIFIC

SOUTHERN PACIFIC PUBLIC RELATIONS
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541- 1658

September 28, 1989

SAN FRANCISCO -- Richard R. Mahon has been named chief engineer for the Southern Pacific Transportation Co., it was announced today.

Mahon, 59, succeeds Gerald L. Murdock, 61, who retired last month after 41 years with the company.

He oversees maintenance of track, roadbeds, signals, buildings, bridges, and all construction projects for the railroad's 15,000 mile, 15 state system.

Mahon, a native of Bakersfield, Calif. joined Southern Pacific in 1948 as a track laborer and has held a variety of positions including division engineer at San Antonio, and Western Region engineer-maintenance of way in Roseville, Calif.

He was named assistant general manager-engineering at Houston in July 1987, a post he held until his appointment this month as chief engineer.

# # #

SANTINA & THOMPSON, INC.
Municipal Engineering • Surveying
Railroad Engineering • Planning

November 27, 1989

Mr. R. R. Mahon, Chief Engineer
Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105

Dear Dick:

I noted in the recent issue of the Southern Pacific Bulletin the announcement concerning your promotion to Chief Engineer.

If your promotion to Chief Engineer has the same effect on the system as your promotion to Division Engineer at San Antonio had on that division, we can look forward to a very successful period for the Company.

Please accept my heartiest congratulations and best wishes in what I know will be a difficult but challenging responsibility.

Yours very truly,

James F. Lynch
Chief Engineer

/o'b

June 1946- June 1948	Track Laborer and attended school	Track Maintenance
June 1948- May 1949	Relief Foreman	
May 1949- July 1952	Extra Gang Foreman	Track Mainrtenance and Construction
July 1952- Feb 1956	Extra Gang Foreman	" "
Feb 1956- Feb 1958	General Track Foreman	" "
Mar 1958- Feb 1959	Supervisor of Track	Pacific Electric Rwy Los Angeles, Calif.
Feb 1959- April 1959	Acting Roadmaster	Merced, Calif.
May 1959- Oct 1960	Roadmaster	Gila Bend, Arizona
Oct 1960- March 1964	Roadmaster	Martinez, Calif.
Apr 1964- Apr 1965	Asst. Divn Engr.- Track	Portland, Ore
May 1965- Apr 1975	General Track Supervisor	San Francisco Calif. General Office
May 1975- Dec 1977	Division Engineer	San Antonio, Texas
Dec 1977- Sept 1978	Production Engineer	San Francisco, Calif.
Sept 1978- Sept 1980	Engineer Track	San Francisco, Calif.
Sept 1980- July 1981	Asst. Engr. M/W Eastern Lines	Houston, Texas
July 1981- July 1985	Asst. Engr. M/W Western Lines	Sacramento, Calif.
July 1985- October 1985	Engr. M/W Western Lines	" "
Oct 1985- Dec 1986	Asst. Gen'l Manager -Engineering	" "
Dec 1986- Jul 1987	Asst. to Chief Engr.- Track	" "
Jul 1987- Aug 1989	Asst Gen'l Manager-Engineering	Houston, Texas

Sept 1989- June 30,1990	Chief Engineer	San Francisco, Calif.
Feb 1994- April 1994	Track Construction Consultant	Palmdale , Calif.

Note:

My tenure with the Southern Pacific Transportation Company, covered a period of 44 years. The early years of service from 1946 - 1956 era, was mostly confined to track maintenance and construction at various locations from Yuma, Arizona to Fresno, California.

I spent one year on th Pacific Electric Railway in and surrounding Los Angeles. My assignment was to organize and establish fully mechanized track maintenance gangs, which included tie renewal gangs, surfacing gangs,and rail relay gangs.Also performed routine track inspections to assure compliance with track standards as set by the parent company, (Southern Pacifc Transportation Company).

The position of Roadmaster involved responsibility for track maintenance and production activities on an assigned territory.
The Roadmaster was on call 24/7, and responded to any emergency that might arise at any time. He was also accountable for the safety of the employees under his jurisdiction as well as materials used or on hand, along with budget expenditures.

The position of Asst. Divn Engr- Track was a position that reported to the Division Engr, and was held resposnsable to see that the trackage within the limits of a division were maintained in compliance with Track Standardss as set by the Chief Engineer as well as the Track Safety Stands as set the set Federal Railway Administration.

The postion of General Track Supervisor was related to track inspection, included compliance of the Rules and Regulations for the Maintenance of Way And Structures.

This required a field inspection of all trackage in your assigned territory that included proposed rail, tie, and ballast renewals for the insuing years.

The maintenance programs were submitted to the Chief Engineer for approval. All track maintenance proposals were submitted to the Asst.Engr. M/W, in detail, for review, as well as for budget approval,all maintenance programs were computerized, in detail.

The remaining positions were all upper level positions, that related to track and structure maintenance, and renewal.

With the exception of the Chief Engineer position all of my assignments were related to the track maintenance and construction field.

Emegency situations were handled at the local level, unless there was a major derailment or catastrophe of any nature, then all M/W Officers became involved.

If their are any questions please do not hesitate to call.

Repectfully,

Richard Mahon

James C. Mahon, resume of 46 years of railroad service

1952-At a young age I started work for the Southern Pacific Co. as a laborer. Working through summer and Christmas holidays till 1955 when I graduated from High School.

June 13, 1955 I continued to work as a laborer full time and on various equipment such as Spike pullers, bolt machines, crib-x's, tie sprayers, adzer machines, spike drivers and burro crane operator.

December 1, 1957 I was asked to take a position on the system rail gang as an assistant foreman.

November 1958, I was promoted to Foreman on a system rail gang which was responsible of laying new rail of 10 to 50 mile stretches of territory at one time in seven different states. This rail gang consisted of 100 to 120 people.

July 1959, I was promoted to Track Supervisor in Bakersfield Ca. Territory between Fresno and Bakersfield, main line trackage. I was responsible for maintenance upkeep of rail bed and properties, creating track speed from 65 mph to 79mph, which included passenger trains.

October 1960, I was promoted to General Track Foreman in charge of all maintenance work and installing CTC (centralize traffic control) and 16 new sidings of 10,000 ft each between Bakersfield and Lathrop, CA to upgrade signal system for safety and greater track speed of trains.

July 1961, I was transferred to Phoenix, AR as General Track Foreman to rehab the Old Christmas Branch line. This was to relay rail, ballast, and ties and upgrade trackage for safety and faster running of trains.

September 1961, I was sent to Tucson as a General Track Foreman to rehab the Tucson Rail Yard to extend (10) ten tracks 1 mile each, and rebuild 5 other yard tracks.

December 1961, I was sent to Deming NM as General Track Foreman to assist in rail renewal between Lordsburg, NM and Deming NM. This was to remove 113 lb. jointed rail replace it with 136 lb. ribbon rail, install 40,000 ties, reballast and surface 50 miles of track and rebuilding 35 main line #14 switches.

April 1962 was promoted to Road Master on the Deming, NM district. As roadmaster, I was responsible for all trackage, properties and personnel from Lordsburg to El Paso New Mexico, including all personnel.

October 1963 was transferred as Road Master to Truckee, CA on the High Sierra's. I was responsible for all snow removal, all tracks and property including personnel, total of 140 miles of territory.

July 1, 1969, transferred from Truckee, CA to Colfax, CA as Road Master. I was responsible for 142 miles of trackage and personnel, rehabilitation of entire district of rail, ties, ballast and surfacing.

April 1973 was promoted from Road Master to Asst. Division Engineer/Track territory running between Sacramento, Ca and Ogden, Ut. During this time I was in charge of Rail Gangs, Tie Gangs, Surfacing Gangs including derailments, snow removal using all equipment such as rotary snowplows, Jordan spreaders, flangers, dozers and front-end loaders. I inspected roadbeds and made up programs for replacement of rail, ties, ballast and surfacing from year to year.

July 1983 was sent to Utah to restore the Great Salt Lake Causeway that had been damaged by high winds and flooding. I organized men, equipment and materials for restoration of tracks.

January 1984, returned to Roseville, CA assuming my regular duties as Asst. Division Engineer/Dash Track and in charge of 13 roadmaster districts and 550 men including making up the maintenance program on a yearly basis.

July 1985, a reoccurrence of damage on the Great Salt Lake Causeway I was sent there to again restore the track between Little Mountain and Lakeside. From Lakeside Siding to Hogup siding winds and flooding submerged the track three to four feet under water misaligning the track to the south. At this time I was in charge of assembling a camp site at Lakeside, UT for 250 people and three different construction groups to help restore trackage east and west of Lakeside. At Hogup constructed a campsite with trailers and commissary to accommodate 300 people of which 250 were railroad workers and 50 were construction workers. The estimated time to restore this track back to service was eleven to twelve months. It was restored in five months time.

December 1985, I returned back to Roseville, CA assuming my regular duties as Asst. Division Engineer

1989 I was promoted to District Engineer in charge of the Sacramento Division. This included the state of California, Utah and Nevada under the management of DRGWRR.

Approximately 1994, more changes occurred in management of the SPRR AND DRGW, I was given the title of District Manager with the same duties as previous title.

1997, Union Pacific RR bought out SPRR and DRGW and again my position was changed from District Manager to Manager of Track Programs.

I worked extensively with other departments, such as: Bridge and building, electrical, water quality service and the transportation dept. With the movement of trains I dealt with government agencies (FRA), environmental, fire depts. (Both city and county). Also US Forestry, highway patrols in connection with replacement of grade crossing and bridges over major highways.

On major derailments, I rerailed cars and cleared the right of way, which also included Amtrak (passenger trains). Snow and mud slides, snow bound trains and any other emergency would require my bringing together men and equipment to handle the problems while interacting with all departments.

October 1999, retired from UPRR

November 10, 2005

Richard (Dick) Carter

Currently I am Self Employed as a consultant on Railroad projects dealing with Tunnels, Bridges and Culverts.

- 25 Bridge removals & replacement with smooth wall steel culvert, in the Dunsmuir Canyon, California.
- Removed 60 foot double track bridge and replaced it with CMP culverts main line near Elmira California
- 15 wooden bridge Replacements with pre cast concrete drop ins, Dunsmuir Canyon, California
- Replace 160 ft of wooden tressel with Pre stress concrete girders and steel pipe pileing over Elk Horn Slough near Moss Landing California
- Constructed 350 foot of Steel Bridge for Texas Industrys, (the piling were placed in shafts drilled into granite) Oklahoma
- Inspected all the Track, Bridges, Tunnels and Culverts on Northwest Pacific Railroad, from Lombard to Eureka California

In April 2001 I retired from Union Pacific Railroad. (Early buy out)

I was with the Southern Pacific Railroad from 1971 to 1997, and the Union Pacific Railroad after the merger from 1997 to 2001. I have extensive experience with Railroad Tunnels, Snow Sheds, Rock Sheds, and numerous types of Railroad Bridges including Wood, Steel, Pre Stress Concrete, and Moveable Structures.

From 1998 to 2001 I was the Manager of Structural Projects (Western Region) with Union Pacific Railroad. My responsibilities included overseeing the long-range budget and project planning, for all Tunnels, Bridges, Buildings and Culverts, prioritizing projects (using inspection criteria), and on site overview of all proposed projects. I also estimated the cost of projects, ensured that the projects were built according to plan, and within estimates. I administered sub contractor bids, established what type and size of equipment was needed and oversaw (tracked) budget spending on each project. The Union Pacific Western Region at that time covered all Union Pacific structures from EL Paso Texas, all of Arizona, California, Oregon, Washington, Idho, and Utah to Ogden.

AR 06711

- After the merger I inspected and evaluated all of the Bridge department's locomotive cranes and their pile driving equipment as to their condition, operator qualifications, and state of readiness for use in emergencies throughout the entire Union Pacific system.(twenty three states)

- After a unit coal train derailed on a 120 foot through plate truss bridge, causing it to collapse in the Calinte Canyon it was replaced with driven steel piles and deck plate girders.

- Replaced three thru plate girders with new stronger thru plate girders on the Feather River route near Portola Califorina.

From 1991 to 1998 I was the Regional District Bridge Supervisor (Western Region) with Southern Pacific Railroad. My responsibilities included overseeing Bridge and Building Supervisors, employee safety, construction of Tunnel, Bridge, Building and Culvert projects, inspection and repair of all structures, and budget. I was also involved in the development of the Bridge Inspection system currently in use on the Union Pacific Railroad. The Southern Pacfic Western Region at that time covered all Southern Pacific structures from El Paso Texas, Arizona, California, Oregon, and Utah.

- Due to the Great Salt Lake rising it became necessary to raise the 600 foot Bear River Bridge 6 feet by placing framed bents on the existing caps.

- The wooden bridge over the Ogden River in Ogden Utah was destroyed by fire and rebuilt by driving 120 foot friction piling with a pre stress box girder deck.

- The bronze lens on the "I" Street Bridge in Sacramento, California was damaged during the flood of 1996, we raised the bridge verticly (all 7,500,000 pounds of it), removed the lens set the bridge down on steel blocking and had the lens machined. One week later the bridge was raised again and the rebuilt lens was reset. The bridge was then lowered back onto the rebuilt lens.

- After being hit by an Ocean going barge and moved 36 inches down stream, the Coos Bay Draw Bridge (when built was the worlds largest swing span) was raised and moved back on it's lens

- After Pier 1 Section B of the Pahavro river bridge in Watsonville California dropped 30 inches during an earthquake it was rebuilt by driving steel "H" beam on either side of the pier and then placing the steel span on corbal blocks.

- During a flood in Arizona which washed out a deck plate girder structure at one location on the Nogales River and a 50 foot pre stress concrete box

AR 06712

girder structure at another, they were both rebuilt by driving steel "H" beam piling and then resetting the girders.

- As Regional District Bridge Supervisor (Western Region) I was sent to Texas in 1994 to rebuilt 450 feet of a deck plate girder (steel bridge) tressel using 24 inch steel pipe piles, pre cast concrete caps, and pre stress concrete girders. As the entire 450 feet of bridge was gone we started from scratch, and finished in 18 days.

- After an underwater inspection revealed that some 45 of the original 50 wooden pileing were missing from beneath one of the abutment piers, temporary "H" pileing were driven to support the bridge while the original concrete pier was sawn into 5 pieces and removed. A new concrete rest pier was constructed using Steel pipe pile and "H" beams. This entire operation was accomplished without stopping train traffic.

- Built a Pre stress concrete bridge in Oaklahoma that was washed out due to flood. (Hopper cars were still hanging on the old Pileing).

- Rebuilt a double track main line bridge near Benson Arizona, one wood, one concrete, (the concrete got so hot from the wooden bridge fire next to it that the pre stress cables in the concrete were damaged beyond repair and the concrete girders had to be replaced) the wood bridge was rebuilt using steel "H" beam pileing and pre stress concrete girders.

- Following a bridge fire on the main line in Bakersfield Califorina, the bridge was rebuilt under traffic using steel "H" beam pileing and pre stress concrete girders.

From 1983 to 1991 I was a Bridge and Building Supervisor and General Foreman Bridge and Building on the Sacramento Division. My responsibilities included employee safety, inspection and repair of Tunnels, Bridges, Buildings, and Culverts, construction of capitol projects, and budget. The Sacramento Division at that time included all structures from Tehama California south to Chowchilla California, Ogden Utah west to Sacramento California.

- After the Bear River Bridge washed out near Wheatland California it was rebuilt using driven steel "H" beam piling and steel deck plate girders.

- Replaced the East approach to the Feather River bridge in Yuba City California using driven steel "H" beam pileing and pre stress concrete girders.

- As the Bridge & Building Supervisor on the Sacramento Region we retrofit the "I" Street double track (with roadway above) turn span bridge

AR 06713

over the Sacramento River from a mechanical gear driven structure to a fully automatic, push button electric / hydraulics.

- Stabilizing the number 3 pier on the old Western Pacific Yuba River Bridge was accomplished by driving pileing around the existing concrete pier, placing reinforcing steel between piles, then pumping concrete into the forms to fill the voids under and around the existing pier.

- The method used to stabilize the undermined piers on the Southern Pacific's Yuba River Bridge, driving sheet pileing around the piers, thus sealing the water off, then drilling through the footers on the existing pier in order to pressure grout the voids beneath the piers.

- After being transferred to the Sacramento division in 1983 as the Bridge & Building Supervisor I was placed in charge of replacing the wooden snow sheds on the number 1 and number 2 tracks on the Donner Summit with pre stress concrete snow shed.

- Replaced the wooden portion of the west approach to the Yuba River Bridge with Driven steel "H" beam pileing and pre stress concrete girders. (2250 feet)

- Replaced 4 wooden bridges on the Yolo Causeway number 1 track with driven steel "H" beam pileing and pre stress concrete girders.(10,900 feet)

- Reconstructed burned out bridge over Simberly Slough in Marysville California with driven steel "H" beam pileing and pre stress concrete girders.

In 1983 I was a Bridge Inspector with Southern Pacific Railroad on the Oregon Division. My responsibilities included the inspection of, Tunnels, Culverts, Buildings, plus the steel, wood, and concrete Bridges. My responsibilities included all structures from Crescent Lake Oregon to Albany Oregon on the Main Line, the Coos Bay Branch, and the Siskiyou Branch.

From 1982 to 1983 I was a certified Bridge Welder for Southern Pacific Railroad on the Eugene District.

From 1979 to 1982 I was a Bridge and Building Supervisor in Eugene, on the Oregon District with Southern Pacific Railroad. My responsibilities included employee safety, inspection of Tunnels, Bridges, Buildings, and Culverts, construction of capital projects, and budget. The Oregon District included all Structures from Crescent Lake Oregon to Albany Oregon on the Main Line, the Coos Bay Branch, and the Siskiyou Branch.

- Just after being promoted to Bridge & Building Supervisor in 1979, the Klamath River Bridge collapsed during a derailment, we rebuilt the 204 foot structure with steel pileing and pre stress concrete girders.

- As the Bridge & Building Supervisor in Eugene Oregon both the 1st and 5th crossings on Tahkenitch Lake were rebuilt from wood to steel pile and pre stress concrete girders (total of 1455 feet.)

From 1971 to 1979 I was an Agreement Employee with Southern Pacific working as a Foreman, Assistant Foreman, Welder, and Carpenter on various Tunnels, Bridges, Buildings, and Culverts on the Oregon district.

- As the Bridge Foreman in Canary Oregon, 1200 ft of wooden trestle on Siltcoos Lake was rebuilt with steel pileing and pre stress concrete girders

Tunnels

- Cascade line between Eugene and Crescent Lake, (5 times) fires
- Tehachapi fire
- Barrel cracking DRGW Utah
- Loosing Sub grade in Tunnel Oklahoma
- Side Bulging and moving in tunnel 16 Sims California
- Footing moving Tunnel 4 Carlin Nevada
- Remove lining and gunite Tunnel 19 Reedsport Oregon
- Portions of Tunnel # 13, # 16, # 18, and # 19, Caved in on the Coos Bay Branch near Reedsport Oregon
- Tunnel # 9 Caved in on the Siskiyou Branch near Hugo Oregon
- Clearances for Double Stack container and Tri Level Auto Cars

In regard to tunnels:

The fires were all extinguished using various methods, (water, foam, fire breaks, pressure grouting, etc). The cracking , moving and bulging were repaired by (rock bolting, driving mini pile, relaging, placing steel sets, and pressure grouting). The cave-ins were repaired by removing debris, placing steel sets, and guniting. The removal of tunnel lining was done by first removing the wood lining, then scaling the loose rock and applying gunite to seal the surface. The clearances for excessive height cars was archived by lowering the tunnel floors, notching the arches, and mining back the crowns. It also involved rock bolting and pressure grouting to stabilize the surrounding ground.

All remaining wood in the tunnels on both the old Southern Pacific and Union Pacific Railroads is scheduled to be removed due to fire.

Sawyer / Mill Wright, Coburg Veneer	Coburg Oregon
Mill Wright, Roseburo Lumber Co	Springfield Oregon
University of Oregon	Eugene Oregon
Eugene Technical Institute	Eugene Oregon
Springfield High School	Springfield Oregon

Richard Allen Carter	Born September 28,1944	Eugene Oregon

AR 06716

Attachment H

Attachment H
Projected NWP, Inc. Income Statement for Years 1-3
Operations of the Russian River Division

	Year 1	Year 2	Year 3
Revenues	$579,000	$1,134,000	$3,157,000
Expenses			
Maintenance of Way & Structures	$200,000	$200,000	$375,000
Train & Engine Service	186,790	186,790	373,580
Locomotives & Fuel	135,400	177,000	354,000
Car Hire	96,300	102,600	102,600
Insurance	100,000	100,000	200,000
Marketing Management	166,250	166,250	362,500
Facilities & Administration	108,000	108,000	182,250
Total Expenses	$992,740	$1,040,640	$1,949,930
Net Income (Loss) Before Income Taxes	$(413,740)	$93,360	$1,207,070

Notes:

(1) Projections assume operations at FRA Class 2/3 standards.
(2) Projections are not a guarantee and are subject to due diligence.

THE WOODSIDE CONSULTING GROUP

Attachment I

CITY NATIONAL BANK
The way up.®

March 24, 2006

Re: H. Skip Berg / Berg Holdings

To: NCRA

Gentlemen:

Mr. Berg has been a valued client of City National Bank for many years.

Please be advised that as of this date, Skip Berg / Berg Holdings has a Net Worth in the [REDACTED] and has adequate resources to support high level acquisitions and operations.

Please feel free to contact me directly at (415) 576-2784 should you have any questions.

Sincerely,

David M. Lawrence
Senior Vice President & Manager
Private Banking Services

Note:
Because Berg Holdings is a privately owned Company, the redacted portion of this letter will only be disclosed privately, face-to-face with NCRA representatives, and with a non-disclosure agreement.

SIERRA PACIFIC PACKAGING, INC.
525 AIRPORT PARKWAY • OROVILLE, CALIFORNIA 95965
TEL: (530) 533-1058 • FAX: (530) 533-1093

March 28, 2006

Mr. Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

Dear Mr. Stogner:

This is to verify that Sierra Pacific Packaging, Inc. has market value assets of about twenty-five million dollars as of this date, and that R. Allen Ennis, Jr., owns approximately fifty-eight percent of the company.

It is our opinion that the realistic net market value of Sierra Pacific Packaging, Inc., would be substantially in excess of ten million dollars to a strategic buyer.

Very truly yours,

Vicki J. Ryther

Vicki J. Ryther
CFO

Private Client Group

333 Middlefield Road
Menlo Park, California 94025
650 473 7888
800 937 0726
FAX 650 473 7800

Merrill Lynch

March 7, 2006

Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

Dear Mr. Stogner:

This is to verify that John H. Williams has available assets substantially in excess of $1,000,000.00 in a retail account at Merrill Lynch as of March 7, 2006. The account was opened June 15, 1982.

This is not a guarantee that these assets will remain at Merrill Lynch in the future. No guarantees or other representations are given or implied.

Sincerely,

Marc E. Iverson
Financial Advisor

AGREEMENT FOR THE RESURRECTION OF OPERATIONS UPON THE NORTHWESTERN PACIFIC RAILROAD LINE AND LEASE

NORTH COAST RAILROAD AUTHORITY

and

NORTHWESTERN PACIFIC RAILROAD COMPANY

SEPTEMBER 2006

AR 06725

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Agreement For The Resurrection of Operations Upon The Northwestern Pacific Railroad Line and Lease

I. Preamble

This Agreement is made this 13th Day of September 2006 by and between NORTH COAST RAILROAD AUTHORITY, ("NCRA") a public agency, and NORTHWESTERN PACIFIC RAILROAD COMPANY, ("NWP"), a California Corporation.

II. Recitals

A. NCRA is the owner of portions of the Northwestern Pacific Line (the "NWP Line") and the holder of certain easements of the NWP Line;

B. NCRA is an agency created by the Legislature of the State of California pursuant to the Government Code Sections 93000, *et seq.* with a statutory duty to provide freight rail service on the NWP Line;

C. NCRA has residual common carrier responsibility for the NWP Line by reason of ownership of railroad property as defined by Interstate Commerce Commission Termination Act of 1995 and the implementing regulations adopted by the Surface Transportation Commission;

D. NCRA was authorized by the Legislature of the State of California pursuant to Government Code Section 93023(d) to select a franchisee to finance and operate the railroad system;

E. To fulfill its statutory duties and to fulfill its common carrier responsibilities, NCRA in January 2006 issued a Request for Proposals for a franchisee to assume the management of NCRA properties and to operate the Northwestern Pacific Rail Line;

F. NCRA received five responses, including the response of Northwestern Pacific Railroad Company, a California corporation; and

G. NCRA evaluated the responses and selected Northwestern Pacific Railroad Company, a California Corporation as its franchisee on May 31, 2006.

III. Definitions

The following terms shall have the following meanings as used in this Agreement:

A. "Affiliate" means, with respect to any person or entity, each stockholder, subsidiary, officer, director, agent and employee of that person or entity.

B. "Easement Premises " are generally described as the Northwestern Pacific Line from NWP Milepost 68.22 near Healdsburg, California to NWP Milepost 40.60 near Schellville, California to SPT Milepost 63.40 near Lombard, California more particularly described and defined as the "Easement Land" in the Operating Agreement at Section 1.01; Exhibits A, B, and C, thereof, subject to the reservations to SMART as successor in interest to the NWPRA in Sections 1.02 and XV of the Operating Agreement.

C. "Eel River Block" means all land owned, easements held, and licenses received by NCRA comprising the Northwestern Pacific Line from NWP Milepost 142.5near Willits , California to NWP Milepost 238.00 near South Fork, California.

D. "Humboldt Bay Block" means all land owned, easements held, and licenses received by NCRA comprising the Northwestern Pacific Railroad Line from NWP Milepost 238.00 near South Fork, California to NWP Milepost 302.90 near Samoa, California and NWP Milepost 295.57 near Arcata, California.

E. "Indemnifiable Losses" means the aggregate of Losses and Litigation Expenses.

F. "Indemnitee" means any person who makes a claim for indemnification under this Agreement, and each Affiliate of the Indemnitee.

G. "Indemnitor" means any person against whom a claim is made by an Indemnitee under this Agreement

H. "Leased Premises" means the Northwestern Pacific Railroad Line from NWP Milepost 142.5 near Willits , California to NWP Milepost 68.22 near Healdsburg, California including all of the property described as the "Willits Segment" in the NWPRA and NCRA Principles of Agreement dated April 30, 1996.

I. "Litigation Expense" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting a claim for indemnification under this Agreement, including without limitation, in each case, attorneys' fees, or other professional's fees and disbursements.

J. "Loss" means any liability, loss, claim settlement payment, cost and expense interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a Litigation Cost. As to the Easement Premises and for consistency with the Operating Agreement, "Loss" shall have the same meaning as defined in Section 9.04 of the Operating Agreement except the references to "NWPRA" shall be deemed as being as to SMART and the references to "NCRA" shall be deemed as being as to NWP.

K. "NCRA Passenger Service" shall mean, with respect to the Leased Premises and Option Premises, rail passenger excursion and regional intercity passenger service and, with respect to the Easement Premises, shall have the same meaning as the term "Permitted Passenger Service" in the Operating Agreement.

L. "NWPRA" means The Northwestern Pacific Railroad Authority, a dissolved joint powers agency, the rights and responsibilities of which were assigned to the Sonoma Marin Area Rapid Transit, ("SMART"), by the Memorandum of Understanding dated June 13, 2003.

M. "NWP Line" means the Northwestern Pacific Railroad Line encompassing the Easement Premises, Leased Premises, and Option Premises extending from SPT Milepost 63.40 near Lombard to NWP Milepost 302.90 near Samoa and NWP Milepost 295.57 near Arcata, including all branch lines.

N. "Operating Agreement" means the Operating Agreement For Northwestern Pacific Line, with exhibits, dated August 19, 1996 by and between NWPRA and NCRA.

O. "Option Premises" means the Eel River Block or the Humboldt Bay Block, if the option for such Block has been effectively exercised.

P. "Premises" shall mean the Leased Premises, the Easement Premises, or any Block the option for which NWP has been effectively exercised .

Q. "Railroad Owner" means NCRA as to the Leased Premises, and the Option Premises and SMART as to the Easement Premises.

R. "Railroad Property" means the Leased Premises, the Option Premises, and the Easement Premises".

S. "SMART" means the Sonoma Marin Area Rapid Transit, or to any agency succeeding to its rights and obligations

T. "STB" means the Surface Transportation Board, or such successor federal agency as may be established in the future for the purpose of regulating the railroad industry.

U. "Track" means all rail and fastenings, switches and frogs complete, ties, ballast and signals.

V. "Track Support Structure" means all appurtenances to the Track, including without limitation bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts and any other structures or things necessary for support or construction thereof, pavement, any crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities and crossing warning devices.

W. "Willits Block" shall have the same meaning as the "Leased Premises."

IV. Conditions

This Agreement is conditioned upon:

A. NCRA having obtained any necessary consents from Sonoma Marin Rail Transit "SMART") pursuant to Paragraph 16.04 of the Operating Agreement; together with the cancellation of the note dated April 18, 2001 in the sum of $250,000 and the reconveyance of the deed of trust of even date encumbering the Ukiah Depot property securing a loan for the improvement of the Haystack Bridge the cancellation and reconveyance being in accord with the First Amendment to Promissory Note dated February 5 2004,

B. NCRA and NWP having executed an Equipment Lease for all equipment being transferred to NWP in accordance with the terms of this Agreement.

C. NCRA having complied with the California Environmental Quality Act ("CEQA") as it may apply to this transaction.

D. NCRA having obtained any necessary approvals or having made any appropriate notifications concerning the Private Activity Tax Rules relating to property acquired with Proposition 116 Bond funds.

V. Conveyance of Premises

A. Easement Premises
NCRA assigns all of its interest in the Easement Premises to NWP in accord with the terms and conditions of this Agreement.

B. Leased Premises
NCRA Leases all of its interest in the Leased Premises to NWP in accord with the terms and conditions of this Agreement.

C. Option Premises
NCRA grants to NWP options to the Option Premises as described in this Agreement in accord with the terms and conditions of this Agreement for:

1. The Eel River Block
2. The Humboldt Bay Block

D. All of the Leased Premises, Easement Premises , and Option Premises that are conveyed by this Agreement from NCRA to NWP shall be used for railroad purposes unless NCRA and NWP agree in writing that specific properties are not needed to provide railroad service and may be leased to others. In that event, an independent real estate appraiser shall determine the fair market value of the property and an appropriate lease rate that is reasonably expected to reflect market conditions over the expected life of the lease.

E. Excepted from the conveyance above is:

1. The Passenger Easement granted by NCRA to NWPRA upon the Willits Block April 30, 1996, which easement was assigned by NWPRA to SMART;

2. The Grant of Easement for Passenger Rail Operations- Sonoma County for the operation of regularly scheduled passenger commute service, and intercity and intermittent or seasonal passenger service originating or terminating from points south of Healdsburg, including the right to effect improvements;

3. Any rock deposits upon property owned by NCRA. However, NCRA grants the right of extraction of such rock without royalty, provided that such rock is utilized for construction , rehabilitation, or improvement of any portion of the Northwestern Pacific Railroad Line, upon documentation of such use as may be in the future be agreed to in writing by and between the parties;

4. The reservation set forth in Article IX C herein.

VI. Term

A. This Agreement shall commence as of September 13, 2006 and continue for an initial term of five (5) years.

B. The NWP is granted the following options to extend the term of this Agreement for an additional term; (i) twenty (20 years commencing upon the expiration of the initial term, (the "First Option"); (ii) a twenty-five (25) year commencing at the termination of the First Option, (the "Second

Option"); (iii) a forty-five (45) year option commencing at the termination of the Second Option, (the "Third Option").

C. The foregoing options may be effectively exercised by the NWP by delivery of a written Notice of Exercise delivered to the NCRA in the manner provided herein for delivery of notices, at a time the NWP is in material compliance with the terms of this Agreement, no sooner that eighteen (18) months prior to the expiration of the then applicable term, and no later than twelve (12) months prior to expiration of the then applicable term.

D. Any notice of exercise of an Option shall be on the same terms and conditions as this Agreement, unless modifications are otherwise agreed to between the parties.

E. Notwithstanding the foregoing, as an Alternative Option, the NWP is granted during the initial term an option to extend the term of this Agreement for an additional term of ninety-nine (99) years commencing upon expiration of the initial term, which may be exercised by the NWP only at such time that the NWP has made private capital investment in the Northwestern Pacific Railroad Line in an amount equal to or greater than the higher of : (1) $10.5 Million; or (2) the aggregate amount of the investment of Proposition 116 funds or other public bond funds by the NCRA in the Northwestern Pacific Railroad Line as of the date of the commencement of this Agreement.

F. The Alternative Option may be exercised by NWP by delivery of a written Notice of Exercise delivered to NCRA in the manner provided herein for delivery of Notices, at a time NWP is in material compliance with the terms of this Agreement, together with documentation of NWP private capital investment in the amount required in subsection E.

G. For purposes of the Alternative Option, the following categories shall be considered "private capital investment:" (i) physical improvements to the Track or Track Structures; (ii) acquisition of railcars dedicated for use on the Northwestern Pacific Railroad Line; (iii) Acquisition of locomotives dedicated for use on the Northwestern Pacific Railroad Line; or (iv) investment in ancillary facilities which will contractually generate gross shipping revenues aggregating in excess of $10.0 million during the Initial Term.

H. The Alternative Option shall be on the same terms as this Agreement, except as to term, and as to term it will be ninety-nine (99) years without any other options.

I. Notice of exercise of an Option for the Eel River Block or The Humboldt Bay Block will be on the same terms and conditions as this Agreement, except that the term for any such exercise will commence immediately upon the NCRA's compliance with the California Environmental Quality Act ("CEQA") unless modifications are otherwise agreed to between the parties.

J. In the event of the exercise of an Option for the Eel River Block, or the Humboldt Bay Block, NCRA shall pursue compliance with CEQA, and NEPA if applicable, with due diligence and with the exercise of its best efforts.

VII. Rail Operations

A. NWP Line Restoration

The Parties agree that it shall be solely NCRA's responsibility to rehabilitate and restore all portions of the NWP Line to the Utility Levels specified in Section VIII. Until such Utility Levels have been achieved on each specified segment of any portion of the NWP Line, NWP shall have no obligation whatsoever to operate either rail freight service or rail passenger service on or to maintain that specific segment of any portion of the NWP Line. If, however, NWP elects to operate either rail freight service or rail passenger service over any portion of the NWP Line at a lesser Utility Level than is specified in Section VIII, then NWP must maintain that portion of the NWP over which rail operations will occur in accordance with the terms of this Agreement.

The Parties also agree that after the effective date of this Agreement, NWP may operate work train service over any portion of the NWP Line subject only to any required authorization by the Federal Railroad Administration, and that the operation of any work train service shall not be considered as either rail freight service or rail passenger service as those terms are used in this Agreement. For work train operations the insurance requirement set forth in Article XV I (1) (a) herein shall be relaxed to require a limit of $5

million in the place and stead of the stated requirements for $25 million limits.

B. Rail Freight Operations

1. After obtaining the necessary authority or exemption from the STB, NWP shall be the sole and exclusive provider of rail freight service to, from and across the Premises. Neither NCRA nor NWP shall grant to any third party any rights whatsoever to conduct rail freight operations on the Premises, without the prior, written consent of the other Party.

2. NWP shall not suspend or discontinue its operation as a common carrier over all or any part of the Premises without first applying for and obtaining from the STB and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approval or exemption from regulation for such discontinuance of operations over the Easement Premises, Leased Premises, or any optioned portion of the Option Premises or any portion thereof.

3. NWP shall not seek regulatory authority for suspension or discontinuance of its operations or take any action to suspend or discontinue its operations on the NWP Line without first receiving written concurrence from NCRA, which shall not be unreasonably withheld. However, the concurrence of NCRA shall not be required for a suspension or discontinuance resulting from an event of Force Majeure or a lawful embargo.

4. NWP may in its sole discretion enter into any commercial arrangement with any other company, including but not limited to transloading, joint railroad or highway transportation operations, car haulage, and the like; provided, however, no such commercial arrangement may adversely affect (i) commuter passenger services, intercity excursion or other passenger service on the Easement Premises or (ii) NCRA Passenger Services on the Leased Premises or the Option Premises.

5. NWP shall manage, control and dispatch all train operations on the Leased Premises and on the Option Premises and subject to the limitations below, upon the Easement Premises. In the event SMART establishes commuter passenger, intercity, excursion, or other passenger

transit operations on the Easement Premises pursuant to the Operating Agreement, NWP shall act as NCRA's agent to negotiate the Coordination Agreement pursuant to Paragraph 3.09 of the Operating Agreement with reference to all of the topics therein contained including but not limited to the assumption by SMART or its franchisee of maintenance and/or dispatching functions as defined in Paragraph 3.07 (b) of the Operating Agreement.

6. NWP shall manage, control and have sole authority to grant and schedule access by third parties to the Leased Premises and the Option Premises to the extent consistent with Section XI herein relating to Capital Projects, and to the extent consistent with the Operating Agreement, and as may be provided for in the Coordination Agreement to be negotiated between NCRA (with NWP as NCRA's agent) and SMART, to the Easement Premises.

7. In the event that SMART undertakes to provide commuter rail, intercity, excursion or other passenger transit operations on the Easement Premises pursuant to the Operating Agreement, as amended, either directly or through the designation of a passenger service operator, NCRA agrees to designate NWP as a party agent and as a party of interest in the Coordination Agreement that will describe in detail the respective rights and obligations of the Parties with respect to maintenance, capital expenditures, dispatching, scheduling of operations, environmental liability, taxes and other matters concerning the joint use of the Easement Premises. NWP shall be entitled to negotiate the Coordination Agreement for all provisions of the coordination agreement except as the coordination agreement committing NCRA to capital improvements, or to reimbursement for such improvements for which matters the written consent of NCRA is to be necessary, and it shall negotiate in good faith with SMART, keeping NCRA informed as to status of all such negotiations.

C. **Rail Passenger Service.** NWP shall be the sole and exclusive use of the Leased Premises, Easement Premises, and the Option Premises, to the extent effectively exercised, to provide NCRA Passenger Service originating or terminating from points north of Healdsburg, provided that these operations shall be subordinate to regularly scheduled commuter operations conducted on the Easement Premises if any, as provided for in the Operating Agreement ("Permitted Passenger Service"). Further, the Operating Agreement provides that neither NWP nor NCRA may use the

Premises for any other type of passenger service; provided, however, that the term "passenger service" shall not include the transportation of officers, employees or invitees of either NCRA or NWP or the use of equipment utilized for the transportation of such persons.

If, at any time after two years from the date that any portion of the NWP Line has been rehabilitated to the FRA Class specified in Section VIII, NWP has not proposed to NCRA to operate NCRA Passenger Service over that portion of the NWP Line, or NCRA has not accepted such proposal within sixty (60) days of such proposal, then NWP agrees to join with NCRA in issuing a Request For Proposals ("Passenger RFP") for such service and the parties agree to then accept and consider applications to operate NCRA Passenger Service over that portion of the NWP Line from third party operators who are financially and operationally qualified. The parties shall require that any contract with a third party operator provides for safe operations, will not adversely affect NWP's freight service operations, will provide adequate compensation to NWP as defined below , will provide insurance and indemnification of NWP in accordance with the terms of this Agreement and provide for the retirement of the $134,937 plus interest, franchise fee NCRA is contractually required to collect, payable in three annual installments.

The term "adequate compensation as used in the preceding paragraph shall be deemed to include, without limitation, the cost of locomotives; cars; train crews; engine crews; dispatching; track and track support structure maintenance; and property and liability insurance. It is the intent of the Parties that reimbursement to NWP shall reflect the principles for the direct assignment and separation of common expenses between passenger and freight service as promulgated by the STB in 49 CFR Part 1201 and 49 CFR Part 1242. NCRA shall not require that NWP accept any NCRA Passenger Service operation by another carrier over any portion of the NWP Line that is not then in active service by NWP, would not provide safe passenger train operations, would adversely affect NWP's freight service operations, would not provide insurance and indemnification in accordance with the terms of this Agreement, and would not adequately compensate NWP for any costs it would incur in accommodating such NCRA Passenger Service.

In the event that NCRA rejects a proposal from NWP for passenger service, such rejection shall be subject to the dispute resolution provisions of this agreement. NCRA may solicit third party operators during such dispute

resolution, but shall not accept any proposal from a third party operator so long as the dispute resolution is pending, and neither party has unnecessarily delayed such process.

D. NCRA reserves the right to require NWP to admit contractors upon the Leased Premises for purposes of performing capital projects, subject to Section XI relating to Capital Projects.

E. NCRA warrants that it has not granted rights to use the Easement Premises, Leased Premises, or Option Premises for rail operations to any third party except:

1. A lease Agreement with NWPY and NORCARE, which agreement terminated June 30, 2005;

2. A trackage rights agreement with California Northern Railroad relating to the Lombard-Schellville segment, which agreement both NCRA and California Northern Railroad consider to be terminated;

3. A trackage rights agreement with California Western Railroad dated March 11, 1999 relating to the use of Willits Yard.

VIII. Maintenance, Rehabilitation, and Level of Utility

A. NCRA has an interest in rehabilitating, restoring the level of utility and preserving the physical condition of the NWP Line to facilitate the further development of economical and efficient freight services and the eventual development of NCRA Passenger Services. As long as the Premises are exclusively used by NWP for rail freight service, NWP shall perform all Normalized Maintenance functions on the Premises at NWP's sole cost and expense, subject to the definition of "Normalized Maintenance" below. When NCRA Passenger Services are initiated, NWP shall perform all Normalized Maintenance functions for said NCRA Passenger Services on the Premises at the sole cost and expense of the operator of said NCRA Passenger Services, subject to the definition of "Normalized Maintenance" below. NCRA shall, however, bear all expense of storm damage repairs, rehabilitation and restoration of the level of utility of the Premises as defined in Subsection B, below.

B. The following specific principles and understandings shall govern NCRA's maintenance responsibilities:

1. The Parties acknowledge that the freight revenue stream generated historically by traffic moving on the NWP Line has been inadequate either to fund the Normalized Maintenance requirements of the NWP Line, or to maintain it to the FRA Track Classes specified in Paragraph (4) below.

2. As a result of the foregoing, the Parties agree that, during the Term of this Lease Agreement, including any extensions thereof, NCRA shall utilize its best efforts to (i) bear all expenses of rehabilitating and restoring the level of utility of the Easement, Lease, and Option Premises, (ii) bear all expense of repairing any present or future damage to the Easement, Lease, and Option Premises attributable to all forms of Force Majeure, including, but not limited to, natural calamity, and (iii) NCRA shall independently, and with the solicited assistance of SMART, seek to obtain potentially available public funds for the rehabilitation, restoration, and continuation of the level of utility of the Easement, Lease, and Option Premises (without detriment to similar needs of any part of the Premises). The foregoing notwithstanding, the parties understand and agree that any reasonable unreimbursed capital expenditure for the rehabilitation or restoration of the Premises borne by NWP shall be capitalized by NWP as a leasehold improvement and will be subject to recapture as provided in Section XII, provided however that prior to commencement of construction NWP receives NCRA's written concurrence, which will not be unreasonably or unseasonably withheld , and further provided, however, that NWP shall report to the NCRA not less than annually at the time of submitting its financial statement all such capitalized leasehold improvements made during the immediately preceding calendar year and shall have been designated in writing as a capitalized leasehold improvement when made pursuant to Section XI relating to privately funded Capital Projects.

3. NCRA commits that all available public funds which are, or may be, designated for rehabilitation, restoration, and improvement projects of the NWP Line shall be invested in the NWP Line in a timely and efficient manner.

4. It shall be solely NCRA's responsibility to use its best efforts to seek public funding to reopen, rehabilitate, restore, and continue the level of

utility of the NWP Line at the following FRA Classes in order to achieve the following minimum acceptable track standards ("Utility Levels"):

(a) Lombard – Ignacio Segment: FRA Class 3;
(b) Ignacio – Healdsburg Segment: FRA Class 3;
(c) Healdsburg – Redwood Valley: FRA Class 3;
(d) Redwood Valley – Willits: FRA Class 2; and
(e) Willits – Arcata/Samoa: FRA Class 3.

The Parties recognize and agree that actual track conditions and FRA Classes for most of the Premises do not meet these standards as of this date. NCRA shall use its best efforts to fund restoration of the Utility Levels set forth above. Prior to the commencement of rail operations on any portion of the NWP Line, NCRA and NWP shall make appropriate joint inspections of the Premises to document the actual condition and the FRA Classes of the Track and Track Support Structures.

5. Upon the commencement of rail operations on any portion of the NWP Line, NWP shall assume exclusive responsibility for performing (i) all Normalized Maintenance, (ii) all privately funded capital improvement projects, and (iii) and to the extent permitted by applicable law or regulation or exercise of regulatory authority, all disaster relief management and emergency repairs of damage sustained by the Premises as the result of natural disasters for and on behalf of NWP and the NCRA.

6. Accounting for maintenance of way expenditures must be performed in accordance with Generally Accepted Accounting Principles as consistently applied in the railroad industry and subject to any and all orders of the STB or other entity with jurisdiction over NWP's accounting. To the extent of any conflict between GAAP and orders of the STB, the policies and procedures of GAAP must apply.

C. In the event that NWP determines that it is not economical in consideration of traffic volumes on any portion of the NWP Line to perform Normalized Maintenance on such line segment, NWP may seek to suspend or discontinue service or embargo the line upon ninety (90) days of notice to NCRA. In the event that NWP obtains regulatory authority or exemption to suspend or discontinue service on any portion of the NWP Line, the standard of maintenance for such line segment(s) may be suspended by

NWP. In the event that NCRA unsuccessfully opposes such suspension or discontinuance of service it may terminate this Agreement as to any section or any portion of a section of the NWP line necessary in its sole discretion to restore service to the portion of the NWP line to which service has been suspended. In addition, to the extent that NWP lawfully and in good faith embargoes a portion of the NWP Line, the Normalized Maintenance obligations of NWP shall be suspended for so long as the embargo remains in effect.

D. Normalized Maintenance

1. For the purposes of this Lease Agreement, "Normalized Maintenance" is defined as the annual operating expenses necessary to preserve the Levels of Utility of the Track and Track Support Structures, as is reasonable and appropriate following restoration of the Track and Track Support Structures to the standards established in Paragraph 1(e) above, from the combined effects of actual freight railroad usage and the passage of time, excluding any effects of Force Majeure events. Excluded from the definition of Normalized Maintenance specifically are those costs actually reimbursed to NCRA by the Federal Emergency Management Administration ("FEMA"), or the Governor's Office of Emergency Services, "(OES").

2. Normalized Maintenance for NCRA Passenger Services shall be the obligation of, and paid for by, the third-party operators, and performed by NWP. During the Term hereof, all NCRA contracts for the operation of NCRA Passenger Services shall provide for a reasonable roadway maintenance expense and capital expenditure recovery in such amounts as agreed between NCRA, NWP, and the third party operators, in accordance with the principles and costing methodology promulgated by the STB in 49 CFR Part 1201 and 49 CFR Part 1242.

3. As long as the Premises are exclusively used for rail freight service by NWP and NCRA Passenger Service by, or on behalf of, NCRA, NWP shall perform any and all work required by lawful authority in connection with maintenance and operation of the Track and Track Support Structures, including but not limited to roadway, bridges, and tunnels on the NWP Line, and all additions thereto; provided, however, payment for all expenses in excess of Normalized Maintenance shall be solely the responsibility of NCRA. All work required for passenger services by lawful authority in connection with maintenance and

operation of the Track and Track Support Structures on the Easement Premises, and all additions thereto, shall be performed at the sole expense of NCRA or its third party passenger operator.

E. Upon commencement of rail operations on any portion of the NWP Line authorized by the Federal Railroad Administration, NWP shall assume exclusive responsibility for providing all ordinary and normalized maintenance on such portion of the NWP Line and only on those portions of the NWP Line that NWP operates.

F. As to the Leased Premises including any portion of the NWP Line for which an Option has been exercised, NCRA shall own, and as to the Easement Premises, SMART shall own, all fixtures, improvements, and materials added to the Track and Track Support Structures unless otherwise agreed to in writing by NCRA or SMART as the case may be. Materials removed from the Track and Track Support Structures shall to the extent not prohibited by law, or agreements to which NCRA is a party, become the property of NWP provided that such materials are replaced by NWP. No rail or other material utilized for railroad operations shall be replaced with lesser weight or size rail or material without the prior written consent of NCRA or SMART as the case may be. However, nothing contained herein shall prohibit NWP from making emergency or other temporary repairs with lesser weight or size rail or other inferior materials provided that with respect to the Easement Premises, SMART consent is first obtained and with respect to the Leased Premises, NCRA consent is first obtained, and permanent repairs are made within a reasonable time thereafter and that such permanent repairs comply with the standards set forth in this Paragraph.

G. NWP shall comply with all laws affecting the Premises or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer, or permit any act upon the Premises in violation of law; and shall do all other acts which from the character or use of the Premises for rail freight and permitted passenger operations may be reasonably necessary, the specific enumeration herein not excluding the general.

H. Inspection of Premises

1. NCRA shall have the right at any time, upon reasonable advance notice (except for emergencies, where no notice is required) and from time to

time to inspect the Premises for conformity with the maintenance standards of this Agreement and to verify compliance with this Agreement; provided, that such inspections shall not unreasonably interfere with NWP's freight operations.

2. If, and when, SMART exercises its rights pursuant to the Operating Agreement to inspect the Easement Premises at any time, upon reasonable advance notice (except for emergencies, where no notice is required), and from time to time to inspect for conformity with the standards of maintenance contained in the Operating Agreement and to verify compliance with the Operating Agreement, then NWP shall grant access to the Easement Premises, provided, however, that such inspections shall not unreasonably interfere with NWP's freight service operations or any Permitted Passenger Service operations.

I. Maintenance Records and Documentation

1. NWP shall maintain full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Premises and shall maintain track profiles and track charts in a current condition so as to disclose and show all program maintenance and rehabilitation performed on the Track and Track Support Structures, together with all crossings permitted by NWP (the Track Charts"). NCRA shall have the right at all reasonable times and places to inspect such records and Track Charts. Copies of records and track charts shall be provided by NWP to NCRA promptly upon request.

2. NWP shall provide copies of all reports of track inspections by Federal Railroad Administration ("FRA") or California Public Utilities Commission ("CPUC") inspectors to NCRA as to the Leased Premises and to SMART as to the Easement Premises promptly upon receipt of said reports; the term "reports" shall include all notices or citations alleging deficiencies from FRA track standards.

3. NWP shall annually submit its maintenance plan and budget (the "Maintenance Plan") to NCRA for consideration and consent of NCRA on or before the March meeting of the Board of Directors of NCRA, such consent not to be unreasonably withheld by NCRA. The Maintenance Plan shall be in sufficient detail to enable NCRA to meet its contractual requirements to SMART set forth in the Operating Agreement.

J. NWP shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or would materially interfere with the continued commercial, industrial or transportation corridor uses of the Premises. In using the Premises, and in constructing, maintaining operating and using the Track and Track Support Structures, NWP shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations or any governmental body having jurisdiction, including, but not limited to, building and zoning ordinances regulating the occupancy, use or enjoyment of the Premises or regulating the character, dimensions or location of any Track and Track Support Structures on the Premises, subject to such exemptions from jurisdiction as may be set forth in the Interstate Commerce Commission Termination Act of 1995, 49 USC 10500 et seq. Nothing herein shall diminish by this Agreement any rights under law or regulation to which NWP is entitled as a railroad providing common carrier service on any portion of the NWP Line.

K. Subject to the provisions hereof, NWP may construct or relocate sidetracks or industrial spur tracks on the Leased Premises and Option Premises (and upon the Easement Premises upon written consent of SMART) as required in the ordinary course of business so long as such work is done in conformity with applicable governmental regulations. Sidetracks or industrial spurs in place on the Leased Premises as of the effective date of this Agreement may not be removed from the Leased Premises without consent of NCRA, which consent will not be unreasonably withheld and in the event any tracks are removed and track materials sold for salvage, the net proceeds (after removal costs) of such sale shall belong to NCRA, or SMART as the case may be, unless otherwise agreed to in writing; provided that NWP may remove sidetracks and industrial spurs it installs, and retain the proceeds from the sale of such materials, without obtaining the prior consent of NCRA.

L. **Transfer of Road Inventories**

On the effective date of this Agreement, NCRA shall transfer possession and convey by itemized written description all of its equitable interests and title in and to all inventories of (i) track, signal, communication and other roadway materials, parts and supplies of every kind or description, and all other consumable roadway supplies of every kind whatsoever, wherever situated on the Leased Premises or the Option Premises (collectively, the "Roadway Inventories") to NWP and (ii) all freight car, locomotive,

vehicles, maintenance machinery, and roadway equipment parts and supplies to NWP, subject to the following understandings:

1. NCRA may reserve from the transfer any Roadway Inventories acquired for a specific capital project, including without limitation the signal equipment acquired by NCRA in November 2005 , and also any property acquired with bond funds shall be conveyed unless and until any necessary consent of the California Transportation Commission is obtained.

2. Transfer and conveyance of NCRA's title and interests in the Roadway Inventories to NWP is subject to any and all lawful, surviving property rights of every local, state or federal governments, including SMART's passenger rail easement over the Willits Block and of all public agencies, with jurisdiction over the NCRA or SMART and such surviving property rights, if any, (the "Public Property Rights") shall survive transfer of the Roadway Inventories to NWP and shall become an obligation of NWP that is subject to the general indemnification of NCRA and SMART by NWP given in Section XV infra;

3. Subject to reservation of the Public Property Rights described in the immediately preceding subsection, NWP may use the Roadway Inventory only for publicly funded maintenance, rehabilitation, and improvements to the Leased Premises;

4. Any Roadway Inventory applied to Normalized Maintenance or other privately funded improvement projects shall be promptly replaced in kind by NWP; and

5. The signal crossing sets now stored at the Cloverdale Maintenance Facility shall remain at such facility pending a Capital Improvement program for replacement of the Signal Systems as contemplated by the Initial Capital Project described in the Capital Project Agreement at which point the possession of such signal systems shall be delivered to the contractor selected for the Signal Replacement Capital component of the Initial Capital Project.

6. NWP shall maintain, and preserve for inspection by NCRA and/or SMART, for a minimum of three (3) years, records, reports and supporting documentation of the transfer, use and replacement of the Roadway Inventories.

IX. Consent Decree Compliance

A. The parties acknowledge that NCRA has provided NWP with a copy of the Consent Decree and Stipulated Judgment entered on July 14, 1999 in the matter of Hight vs. NCRA, Mendocino Superior Court Case # CV80240.

B. NWP must comply with the following Paragraphs of the Consent Decree: 3-7; 10-18; 20-21; 23; 25-26; 32-33; 37; and 52.

C. To comply with Consent Decree Paragraph 22, and prior to commencement of operations, NWP shall provide training to all employees involved in the management or handling of hazardous wastes as required by 22 Cal. Code of Regulations 66265.15(a); deliver to NCRA records of all required employee training specified in 22 Cal. Code Regulations 66265.15(d)(4); provide a complete list of the job titles, job description, job duties and required training for all employees who manage or handle hazardous waste as specified in 22 Cal Code Reg 66265.15(d)(1),(2),(3) along with the name of the individual assigned to each position. NWP shall assign an officer to be responsible for environmental compliance at any maintenance facility operated by NWP, and shall require such officer to attend Modules 1 through 4 of the California Compliance School given by the California Community Colleges Foundation, or such substitute training as NCRA may approve.

D. Prior to commencement of any rail operations, NWP shall provide the documents required by Consent Decree Paragraph 24 to NCRA. NWP shall be in compliance with Consent Decree Paragraphs 27-28 as of the date of commencement of operations. Within sixty (60) days after the commencement of operations in or through Willits, NWP shall comply with Consent Decree Paragraphs 29-30.

E. In the event that NWP exercises the Option contained herein for the Humboldt Bay Block, NWP shall comply with Consent Decree Paragraph 31.

F. Prior to the commencement of operations on any Block of the NWP Line NWP shall meet and confer with NCRA as to the status of compliance with the provisions of this Paragraph. Thereafter, NWP shall provide NCRA

with a written Report upon its compliance with the Consent Decree on the first day of each quarter.

X. Lease Payments Fund

A. Structure of the Fund

1. The purposes of the NCRA/NWP Lease Payments Fund ("Fund") shall be to accept the required annual lease payments from NWP, to disburse to NCRA the required annual Administrative Payment, to make emergency and other repairs, to make capital improvements to the NWP Line, and for any other purposes, including the payment of the costs of litigation, that are agreed-upon by the parties which are intended to preserve and protect the capability of the NWP Line to provide continuing rail service over all or any portion of the NWP Line.

2. The Fund shall be jointly administered by the Executive Director of NCRA and the President of NWP, or their designees. The NCRA and NWP administrators must agree in writing to any withdrawal from the Fund except for the agreed-upon required Administrative Payment in any year.

3. The primary duties of the joint administrators shall be to authorize withdrawals from the Fund, to safeguard the monies in the Fund, to invest the monies in the Fund in authorized securities, and to maximize the Fund's earnings from such investments.

4. The Fund shall be held in a segregated account in an established and reputable bank or brokerage firm.

5. The parties agree that all of the Section 130 funds received by NCRA for grade crossing warning system maintenance shall be paid to NWP by NCRA as reimbursement for providing such grade crossing warning system maintenance and are not Lease Payment contributions or withdrawals to be made to or from the Fund.

B. Contributions to the Fund

1. NWP shall make annual Lease Payments in the amount of 20% of its Net Income, as determined by STB and GAAP accounting principles,

commencing in the first year after NWP has generated positive Net Income in excess of $5.0 million, subject to the Maximum Required Balance.

2. NCRA agrees to grant to NWP the exclusive rights to manage, develop, lease, and otherwise control all of the property owned by NCRA that is not used to provide railroad service. All real estate Lease Revenues received by NWP that are derived from all property owned by NCRA and leased by NWP that is not used to provide railroad service but is leased to others shall be paid to NCRA annually, subject to the maximum annual Administrative Payment requirement, as reduced by the total of all of NCRA's income from other sources (as defined in Subsection C.1).

3. NWP may make advance Lease Payments in any amount to the Fund in any year before NWP has achieved positive Net Income. All such advance Lease Payments shall be credited so as to reduce NWP's required annual Lease Payments in future years, on a dollar-for-dollar basis. Either a portion or all of such advance Lease Payments may be paid to NCRA as Administrative Payments.

4. The Maximum Required Balance that may be maintained in the Fund at the end of any fiscal year is $20.0 million, adjusted for inflation.

5. When the Maximum Required Balance of $20.0 million of unobligated funds is held in the Fund as of June 30 of each year, NWP shall not be required to make a Lease Payment for that July 1 – June 30 fiscal year.

C. Withdrawals from the Fund

1. The Fund shall make maximum annual Administrative Payments to NCRA of $1.0 million per year, adjusted for inflation. The maximum annual Administrative Payment to be paid to NCRA shall be reduced by the total of all of NCRA's income from other sources, including but not limited to its income from real estate leases and fees, easements, crossing fees and charges, proceeds from the sale of its assets, and its boxcar lease, which the parties calculate at this time to total about $500,000. However, unbudgeted administration fees funded by FEMA or the Governor's Office of Emergency Services, or any other source dedicated for administration of specific projects, shall not cause reduction of the maximum annual Administrative Payment. When the

parties agree that management of NCRA's real estate and crossing leases and fees, its leased box cars, and other sources will be transferred to NWP, then the Fund's obligation to pay to NCRA shall increase to the maximum annual Administrative Payment of $1.0 million per year, adjusted for inflation as provided in Section D below.

2. The Fund shall distribute the annual Administrative Payment to which NCRA is entitled in monthly amounts that have been agreed upon by the parties.

3. The use of Administrative Payments shall be restricted to payment for those goods and services incurred during the term of this agreement that are used and necessary for the administration of NCRA, have been included in NCRA's budget, and have been approved by the NCRA Board of Directors.

4. When withdrawals from the Fund are made for emergency or other repairs, for capital improvements, or for any other purposes for which the parties expect NCRA to be reimbursed, the parties shall, at the time of the withdrawal, enter into an agreement that specifies the expected dates that reimbursement of NCRA and the Fund shall occur and the business arrangements by which NWP's contributions to the Fund shall be reduced during the time period when reimbursement is pending.

5. Upon termination of this Agreement for any reason, the balance of funds held in the Lease Payment Fund shall be distributed to NWP.

D. Adjustments for Inflation

1. The Maximum Required Balance in the Fund of $20.0 million and the maximum annual Administrative Payment from the Fund to NCRA of $1.0 million shall be adjusted for inflation every third year commencing from the date of this Agreement.

2. The adjustment for inflation shall be made using the Rail Cost Adjustment Factor (RCAF-Adjusted), adjusted by the productivity adjustment factor, as determined by the STB and published as a part of the AAR Railroad Cost Indexes.

3. The adjustment shall be calculated for the calendar Base Year 2006 as the arithmetic average of the RCAF (Adjusted) for the four quarters, Q-

1 through Q-4.

4. The adjustment for inflation shall be calculated by comparing the RCAF (Adjusted) for the 2006 Base Year with the RCAF (Adjusted) in every third year. To illustrate, the calendar Year 2009 RCAF (Adjusted) would be compared to the Base Year 2006 RCAF (Adjusted) in order to calculate the adjustment for inflation that would be applicable for the three years 2010 – 2012.

5. At no time shall the application of the adjustment for inflation reduce the Maximum Required Balance below $20.0 million nor shall it reduce the maximum Administrative Payments below $1.0 million per year.

E. Renegotiation Related To Diminution Of Public Funding

NCRA and NWP shall use all good-faith efforts to draw down public funds currently allocated for the benefit of capital improvements to the railroad, including, but not limited to, environmental remediation, track repair, signal repair, stabilization of roadway, etc. and to seek such further public funding as may be required to reinstate and improve service on the line. In the event public funding, for whatever reason, is not forthcoming so as to render operation of the NWP Line economically infeasible, or in the event public funds are made available so as to render operation of only some sections of the Line economically feasible, then, upon Notice given to the NCRA Board by NWP, the parties hereto shall renegotiate the provisions of this Section and adjust the payments required to be made by NWP commensurate with such diminution of public funding. No such renegotiation shall be Noticed or take place within the first two years of this Contract.

XI. Business Arrangements as to Capital Projects

A. All Capital Projects

1. Recitals

(a) Restoration and enhancement of service as contemplated by this agreement will require substantial rehabilitation of the NWP Line, and its signals and structures.

(b) Rehabilitation will require the integration of functions by the parties who each enjoy different roles and objectives in project implementation:

(1) NCRA has the responsibility to ensure that public funds are utilized for their intended purpose in an efficient and effective matter, and to ensure the serviceability of the railroad;

(2) NWP, as the Operator, is obligated by its Certificate of Convenience and Necessity (as granted by the STB) to provide safe, adequate, and efficient facilities and service;

(3) A "Railroad" as defined by the Federal Railroad Administration, NWP is the Operator responsible for complying with all FRA and CPUC safety regulations including 49 CFR Parts 209 through 240, Parts 171.15, 172.7 and 174, and the National Grade Crossing Inventory), as well as all current, applicable California Public Utilities Commission General Orders, including GO 26D, 72-B, 75-C, 95 and 118;

(4) As the designated Operator, NWP has the responsibility to ensure that capital projects effectively implement its Business Plan in terms of promoting safe, efficient, and reliable service over the long-term;

(5) The contemplated application of public and private funding or financing to implement these responsibilities will require joint project planning, contract award, contractor supervision and inspections, and acceptance of all contractor work;

(c) It is the intention of the parties to utilize "value engineering" as that term is utilized in Federal Regulations, specifically 49 CFR 18.36(b)(7), to provide for the provision of construction project contract items or tasks at the overall lowest cost.

2. Consultation Between the Parties

(a) The parties shall consult with each other frequently and prior to the finalization of the definition and scope of each Capital Project ("the Work");

(b) The parties shall consult with each other prior to the finalization of the sources and uses of funds for such Capital Project;

(c) The parties shall consult with each other prior to the environmental clearance by NCRA of the scope for each Capital Project;

(d) The parties shall consult with each other prior to the finalization of the specifications and contractual documents for each Capital Project; and

(e) The parties shall consult with each other from time-to-time throughout the duration of each Capital Project.

3. Access to NWP Property by Third Parties

Because it controls the movement of trains over and maintains the rail Line, NWP shall exclusively coordinate and oversee the physical access to, and railroad operations on the Line, provided that NCRA and its agents shall have the right to enter upon any portion of the Line or grant entry to NCRA's contractors and agents, subject to compliance with NWP's operating and safety rules in effect. NCRA will grant entry to third parties to enter upon the Line, subject only to compliance with the operating and safety rules in effect and to appropriate indemnities for NCRA and NWP. Third parties shall sign a standard right of entry permit agreement in a form to be provided by the NCRA. NCRA shall provide to NWP reimbursement as provided herein for all requested services, including engineering, flagging, inspection, training and other services rendered in connection with access granted by NCRA to the Line by third parties. Such reimbursement shall be limited to the rates and charges agreed to by NCRA and NWP on an annual basis to uniformly apply for such services, with NCRA and NWP having the mutual duty each year to meet and confer in good faith for the establishment of such reimbursement rates and charges in accordance with the terms and conditions of the Capital Project Support Services provision in this Section.

B. Publicly Funded Capital Projects

1. NWP Approval of Plans

   Prior to commencing construction of any publicly funded Capital Project, NCRA shall submit to NWP for its approval, reasonably detailed plans and specifications for such improvements, together with proposed dates upon which NCRA expects to begin and end such construction. NWP shall not unreasonably withhold its consent to such plans and specifications, or construction dates, and shall be deemed to have consented thereto unless NCRA is given written notice disapproving the plans or specifications, or construction dates, within 30 days after such matters have been submitted to NWP. Any disapproval shall set forth in reasonable detail the reasons therefore.

2. All Capital Projects undertaken hereunder shall be accomplished substantially in accordance with the approved plans and specifications and timetable. All work undertaken by NCRA shall be accomplished in a manner which does not interfere in any material way with NWP's passenger and freight service.

3. Supervision of Work

   (a) During the construction of the publicly funded Capital Project, supervision of the project shall be bifurcated.

   (b) NCRA (acting by and through its Executive Director, Project Engineer, and On-Call Engineer) shall have the sole responsibility for ensuring compliance with the provisions of all contract conditions and obligations, including compliance with contract specifications, and including, but not necessarily limited to:

      (1) Compliance with permit conditions;
      (2) Compliance with the Consent Decree;
      (3) Compliance with any applicable Fund Transfer Agreements;
      (4) Coordination with other governmental entities with contractual jurisdiction over the Work, including but not limited to SMART;
      (5) Defining the final project scope and content to be submitted to the funding agencies;
      (6) Writing project specifications;

(7) Soliciting bids;
(8) Awarding contracts and issuing the Notice to Proceed to the contractor;
(9) Overseeing contractor construction;
(10) Managing/monitoring detailed project documentation;
(11) Preparing reimbursement requests to public agencies, with supporting documentation;
(12) Monitoring public agencies' reimbursement process; and
(13) Making payments to contractors.

(c) NCRA shall consult with the NWP as to:

(1) Project concept

(2) Coordination with regulatory agencies with authority to approve project performance; and

(3) Consideration of the qualifications, reputation, and capabilities of its proposed contractors.

(4) Consideration and approval of contractor requests for Change Orders; and

(5) Consideration and approval of contractor requests for interpretation of the construction contract or its specifications.

3. Acceptance of Work

(a) NCRA and NWP shall have joint responsibility for final inspections of the work;

(b) NCRA shall have the sole responsibility for the issuance of a Notice of Completion and the final acceptance of the work; and

(c) NWP shall have the sole and exclusive responsibility to accept into railroad service any completed work. NWP may reject any completed work that does not comply with its construction standards, is of poor quality materials, or does not comply with NWP, FRA, or CPUC safety standards.

4. NWP Invitation to Bid

NWP may be invited to submit bids for construction work in accordance with project specifications, so long as NWP has not participated in the preparation of such project specifications. Said work may include, but is not limited to: engineering services, project planning and scoping, track inspection, cross-tie replacement, grade crossing repairs, track surfacing, rail line maintenance, switch tie replacements, rail replacements, turnout/crossover renewals, and the like. Unless invited to do so by NCRA, NWP may not participate in bidding for any construction work contemplated herein directly by it or indirectly through any related entity.

5. Public Funding Requirements

The following provisions shall apply to any such work awarded to NWP under Section XI utilizing Traffic Congestion Reduction Program funds:

(a) All work shall be accomplished in accordance with the applicable provisions of Public Utilities Code, the Streets and Highways Code, the Government Code and other applicable statutes and regulations.

(b) Project related travel and subsistence and travel expenses of NWP claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid State employees under current State Department of Personnel Administration (DPA) rules.

(c) NWP shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project together with the cost of administering the project. In doing so NWP shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion and provide support for reimbursement payment vouchers or invoices. NWP shall retain all accounting records and supporting papers for a minimum of three years from the date of final payment from the State, and such records shall be held open to inspection and audit by representatives of the State, the California State Auditor, and upon request copies of such records

shall be furnished by NWP to the NCRA, the State, or both of them.

(d) NWP agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition System, Chapter 1, Part 3 et seq. shall be used to determine the allowability of individual project costs items, and that NWP shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(e) In the performance of such work NWP shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religions creed, national origin, physical disability (including FUV and Aids, mental disability, medical condition, including cancer, age, marital status of family care leave. Furthermore, NWP shall insure that the evaluation and treatment of employees and applicants for employment are free from such discrimination and harassment. NWP shall comply with the provisions of the Fair Employment and Housing Act, Government Code section 12900 et seq., and the applicable regulations promulgated thereunder including but not limited to California Code of Regulations, Title 2, Section 7285.0 et seq.

(f) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a)-(f) and the provision s of California Code of Regulations, Title 2, Chapter 5, Division 4 shall be deemed incorporated into any such contract by reference and made a part thereof as if set forth therein in full.

(g) NWP shall give written notice of its obligations under this paragraph to labor organizations with which it has a collective bargaining agreement or other agreement.

(h) NWP shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of

California designated by the State for the purpose of investigation to ascertain compliance with the provisions hereof.

(i) NWP shall pay all workers employed on the project not less than general prevailing wage rates predetermined by the Department of Industrial Relations.

(j) NWP shall include the provisions of subparagraphs A-I inclusive in all contracts with any subcontractors performing work for the project.

For any projects funded by the federal government, including without limitation, the ISTEA program, all of the foregoing requirements will be applicable, plus any requirements peculiar to the federal program requirements. For such projects, where the provisions of TCRP conflict with the federal requirement, the federal requirement shall prevail.

6. NWP Capital Project Support Services

(a) Definition of Capital Project Support Services

NWP shall perform Capital Project Support Services. NWP shall be employed either as a contractor to NCRA or as a sub-contractor to NCRA's On-Call Engineer and shall be compensated for its Project Support Services by the contracting entity. Such Project Support Services shall be furnished on an as-needed basis in accordance with Work Directives issued by NCRA. A Work Directive is an agreed-upon document issued by NCRA that requires the NWP to perform specified Project Support Services. Ongoing projects, other than ordinary maintenance, to improve and modernize the NWP's signal and communications system as well as track work, civil work, engineering, and any other work on the Line may require such Project Support Services. A representative listing of Project Support Services is as follows:

(1) Providing engineering services that cannot be provided solely by NCRA's On-Call Engineer which are judged by NCRA to be of value in any aspect of a Capital Project, with specific reference to compliance with the requirement to use value engineering;

(2) Providing engineers, managers, and technical specialists to assist in project planning and scoping, construction staging and operations, and managing all aspects of construction work windows;

(3) Furnishing flagmen and inspection and repair crews for construction projects;

(4) Providing specialized rail equipment with qualified operators to support construction work;

(5) Identifying, marking and performing minor protection and relocation of underground signal and communications cables;

(6) Providing access to signal house, signal case, and all other signal facilities for outside contractors;

(7) Providing inspection, minor repair, and defect correction services;

(8) Performing minor track, signal, bridge and station projects;

(9) Providing training, testing, and rules qualification to NCRA staff and other NCRA contractors;

(10) Organizing and coordinating site specific work plans and performing inspection of contractor work sites, and performing inspections of contractor work in progress;

(11) Furnishing train and engine crews and locomotives to operate work trains; and

(12) Assuring that up-to-date signal plans, as provided by NCRA, are in all signal equipment shelters.

(b) Compensation

(1) Mobilization/Start-Up Regarding Support Services. NCRA will pay NWP its verifiable and actual Direct Costs incurred by NWP which, to the satisfaction of the NCRA, have been

adequately documented as costs associated with NWP's approved Mobilization, Transition, and Start-up Plan with regard to Project Support Services. In addition to reimbursement of its Direct Costs, the NWP shall receive payment of its corresponding General and Administrative Overhead costs, plus a reasonable Mobilization Fixed Fee to be negotiated on a project-by-project basis.

(2) Work Directives. NCRA may issue a Work Directive to the NWP at any time, and NWP shall provide the Project Support Services specified by the Work Directive on an on-call basis. NWP shall establish reasonable rates for the provision of FRA qualified train crews, work train equipment (cars and locomotives) where required, dispatching services, and flagging and other construction Project Support Services. Such rates shall be equally available to all potential construction contractors for the provision of like services. Unless specifically negotiated by NCRA and NWP to the contrary, NWP shall be compensated for each Work Directive as set forth below:

(a) Labor, Materials, Equipment, and Incidental Costs. For each Work Directive, NWP will be paid for its reasonably incurred labor costs (including fringe benefits and injury costs), materials, equipment and incidental costs at the unit rates set forth in NWP's Proposal for the Work Directive.

NWP may use consultants, and to the extent that NWP utilizes consultants to provide Project Support Services, their allowable total hourly rates shall be approved by NCRA and shall not exceed the total hourly rates for comparable classifications of NCRA's On-Call Engineering personnel, including all components of direct labor, fringe benefits, overhead and general administration, and fixed fees.

The maximum rental or lease rate for equipment shall not exceed the monthly ownership and hourly operating costs provided in the Blue Book for Railroad Equipment, most current edition, or the prices furnished

in NWP's Proposal for the Work Directive, whichever is less, provided, however, that in no event will NWP be required to furnish equipment hereunder at prices which do not, at a minimum, equal NWP's Direct Costs of such equipment, plus applicable General and Administrative Overhead Costs and Fixed Fees.

When utilizing the *Blue Book*, the hourly ownership rate shall be determined by utilizing the appropriate monthly rate and dividing by 176. Added to this hourly rate will be the estimated hourly operating cost plus the rate for any attachments. The rate adjustment table will be applied for machine age differences; for standby rates (where equipment is on the job and available for work but not working), the rate will be established as the adjusted monthly rate multiplied by 0.65 and assuming not more than 176 hours worked per month. Rental time will not be allowed while equipment is inoperative due to breakdowns.

During the process of each Work Directive, the NWP shall carefully account for and monitor its incurred costs in the performance of the work.

For each Work Directive, the NWP shall keep full and complete records of the cost of that work and shall submit those records to the NCRA on a monthly basis. NWP's failure to maintain daily accounting records shall be a valid basis for NCRA's rejection of NWP's request for additional compensation.

NCRA, in its sole discretion, may decide that it would be in the best interests of both NCRA and NWP to arrange for NWP to perform work specified by a Work Directive on a stipulated sum or unit price basis. In such event, the parties will conduct good faith negotiations in an attempt to reach a mutual agreement concerning a fair and equitable means of compensation for the Work Directive at issue.

(b) General and Administrative Overhead Costs. In addition to compensation for labor, materials, equipment, and incidental costs reasonably incurred with respect to each Work Directive, NCRA will pay NWP for its General and Administrative Overhead Costs associated with such expense.

General and Administrative and Overhead costs represent those general functions which are not directly identifiable to provision of the Project Support Services, but are, nevertheless, necessarily incurred by NWP for the provision of the Contract Services. Such general functions may include but are not limited to financial and accounting, contract administration, information systems, insurance, crew dispatching, operations and maintenance management, and railroad liaison.

Costs included in the General and Administrative and overhead category shall be permitted as allowed under Contract Cost Principles and Procedures, 48 CFR Federal Acquisition Regulations System, Chapter 1, part 31 et seq. Any costs for which payment has been made to NWP that are determined by subsequent audit to be unallowable under 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," are subject to repayment by NWP to NCRA.

(c) Fixed Fee Per Work Directive. For each Work Directive, NCRA will pay a Fixed Fee for the work covered by the Work Directive. The Fixed Fee percentage shall not exceed the Fixed Fee percentage negotiated with NCRA's On-Call Engineer, and shall be subject to concurrence by any and all of the agencies from which NCRA receives funding for projects carried out under the Work Directive process described herein. In cases where such concurrence is not forthcoming, NCRA and NWP will negotiate a Fixed Fee which complies with any funding agency's requirements or directive related thereto.

Except as provided for immediately above, the percentage for Fixed Fee shall remain constant as applied to the compensation for Project Support Services during the entire term of the Work Directive.

(d) Extra Work. For Extra Work that is not covered by the above methodology, NWP shall be compensated either on a cost-plus-fixed fee, a not-to-exceed ceiling, or a Fixed Price basis, at the sole discretion of NCRA.

C. NWP Funded Capital Projects

1. NCRA Approval of Plans

Prior to commencing construction of any NWP funded Capital Project, NWP shall submit to NCRA for its approval, reasonably detailed plans and specifications for such improvements, together with proposed dates upon which NWP expects to begin and end such construction. NCRA shall not unreasonably withhold its consent to such plans and specifications, or construction dates, and shall be deemed to have consented thereto unless NWP is given written notice disapproving the plans or specifications, or construction dates, within 30 days after such matters have been submitted to NCRA. Any disapproval shall set forth in reasonable detail the reasons therefore. All Capital Projects undertaken hereunder shall be accomplished substantially in accordance with the approved plans and specifications and timetable.

NWP shall, in submitting request for approvals, designate any such portion of the work it considers to be a capital project to be paid for by the Lease Payment Fund and/or for which it would be entitled to reimbursement under Subsection B of this Section. Within thirty days of the completion of the work, NWP as a condition for receiving either payment from the Lease Payment Fund or reimbursement pursuant to Section B shall certify the costs incurred for such project in accordance with GAAP.

2. Supervision of Work

(a) During the construction of the NWP funded Capital Project, supervision of the project shall be bifurcated.

(b) At the request of NWP, NCRA (acting by and through its Executive Director, Project Engineer, and On-Call Engineer) shall diligently and expeditiously execute on NWP's behalf any of its responsibilities that cannot be assumed by NWP for ensuring compliance with any of the public agency related provisions of all contract conditions and obligations, including compliance with contract specifications, and including, but not necessarily limited to:

(1) Compliance with permit conditions;
(2) Compliance with the Consent Decree;
(3) Coordination with other governmental entities with contractual jurisdiction over the Work, including but not limited to SMART.

(c) NWP shall have the sole responsibility for:

(1) Defining the final project scope and content;
(2) Writing project specifications;
(3) Soliciting bids;
(4) Awarding contracts and issuing the Notice to Proceed to the contractor;
(5) Overseeing contractor construction;
(6) Managing/monitoring detailed project documentation; and
(7) Making payments to contractors.

(d) NWP shall consult with the NCRA as to:

(1) Project Concept

(2) Coordination with regulatory agencies with authority to approve project performance; and

(3) Consideration of the qualifications, reputation, and capabilities of its proposed contractors.

(4) Consideration and approval of contractor requests for change orders; and

(5) Consideration and approval of contractor requests for interpretation of the construction contract or its specifications.

3. Acceptance of Work

(a) NCRA and NWP shall have joint responsibility for final inspections of the work;

(b) NWP shall have the sole responsibility for the issuance of a Notice of Completion and the final acceptance of the work; and

(c) NWP shall have the sole and exclusive responsibility to accept into railroad service any completed work. NWP may reject any completed work that does not comply with its construction standards, is of poor quality materials, or does not comply with NWP, FRA, or CPUC safety standards.

D. Jointly Funded Projects

For all capital projects that are jointly funded by NWP with private funds and by NCRA with public funds, the parties agree to assign rights and obligations in accordance with the provisions of this section.

XII. Termination

A. This Lease Agreement may be terminated as follows:

1. By NWP:

(a) Upon not less than forty-five (45) days' written notice to NCRA, following NWP's obtaining all necessary regulatory approvals or exemptions to permit NWP to discontinue rail freight operations in accordance with Section VII.

(b) Pursuant to Section XIII; and

2. By NCRA pursuant to Section XIII.

B. In the event of expiration or termination of this Lease Agreement, NWP shall vacate the Leased Premises in an orderly manner and shall provide all hard copy and electronic data and documentation related to the leased premises such as property lease information, equipment inventory, and pending design or construction documents.

C. NWP may cancel this Lease Agreement at any time upon not less than forty-five (45) days' prior written notice to NCRA, following NWP's obtaining all necessary regulatory approvals or exemptions to permit NWP to discontinue rail freight service operations if at anytime during the Term hereof, or any extension of the Term, NCRA agrees to the assignment, sale, conveyance, or transfer of NCRA's ownership, control, property or leasehold interests in the Premises to any third party without NWP's prior written consent.

D. In the event NCRA terminates this Agreement, NCRA shall authorize the disbursement to NWP from the Lease Payment Fund and from other sources of an amount up to or equal to NWP's adjusted tax basis, including interest at the legal rate of interest for public entities, of all unrecovered investment in the Land, Track and Track Support Structures made by NWP on all or any portion of the NWP Line at NWP's expense, provided such expenditures are properly capitalized as leasehold improvements for Federal income tax purposes pursuant to Sections 1012 and 1016 of the Internal Revenue Code of 1966, as amended (hereinafter, the Code). For purposes of the preceding sentence, NWP's adjusted tax basis shall be determined at the time of the expiration or termination, as applicable, of this Amended Lease Agreement and shall be calculated under Section 1011 of the Code, taking into account all cost recovery elections and adjustments to tax basis legally permissible under the Code. However, NCRA's obligation will be limited by the amount on deposit in the Lease Payment Fund, in addition to the amount from any other source reasonably available to the NCRA including but not necessarily limited to contractually agreed payments by a successor operator.

E. In the event of Termination, NWP shall at the written request of NCRA file within ten (10) days with the STB a petition, or Notice of Exemption, or such other filing as necessary, to transfer any certificate of Convenience and Necessity held by NWP upon any portion of the Northwestern Pacific Railroad Line to NCRA, or its designee to which the agreement has terminated. This obligation is unconditional to any other provision of this agreement and may be specifically enforced at the option of North Coast

Railroad Authority in any court of competent jurisdiction, notwithstanding any provisions in this agreement for arbitration. This provision shall survive the termination of this Agreement.

XIII. Events of Default

A. The following shall be Events of Default:

1. NWP fails to make any payment to NCRA when due, and such failure continues for thirty (30) days following written demand therefore by NCRA.

2. NWP fails: (i) to provide common carrier rail freight service, or (ii) to perform in any material respect any other provision of the Lease Agreement after receipt of written notice of such breach from NCRA and fails to commence to cure such default within forty-five (45) days, or, once commenced, fails to use due diligence to complete the cure.

3. NCRA fails to (i) to promptly utilize its best efforts to commence, continue and complete rehabilitation of the Premises and to restore the Utility Levels or (ii) to perform in any material respect any provision of this Lease Agreement, and, after receipt of written notice of such breach from NWP, fails to commence to cure such default within sixty (60) days, or once commenced, fails to use due diligence to utilize its best efforts to complete the cure.

4. NCRA fails to timely cure any breach or default of any agreement or instrument to which the NCRA is a party or obligee that has, or will have, a material adverse effect on the ability of NWP to operate or maintain the railroad.

B. NWP shall be able to cure an Event of Default by remedying the Event of Default within the respective notice period stated herein.

XIV. Remedies

A. Dispute Resolution

NCRA agrees in good faith to attempt to resolve amicably, without litigation, any dispute with NWP arising out of or relating to this Lease Agreement. When agreement has not been reached by NCRA and NWP on any issue, the disagreement shall be promptly mediated by subcommittees of the NCRA and NWP Boards of Directors consisting of not more than three members each. In the event that any dispute cannot be resolved through direct discussions between such NCRA and NWP Board subcommittees, the Parties agree to endeavor to settle the dispute by third party mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a third party mediator who shall hear the matter and provide an informal, nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties.

B. Arbitration

If the dispute cannot be resolved through mediation, the matter may be submitted to binding arbitration, in which event all expenses, consultant's fees, witness fees, court costs and attorneys' fees will be paid to the prevailing Party. The arbitration shall be conducted in such manner as the parties may agree in a written arbitration agreement developed by the parties within thirty days of the conclusion of mediation. In the event that the parties do not reach a written arbitration agreement within such thirty days the following arbitration provisions shall apply:

1. Any controversy or claim arising out of relating to this Agreement is to be arbitrated, including, without limitation, any controversy or claim sounding in tort, (subject to the claim presentation provisions of the California Tort Claims Act), except that the parties shall adjudicate any controversy or claim within the jurisdiction of the Surface Transportation Board, or any successor adjudicatory body with jurisdiction over the railroad industry, and except that the parties shall adjudicate any controversy for which equitable relief is sought.

2. The parties agree to submit any arbitable controversy to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.

3. The arbitration is to be conducted before a single arbitrator who the parties shall jointly select within sixty (60) days following the completion of mediation. If the parties are unable to agree upon the arbitrator, either party may request the American Arbitration Association to select the arbitrator. Prior to the commencement of hearings, the appointed arbitrator must provide an oath of impartiality.

4. Either party is entitled to seek from any court of competent jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party. The interim relief is to remain in effect until the arbitration award is rendered or the controversy otherwise resolved. By doing so, the party does not waive any right or remedy under this Agreement.

5. In rendering an award, the arbitrator is to determine the rights and obligations of the parties according to the substantive and procedural laws of the State of California.

6. Each party shall submit to any court of competent jurisdiction for purposes of the enforcement of any award, order or judgment. Any award, order or judgment pursuant to arbitration is final and may be entered and enforced in any court of competent jurisdiction.

7. Either party has the right to appeal the arbitration award to an appellant arbitrator by filing with the AAA , no later than twenty (20) days after the transmittal of the award a written brief, not to exceed thirty (30) pages, stating the reason the arbitration award should be reversed or modified. The opposing party shall file with the AAA and serve on the appealing party, no later than twenty (20) days after service of the appeal brief, an opposition brief not to exceed thirty (30) pages. The Appellant may file with the AAA and serve on the opposing party, a reply brief no later than seven days after service of the Opposition Brief, not to exceed five (5) pages, The AAA is to appoint the appellate arbitrator who is to be a retired judge of a court of record in California. The AAA shall make the appointment directly without submission of lists of proposed appellant arbitrators. Either party may request oral argument, which must be conducted no later than 14 days following the submission of the final brief. The appellate arbitration is to be based only on the record of the arbitration hearing and oral argument, if any.

The Appellate Arbitrator is to render a written decision no later than twenty (20) days after the appeal is submitted for decision. The appellate decision may be a final decision, or it may be a final decision or it may affirm, reverse, modify or remand for further proceedings by the initial arbitrator, in which case such proceedings shall be completed within twenty (20) days. However, the reversal, modification or remand may only be on one of the following grounds: Any ground specified in 9 U.S.C. 10 or 9 U.S.C. 11; the award contains material errors of applicable law; the award is arbitrary or capricious.

C. Other Rights and Remedies

If an Event of Default shall have occurred, the non-breaching Party (to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect) shall have the following rights and remedies, in addition to all other remedies at law or in equity, and none of the following, whether or not exercised by the non-breaching Party, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or in equity:

1. If NCRA is the non-breaching Party, NCRA may terminate this Amended Lease Agreement by giving Lessee notice in writing at any time as provided in Section XII. Upon termination of this Lease Agreement pursuant to this Section and obtaining the necessary regulatory authority or exemption, NWP shall surrender to NCRA the Premises as set forth herein.

2. If NCRA is the non-breaching Party, NCRA may maintain NWP's right to possession, in which case this Lease Agreement shall continue in effect whether or not NWP shall have abandoned the Premises. In such event, NCRA shall be entitled to enforce all of NCRA's rights and remedies under this Lease Agreement, including the right to recover Lease Payments payable under this Lease Agreement as they become due hereunder.

3. If an Event of Default shall have occurred, anything in this Lease Agreement to the contrary notwithstanding, upon obtaining the necessary regulatory authority or exemptions, NCRA may enter the Premises and assume all common carrier duties (including but not limited to the provision of freight service and dispatching), regardless of whether or not this Lease Agreement has been terminated.

4. If NWP is the non-breaching Party, NWP shall have the right to terminate this Lease Agreement pursuant to Section XII. Upon termination of this Lease Agreement pursuant to this Section and obtaining the necessary regulatory authority or exemption, NWP shall surrender to NCRA the Premises as set forth herein.

5. If NWP is the non-breaching Party, NWP shall have the right to withhold payment of Lease Payments without loss of possession of the Premises, until the breach has been cured and to collect from the NCRA, or any other party of interest, the costs and damages incurred by or on behalf of them by suit or suits or other proceedings brought from time to time on one or more occasion to enforce the terms and conditions of this Lease Agreement without NWP being obligated to wait until expiration of the Term, or if this Lease Agreement is terminated, the date on which such expiration would have occurred.

XV. Indemnity and Insurance

A. It is the express intent of NCRA and NWP that NWP shall protect, defend, hold harmless, and indemnify NCRA and SMART from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorney's fees (collectively, "Liability"), incurred by or assessed against NCRA, its agents, employees, affiliated companies and its successors and assigns on account of injuries, death, or property loss or damage arising from (i) use, operation or maintenance of the Premises, (ii) failure by NWP to perform any of its covenants under this Lease Agreement, (iii) failure of any representation or warranty of NWP under this Lease Agreement to be true and correct in all material respects as of the date made; except, however that all Liability, including Liability for any injury, death, or property loss or damages arising in connection with hazardous substances or environmental conditions shall be governed by the provisions of Subsection E of this Section below.

B. It is the express intent of NCRA and NWP that NCRA shall protect, defend, hold harmless and indemnify NWP from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorneys' fees (collectively, "Liability"), incurred by or assessed against NWP, their agents, employees, affiliated companies and

successors and assigns on account of injuries, death, property loss or damage (i) occurring prior to the Commencement Date and occurrences following NWP's vacation of the Premises, (ii) operations, construction or maintenance relating to passenger service during the term of this lease Agreement (except to the extent that such injuries, death, property loss or damage are caused by the willful neglect of NWP, its agents, employees, affiliated companies, successors or assigns), (iii) failure by NCRA to perform any of its covenants under this Lease Agreement, and (iv) failure of any representation or warranty of NCRA under this Lease Agreement to be true and correct in all material respects as of the date made, except, however, that all Liability, including Liability for any injury, death, or property loss or damages, arising in connection with hazardous substances or environmental conditions shall be governed by the provisions of Section E below.

C. The foregoing notwithstanding, except in the instance of tortuous interference with the NWP's quiet enjoyment of the Premises by NCRA, neither Party shall have any claim against the other Party for interruption of or delay to such Party's business or for loss of profit or income. NWP shall have no cause of action against NCRA for the condition of the Leased Premises.

D. Each Party hereto covenants and agrees that its obligations under this indemnity will be fulfilled whether or not such Liability arises during the time that this Lease Agreement is in effect or thereafter. The covenants of indemnity contained in this Lease Agreement shall continue in full force and effect notwithstanding the full payment of all sums due under this Lease Agreement, or the satisfaction, discharge or termination of this Lease Agreement in any matter whatsoever.

E. As long as the Premises are used exclusively for the provision of freight service, unless modified by the Coordination Agreement contained in the Operating Agreement, it is the express intention of both NWP and NCRA that NWP assumes the risk of and agrees to indemnify and hold NCRA, SMART, or any party providing express indemnity to either NCRA or SMART for passive ownership of rail facilities, (the "Indemnities"), harmless, and to defend such indemnities against and from any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or

source for (i) any defects or Environmental Problems, latent or obvious, discovered or undiscovered, in the Premises, including any improvements, fixtures or equipment associated with its use hereunder; (ii) real and chattel property to be leased hereunder and (iii) personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of indemnities, NWP, or any third party), (iv) property damage or destruction of whatsoever nature (including without limitation property of Indemnitees or NWP, or property in NWP's care, custody or control, and third party property, (v) violation of any Applicable Laws; and/or (vi) breach of this Lease Agreement (collectively, the "Claims") when such Claims arise out of acts, omissions (whether or not negligent) or events occurring on the Premises after the Commencement Date and before the termination of this Lease Agreement; provided that (i) NWP shall not indemnify or hold harmless Claimants to the extent that any Claims arise out of or in connection with acts, omissions or negligence of SMART, NCRA or any agent or licensee of SMART, NCRA, any officer, director, employee, lessee, contractor, or other third parties (other than agents, licensees, contractors or affiliates of NWP, prior to, during or following the term of this Lease (including operations, construction and maintenance in connection with passenger service and property management), and (ii) NWP shall not indemnify nor hold harmless Indemnitees in connection with any Environmental Problems of which Indemnitees have knowledge as of the date of this Agreement, including, without limitation all Environmental Problems identified in that certain Consent Decree and Stipulated Judgment between Lessor and the Superior Court in and for Mendocino County, dated as of July 14, 1999, the Time Schedule for Administrative Civil Liability, Order No. 97-134 of the North Coast Regional Water Quality Control Board, and any incremental liability arising in connection with such Environmental Problems during the term of this Lease.

It is the express intention of NWP that NCRA shall assume the risk of, and agrees to indemnify and hold NWP harmless from, and to defend NWP against any Claims for (i) any defects or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be used by NWP hereunder, which NWP proves (a) existed prior to the Commencement Date or (b) occurred after the termination of this Lease Agreement and termination of the Freight Easement ("Excluded Environmental Claim"); (ii) for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of NCRA or any third party) or property damage or destruction of

whatsoever nature (including without limitation property of NCRA, or property in its or their care, custody or control, and third party property) where such Claims arise out of acts, omissions or negligence or events occurring on the Premises prior to the Commencement Date or subsequent to the termination of the Lease Agreement; or (iii) where such Claims arise out of acts or omissions arising out of or in connection with the provision of commuter passenger service or construction in connection therewith on the Easement Premises during the term of this Lease Agreement (except to the extent such injuries, death, property losses or damages are caused by NWP, its agents, employees, affiliated companies, successors or assigns). Furthermore, nothing in this Lease Agreement shall be construed as modifying any agreement between SPTCO, or any SPTCO successor, and NCRA and SMART concerning responsibility for Environmental Problems. "Environmental Problems" shall mean any Claim arising under Applicable Laws or due to any violation thereof, including, without limit, federal, state or local legislation or other rules of law, and private causes of action of whatever nature, which regulate or concern the use, generation, storage, transportation, disposal, release, handling or presence of Hazardous Materials in or about the Premises or related to its use and operation.

F. Non-Third Party Claims

1. Notice of Claim. An Indemnitee shall notify each Indemnitor in writing and with reasonable promptness, of any Claim.

2. Contents of Notice. In the Notice of Claim an Indemnitee shall include the following:

   (a) A description of any claim, event, or fact known to the Indemnitee that gives rise or may give rise to a claim by the Idemnitee against and Indemnitor based on this Agreement, including the nature and basis of the claim, event, or fact and the amount to the extent known.

   (b) A statement in prominent and conspicuous type as follows:

      (1) THE INDEMNITEE'S CLAIM IS CONCLUSIVELY DEEMED A LIABILITY OF THE INDEMNITOR IF THE INDEMNITOR DOES NOT DISPUTE ITS LIABILITY BY WRITTEN NOTICE TO THE INDEMNITEE BEFORE THE END OF THE 30-DAY

PERIOD FOLLOWING THE INDEMNITOR'S RECEIPT OF THE NOTICE OF THE CLAIM.

(c) Indemnitor's Right to Dispute Claim. An Indemnitor has the right, by a written notice, for a thirty (30) day period, to dispute its liability to an Indemnitee with respect to a Claim. The 30-Day period begins the day after the Indemnitor's receipt of the Indemnitee's notice and ends at 5:00 P.M. on the 30th day. Time is specifically of the essence for this provision.

(d) Good Faith Negotiation. If an Indemnitor timely disputes its liability to an Indemnitee with respect to a Claim, the parties to the dispute shall negotiate in good faith to resolve the dispute.

(e) Deemed Loss.

(1) Circumstances under which a Claim is deemed a Loss. The Claim set forth in the notice is conclusively deemed a Loss of an Indemnitor if:

(a) The Indemnitee has provided the Indemnitor notice as required in Subsections (a) and (b), above; and

(b) The Indemnitor does not dispute its liability pursuant to Subsection (c), above;

(2) Payment of a Deemed Loss. If a claim has been deemed a Loss, the Indemnitor shall pay the amount of the Loss to the Indemnitee on demand; or on the later date when the amount of the Loss (or a portion of it) becomes finally determined if the Indemnitee estimated the amount of the Loss (or any portion of it) in its notice.

(3) Other Payments. In addition to making the payment under this section F 2, the Indemnitor shall make any other payments required by this Section including, without limitation, the payment of the Indemnitee's Litigation Expenses.

(4) SMART Demands. In the event that SMART makes an indemnity demand to NCRA covered by NWP's

indemnification, the indemnity claim shall be passed on by NCRA to NWP, and shall not be treated as a Third Party Claim.

G. Third Party Claims

1. Notice of Third Party Claim

(a) Notice of Third Party Claim. If any third party makes any claim or brings any action, suit or proceeding against an Indemnitee (a "Third Party Claim") with respect to which an Indemnitor may have liability, the Indemnitee must promptly notify the Indemnitor in writing of the Third Party Claim and deliver to the Indemnitor a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim.

(b) Indemnitor Assumption of Defense. If an Indemnitor wishes to assume the defense of the Third Party Claim, it shall do so by sending notice of the assumption to the Indemnitee. The Indemnitor's assumption of the defense acknowledges its obligation to indemnify. Promptly after sending the notice, the Indemnitor shall choose and retain independent legal counsel of reputable standing. After sending the notice, the Indemnitor is entitled to contest, pay, settle or compromise the Third Party Claim as it determines subject to the provisions of subsection (e) below.

(c) Indemnittee's Right to Undertake Defense. Despite the provisions of subsection (b) and Indemnitee is entitled:

(1) to participate in the defense of a Third Party Claim; and

(2) to defend a Third Party Claim with counsel of its own choosing and without the participation of the Indemnitor if:

(a) the Indemnitor fails or refuses to defend the Third Party Claim on or before the 20th day after the Indemnitee has given written notice to the Indemnitor of the Third Party Claim; or

(b) representation of the Indemnitor and the Indemnitee by the same counsel would in the opinion of that counsel, constitute a conflict of interest.

(d) Litigation Expenses. The Indemnitor shall pay for the Litigation Expenses incurred by the Indemnitee to and including the date the Indemnitor assumes the defense of the Third Party Claim. Upon the Indemnitor's assumption of the defense of the Third Party Claim, the Indemnitor 's obligation ceases for any Litigation Expenses the Indemnitee subsequently incurs in connection with the defense of the Third Party Claim, unless the Indemnitee has retained counsel in accord with the provisions of subsection c(2) supra.

(e) Compromise and Settlement of Third Party Claims

(1) General Rule. If an Indemnitor assumes the defense of a Third Party Claim, it may not effect any compromise or settlement of the Third Party Claim without the consent of the Indemnitee, and the Indemnitee has no liability with respect to any compromise of any Third Party Claim effected without its consent.

(2) Exceptions to the General Rule. Despite the provision of subsection e(1) supra relating to the general rule an Indemnitor may effect a compromise or settlement of any Third Party Claim without an Indemnitee's consent if:

(a) There is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claim that may be made against the Indemnitee; and

(b) The sole relief provided is monetary damages that are paid in full by the Indemnitor; and

(c) The compromise or settlement includes, as an unconditional term, the claimant's or the plaintiff's release of the Indemnitee, in form and substance satisfactory to the Indemnitee, from all liability in respect of the Third Party Claim.

H. Third Party Beneficiaries

The Affiliates of NCRA are third party beneficiaries of this Agreement in accordance with its terms. Any modifications of this Agreement executed by the signatories is binding upon such Affiliates, and any action taken or consent given by NCRA on its own behalf is binding upon the Affiliates for the purposes of this Agreement. This Agreement is not intended to nor may it be deemed to, create any rights of enforcement in any person who is neither a signatory to this Agreement nor an Affiliate of NCRA.

I. Insurance

1. NWP shall, at its sole cost and expense, procure the following kinds of insurance effective on Commencement Date and promptly pay when due all premiums for that insurance. Upon the failure of NWP to maintain insurance as provided herein, NCRA shall have the right after giving NWP ten (10) days written notice to obtain insurance and NWP shall promptly reimburse NCRA for that expense. The following minimum insurance coverage shall be kept in force during the term of this Agreement:

   (a) Comprehensive Freight Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least Twenty-five Million Dollars ($25,000,000) for each incident and a general aggregate limit of at least Twenty-five Million Dollars ($25,000,000). (The Parties agree that NWP has objected to the $25 million limit as being unreasonably high, and that NCRA and NWP will jointly seek a $5 million limit in their SMART negotiations.) This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Agreement, severability of interests and name NCRA and SMART as additional insured with respect to liabilities arising out of NWP's obligation to NCRA in this Agreement. If coverage is purchased on a 'claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the term of this Agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

(b) Federal Employer's Liability Act insurance with a waiver of subrogation.

2. NCRA (or its Third Party Operator) shall, at its sole cost and expense, procure the following kinds of insurance to be effective on the later of either (i) the Commencement Date or (ii) the date Permitted or other Passenger Services begin:

(a) Comprehensive Passenger Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least twenty-five million dollars ($25,000,000) for each incident and a general aggregate limit of at least twenty-five million dollars ($25,000,000). NCRA (or its Third Party Operator) shall promptly pay when due all premiums for that insurance. Upon the failure of NCRA (or its Third Party Operator) to maintain insurance as provided herein, NWP shall have the right after giving NCRA ten (10) days written notice to obtain insurance and NCRA shall promptly reimburse NWP for that expense. This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Agreement relating to NCRA Passenger Service, severability of interests and name SMART, and NWP as additional insureds with respect to liabilities arising out of this Agreement as it relates to NCRA Passenger Service. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the term of this Agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

(b) Federal Employer's Liability Act Insurance with a waiver of subrogation.

XVI. Reopener Clause Following SMART Negotiation

A. The parties contemplate that NCRA will undertake negotiations for revisions of the Operating Agreement over the course of the next year that address including without limitation, the following issues:

1. Assumption by NCRA of responsibility for the Lombard Segment by SMART transfer to NCRA of ownership of the Lombard Segment;

2. Modification of the Permitted Passenger Service restrictions that apply to NCRA Passenger Service in Section 3.01 of the Operating Agreement;

3. Agreement by SMART to utilize the higher of the engineering standards promulgated by either SMART or NCRA on the Easement Premises;

4. Deletion of the word "unreasonably" in Section 1.02(e) of the Operating Agreement and agreement that any approvals will not interfere with the Freight Easement;

5. Clarification of the responsibility for the costs of rehabilitation and capital improvements and the maintenance of grade crossing warning systems on the Easement Premises;

6. Deletion of the requirements for annual payments in Section IV of the Operating Agreement;

7. Reduction of the $25 million liability insurance limit specified in Section 10.02 of the Operating Agreement to a $5.0 million liability insurance limit so long as no rail passenger train service is operated by NCRA or its licensees, agents or contractors on the Easement Premises;

8. Inclusion of NWP as a party to the Coordination Agreement referred to in Section 3.09 and Schedule 3.10;

9. Payment by SMART of any real property taxes and bonded or special assessments upon the Leased Premises;

10. Modification of the provisions relating to the termination of the Operating Agreement, providing for the provision being triggered by NCRA having obtained regulatory approval for termination of its common carrier authority;

11. Making by SMART of any necessary approvals to terminate any remaining California Northern trackage rights between Lombard and Schellville.

B. Without affecting any obligations of this Agreement and upon the conclusion of such negotiations, NCRA shall notify NWP and the parties shall thereafter negotiate in good faith to amend this Agreement to conform to the Operating Agreement as revised.

XVII. Accounting and Reporting

A. NCRA and its agents shall have the right at any time following NWP's receipt of not less than forty-eight (48) hours notice prior to inspect NWP's books, records, or any other reports or supporting documents or materials necessary to determine compliance with any provisions of this Agreement. Such inspection shall be conducted during normal business hours. NWP shall make its facilities available to NCRA's inspectors to permit such inspection without undue interference with NWP's operations. Any direct expense arising from the inspection shall be borne by NCRA.

B. NWP shall have its financial statements audited by an independent certified public accountant on or before the third month following the close of the calendar year and shall provide a copy of such independently audited financial statement delivered to NCRA within thirty (30) days of its receipt. To the extent that this Agreement creates or conditions a right upon financial expenditure or percentage of income, such right shall be referable to the financial statement, independently audited as contemplated herein, and such portion thereof as is separately delineated or defined therein.

C. NWP shall maintain for a minimum of three (3) years its books, records and any other reports, or supporting documents or materials necessary to determine compliance with this Agreement

D. At the time of providing the financial statement as required in B above, NWP shall in good faith forecast the amount to be deposited in the Lease Fund for the following twelve (12) month period and the following thirty-six (36) month period.

E. It is understood that as a condition to eligibility for NWP participation in any public funding pursuant to the Capital Projects provision of this Agreement NWP may be required to participate in a pre-qualification audit conducted by CalTrans, or its designee.

XVIII. Right of First Refusal

During the term of this Agreement, if at any time NCRA or its successor public agency shall decide to sell all or any portion of the NWP Line to a third party, NWP shall have a continuing right of first refusal to purchase such Premises.

Within 90 days after receipt of written notice from NCRA that NCRA intends to offer all or any portion of the Premises to a third party for cash (or cash equivalents, such as a promissory note secured by a deed of trust), NWP may exercise this right of first refusal by delivering written notice to NCRA that it agrees to acquire the specified portion of the Premises for the same price for cash, or at NWP's option, for the cash equivalents specified in the notice, if any, and upon the same terms and conditions as NCRA has specified in its notice to NWP. If NWP has not exercised its right of first refusal for a proposed transaction, and NCRA decides to reduce the purchase price for such transaction by more than 10%, NCRA shall first provide NWP with notice of the intended price reduction and with a renewed opportunity to exercise its right of first refusal for such portion of the Premises. NWP shall have a continuing right of first refusal extending throughout the full term of this Agreement.

XIX. Notices

A. **Requirement of a Writing Delivered by Permissible Means.** Any party giving or making any notice, request, demand or other communication, (each, a "Notice") pursuant to this Agreement, or otherwise as required by law or regulation shall:

1. Give the Notice in writing;

2. Cause the Notice to be signed by an officer authorized to give notice; and

3. Use one of the following methods of delivery, each of which for the purposes of this section is a writing:

   (a) Personal Delivery;
   (b) Registered or Certified Mail, in each case, return requested and postage prepaid;
   (c) Facsimile; or
   (d) E-mail.

B. Addressees and Addresses. Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (" the Addressee") at the address listed below, or to another Addressee or at another address designated by a party in a Notice pursuant to this Section.

1. North Coast Railroad Authority
   Ukiah, California 95482
   Attention: Executive Director
   Facsimile No.: (707) 463-3282
   Telephone No. (for verification purposes only): (707) 463-3280
   E-Mail: ncra.mstogner@sbcglobal.net
   With a copy to:
   Christopher J. Neary
   110 South Main Street, Suite C
   Willits, California 95490
   Facsimile No. (707) 459-3018
   Telephone No. (for verification purposes only): (707) 459-5551
   E-mail: cjneary@pacific.net

2. Northwestern Pacific Railroad Company
   C/O The Woodside Consulting Group, Inc.
   385 Sherman Avenue, Suite 1
   Palo Alto, California 94306-1840
   Facsimile No.: (650) 289-9856
   Telephone No. (for verification purposes only): (650) 289-9850
   E-Mail: jhw@woodsideconsulting.com
   With a copy to:
   Douglas H. Bosco
   37 Old Courthouse Square, Suite 200
   Santa Rosa, California 95404
   Facsimile No.:

Telephone No. (for verification purposes only): (707: 525-8999
Email: dbosco@boscolaw.com

C. **Effectiveness of a Notice**. Unless provided elsewhere in this Agreement, a Notice is effective only if the party giving or making the Notice has complied with subsections (a) and (b) and if the Addressee has received the Notice. A Notice is deemed to have been received as follows:

1. If a Notice is delivered in Person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt as indicated by the date of the signed receipt.

2. If a Notice is sent by facsimile, upon receipt by the party giving the Notice of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile.

3. If a Notice is sent by E-mail, upon written confirmation of receipt.

4. If a Notice is sent by any means and all necessary party recipients confirm or acknowledge receipt in writing.

5. If any Notice is received after 5:00 P.M., or on a day that is not a Business Day, then the Notice id deemed received at 9:00 A.M. on the next Business Day.

XX. Modification Of Agreement

A. This Agreement may be modified by amendment, supplement, termination, or discharge by a written agreement signed by the parties. As a condition precedent to the effectiveness of each modification, each party must deliver to the other a certified copy of the resolution of its board of directors authorizing the modification.

XXI. Waivers

A. The parties may not waive any provision of this Agreement, except pursuant to a writing executed by the party against whom any amendment or waiver is sought to be enforced.

B. No failure or delay in:

1. Exercising any right or remedy or

2. Requiring the satisfaction of any condition under this Agreement, and not course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition.

3. A waiver made in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a wavier on any future occasion or against any other Person.

4. To the extent any course of dealing, act, omission, failure, or delay in exercising any right or remedy under this Agreement constitutes the election of an inconsistent right or remedy, that election does not

   (a) constitute a waiver of any right or remedy; or

   (b) limit or prevent the subsequent enforcement of any contract provision.

5. No single or partial exercise of any right or remedy under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy.

6. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

C. Severability

1. If any provision of the Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any party.

D. Integration and Merger

1. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement may not be explained, supplemented or qualified through evidence of trade usage, course of performance, or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party, their agents or contractors, except those expressly identified in the Agreement.

E. Counterparts

1. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart form each party to the other. In proving this Agreement, a party must produce or account for the executed counterpart of the party to be charged.

XXII. Number

A. Any reference in this Agreement to the singular includes the plural where appropriate.

XXIII. Captions

A. The headings of sections in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation.

XXIV. Presumption of Consideration

A. For the exercise of any option in this agreement the mutual covenants of this agreement at the time of its making shall be deemed to be sufficient consideration for the exercise of any option whenever made in accordance with the terms of this agreement.

XXV. Severability

A. In the event that any provision of this Agreement is void, voidable, or unenforceable, such provision of this Agreement shall be severed from the agreement and remaining provisions of the Agreement shall remain in full force and effect.

NORTH COAST RAILROAD AUTHORITY, a public agency

ALLAN HEMPHILL
Chairman of the Board of Directors

NORTHWESTERN PACIFIC RAILROAD COMPANY, a California corporation

JOHN WILLIAMS
President

Attest:

MITCH STOGNER
Secretary to the Board of Directors

Approved as to form:

CHRISTOPHER J. NEARY
General Counsel

Traffic Congestion Relief Program



Section I. Application Information

A. Specify the paragraph number, authorized dollar amount, and project description pursuant to Government Code section 14556.40 (a) (AB 2928, Chapter 91 of the Statues of 2000) authorizing this project:

Paragraph Number: 32.9 Amount: $ 31.0 million

Description: *North Coast Railroad: Sub-paragraph (i) to fund long-term stabilization.*

B. Applicant Agency: North Coast Railroad Authority
Address: 419 Talmage Road, Suite M
Ukiah, CA 95482

Contact Person: Mitch Stogner, Executive Director

Phone #: (707) 463-3280 FAX #: (707) 463-3282
Email: ncra.mstogner@sbcglobal.net

C. Implementing Agency: Same as above
Address: _____

_____

Contact Person: _____

Phone #: _____ FAX #: _____
Email: _____

D. Caltrans District: 01, Eureka
Address: P.O. Box 3700
Eureka, CA 95502-3700

Project Manager/Coordinator: Cheryl Willis, Deputy Director – Planning

Phone #: (707) 445-6413 FAX #: (707) 441-5869
Email: cheryl_willis@dot.ca.gov

E. Application Type:

____Study Only *(Complete Sections II, IV, VI, & VIII)*

__x__Non-Capital Phase(s)
(Complete All Sections except VII. Detail for requested phase(s), estimate otherwise)
__x__ Studies, environmental review, and permits
__x__ Preparation of project plans and specifications

__x__Capital Phase(s) – **Must attach required environmental documents**
(Complete All Sections except VII. Detail for requested phase(s), estimate otherwise)
____ Right of Way Acquisition
__x__ Construction or Procurement

____Complete Project *(Complete All Sections except VII)*

____Alternative Project *(Complete All Sections)*

Section II. General Project Information

A. Project Name: Upgrade to FRA Class 2 and 3 and Stabilization

B. Project Purpose: Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The first phase of the project to be completed will result in an operable phase of the Russian River Division extending north from Lombard to Windsor and an EIR/EIS in the Canyon.

To bring the entire track up to Class 2 and 3 standards will require investment of Federal funds ($8.6 million has been earmarked in ISTEA), private funds, bond funds, and other TCRP funds.

C. Project Location *(attach a map if applicable)*: Exhibit A shows a map of the NWP line.

D. Project Description: Replace ties, repair roadbed, repair structures, improve drainage, and improve crossing protection to permit operation of FRA Class 2 and where possible Class 3 service and provide landslide stabilization where required. Since the time of the last Project 32.9 application, the cost of restoring the entire rail line has tripled. As funding has been delayed, the rail has continued to deteriorate, and construction costs have increased. As a result, the funds available through TCRP Project 32.9 will primarily cover the first phase of reopening the Russian River Division from Lombard to Windsor and an EIR/EIS in the Canyon. The remaining 32.9 funds and funds from additional funding sources will be used to reopen the balance of the line.

The Russian River Division Phase 1 Reopening project would allow NCRA's operator to serve those shippers as far north as Windsor that have expressed interest in using rail service including an economical out-haul rail alternative for

Sonoma County solid waste. The items listed below summarize the major work elements required for the Russian River Division Phase I reopening. These items are further described in the 2005 Capital Assessment Report and the Russian River Rehabilitation Plans:

- The replacement or repair of 53 railroad grade crossing warning systems. This work is specifically required to address FRA's Emergency Order 21.
- The repair of 32 timber bridges, 4 steel bridges, and 2 concrete bridges. All these repairs consist of replacement of in-kind members like the replacement of cap beams, stringers, and walkway and railing planks.
- The rehabilitation of three movable bridges including structural, mechanical, and electrical repairs.
- The replacement of approximately 50,000 ties to upgrade the line to Class 3.
- The placement of approximately 62,000 tons of ballast.
- The repair and surfacing of 62 miles of track.

All of the proposed work can be characterized as repair or replacement and will be completed within the railroad's right-of-way. In the case of the signal work part of the cost associated with this upgrade would be offset by using signal equipment that NCRA has purchased using FEMA Alternate Project funds.

It is currently proposed that the Russian River Division Phase 1 Reopening be completed through the letting of two or possibly three separate construction contracts. The first would be to complete all the signal work. This would provide for the safe use of track equipment and possible work trains to complete all subsequent track and bridge repairs. Several of the bridges in their present condition would restrict the use of work trains and these would be repaired at the beginning of the second construction contract. This would allow for an efficient use of track equipment to complete the remaining track work and bridge work requiring rail access.

Once an Initial Study is completed, appropriate CEQA and NEPA documentation will be prepared. In addition, it is anticipated that the following agencies will be contacted for permits:

- Bay Conservation and Development Commission (BCDC)
- US Army Corp of Engineers
- California Department of Fish and Game
- Regional Water Quality Control Board
- Local Cities and Counties

This work is consistent with NCRA's overall strategic plan to upgrade the entire railroad to allow rail operation at FRA Class 2 and 3 standards.

E. Project Scope: In general, the project will require the following tasks: 1) project management activities, 2) preliminary engineering, 3) a variety of environmental studies, reviews, assessments and preparation of reports to support the CEQA/NEPA review process, 4) approval of various CEQA/NEPA documents, 5) securing of applicable permits from State and Federal resource agencies, and 6) construction.

This application describes an overall reopening project, the *NWP Reopening*, and provides an in depth description of two near-term projects:

1. *Russian River Division Reopening Phase 1 (Lombard to Windsor)*
2. *Canyon EIR/EIS*

NWP REOPENING

NCRA has adopted a policy of reopening the entire Northwestern Pacific Railroad Line from Lombard to Arcata/Samoa. Reopening the entire line is currently estimated to cost $150.6 million.

The first phase of construction has been identified as the Russian River Division Phase 1 from Lombard to Windsor based on the market demand for rail service, the existing condition of the line, the ability to team with SMART, and the ability to work within NCRA's right-of-way to restore a prior-existing service.

Future construction phasing will be based on several factors including market demand for rail, environmental clearance, and availability of funding. However, once the Russian River Division Phase 1 is completed, the current plan is to move forward with the Russian River Division Phase 2, then the Canyon, and finally the North-End.

RUSSIAN RIVER DIVISION PHASE 1 REOPENING

Specific tasks for the Russian River Division Phase 1 Reopening are outlined in NCRA's 2002 Capital Assessment Report and the subsequent 2005 Updated Capital Assessment and will include:

Environmental:

- Finalize the project description and timing of activities to be undertaken. It is expected that the project description for environmental purposes will include the entire Russian River Division from Lombard to Willits (both Phase 1 – Lombard to Windsor and Phase 2 – Windsor to Willits).
- Perform the additional field surveys and related research for use in the preparation of the environmental document under CEQA and NEPA
- Prepare and process the environmental document under CEQA and NEPA
- Proceed with the preparation and processing of the required permits

Geotechnical:

- Surface drainage improvements
- Repair of scour at bridges

- General restoration of roadbed foundation elements undermined by erosion by dumping or machine-placing rock fill, or other revetment to protect and/or deflect water from further undermining foundation elements
- Depending on the severity of the scour, methods of restoring structural support to foundation elements may also need to be considered
- Installation of culvert extensions along with placement of headwalls and debris racks and rock at the outlets for energy dissipation.
- Additional geotechnical reconnaissance and mapping required for individual site designs.

Tunnels:

- There are no tunnels in Phase 1 of the Russian River Division

Structures:

- Repairs to the existing bridges that bring the bridges to their original design service level, providing the railroad the ability to operate at historic 263,000 pound maximum gross car loads.
- Timber trestles make up the majority of the bridge inventory on the Russian River Division and several require repairs to primary structural members including: piles, caps, and stringers.
- Haystack Landing Bridge, Black Point Bridge, and Brazos Bridge are moveable bridges on the Russian River Division owned by SMART. Black Point and Brazos will require electrical and mechanical maintenance and Haystack Landing will need structural repairs and mechanical and electrical systems rehabilitation. Rail traffic can be resumed on these bridges under restrictive speed after the proposed repairs and maintenance are performed. Because these bridges are owned by SMART, their future replacement would be programmed in concert with their needs.

Roadway:

- Replacement of defective cross ties to achieve FRA Class 3 standards, and disposal of replaced ties
- Surfacing of track along the entire 62 miles as required to achieve FRA Class 3 standards
- Re-establishment of rail anchor pattern, joint bars, bolts, and other track repair items
- Total reconstruction of track in areas of roadbed restoration, as the result of washouts, using existing rail, with solid used or new ties, and new ballast
- Cleaning of flangeways and repair to grade crossing roadway surfaces
- Repair or replacement of switches

- Clearing of heavy, overgrown vegetation along the tracks (environmental clearance for vegetation clearing, disposal and spraying part of programmed work for TCRP Project 32.4)
- Disposal of vegetation from clearing operations
- Systemwide spraying of herbicide and pre-emergent to control regrowth of vegetation
- Replacement and repair of milepost signs, whistle posts, gates, and miscellaneous items

Railroad/Drawbridge Signals and Grade Crossing Warning Systems: The program required to re-open the Russian River Division is based on what has been determined to be the minimum improvements necessary for testing, replacing obsolete equipment, replacing non-reusable equipment, and enhancing safety due to geographical and urban growth that has occurred since this line was taken out of service.

1. Eleven crossings will require basic rehabilitation work to get the crossing warning systems back into compliance with the FRA and the PUC.
2. Twenty-one crossings will require basic rehabilitation work as well as additional work related to control circuitry replacement.
3. Twelve crossings will require basic rehabilitation and control circuitry replacement plus replacement of obsolete gate and cantilever equipment and crossing shelters.
4. Nine crossings require replacement of the entire existing crossing system.
5. New solid state vital controllers for all three drawbridges. In addition the following work is required to bring each of the bridges into FRA compliance: updated circuit plans for each of the bridges, updated plans for the home and distance signals, verification of operation of signal and drawbridge systems, replacement of all bridge lock limit switches and all rail seating spring return switch circuit controllers, and FRA mandated tests.

CANYON EIR/EIS

This application requests programming and allocation of Phase 1 tasks to complete an EIR/EIS for the Canyon along with funds from TCRP Project 32.3. A detailed scope is included in the 32.3 application that has been filed concurrently.

F. Total Estimated Cost of Project: $150.624 million

G. Project Start Date: December 1, 2006

H. Construction Start Date: February 2007 (signals only)

I. Project End Date: December 2011

J. Purpose of Amendment: The prior application for Project 32.9 programmed funding to reopen the entire line. The immediate focus was to complete an

assessment of the condition of the entire line. At the time (April 2002) reopening the entire line was estimated to cost $46.4 million. With this amendment NCRA is updating the cost and schedule information for reopening the entire line based on the assessments performed in 2002 and 2005, and Operator input. The initial two projects of this amended program to reopen the entire line are 1) to reopen the line from Lombard to Windsor and 2) complete an EIR/EIS for the Canyon.

Section III. Project Phase Information (in $1,000s)

For clarification on the short-term and long-term schedule, see Exhibit B which includes a schedule of the work to be completed by reopening phase.

		Schedule (month/year)		
Phase of work	Scope	Start	End	Cost
1. Studies, environmental review, and permits	Russian River Division Reopening Ph 1 Environmental/Permitting/Preliminary Engineering (allocation request Nov-2006)	Dec – 06	Jun – 07	$ 1,460
	Russian River Division Ph 2 Environmental/ Permitting/Preliminary Engineering (Windsor to Willits) (allocation request Nov-2006)	Dec – 06	Jun – 07	$ 979
	Canyon EIR/EIS Preparation and Preliminary Engineering (allocation request Nov-2006)	Dec – 06	Jun – 08	$ 4,000
	Canyon Permitting	Feb – 08	Sep – 08	$ 928
	North-End Environmental/Permitting/Preliminary Engineering	Jun - 08	Nov – 09	$ 2,799
	SUBTOTAL PHASE 1			$ 10,166
2. Project plans and specifications	Russian River Division Reopening Ph 1 PS&E (allocation request Nov-2006)	Dec – 06	Jun – 07	$ 1,557
	Russian River Division Phase 2 PS&E	Jul – 07	Feb – 08	$ 1,084
	Canyon PS&E	Jan – 08	Sep – 09	$ 4,346
	North-End PS&E	Oct – 08	Nov – 09	$ 3,159
	SUBTOTAL PHASE 2			$ 10,146
3. Right of Way	Not applicable			$ 0
4. Construction or procurement	Russian River Division Reopening Ph 1 (multiple contracts: one for signals, second for early bridge work/remainder of roadway/ structures)	Feb - 07	Mar – 08	$ 22,613
	Russian River Division Phase 2 (two contracts similar to Phase 1)	Sep – 07	Oct – 08	$ 15,515
	Canyon (two 18 month contracts)	Sep – 08	Mar – 11	$ 47,832
	North-End (one 2 year contract)	Dec – 09	Dec – 11	$ 44,352
	SUBTOTAL PHASE 4			$130,312
			Total:	$150,624

Section IV. Project Phases and TCRP Funds covered by this Application (in $1,000s)

	Phase 1	Phase 2	Phase 3	Phase 4	Total
Project 32.9 TCRP Funds	$1,222 (Russian River Ph1 Environm'l)[1] $ 907 (Russian River Ph2 Environm'l)[2] $3,300 (Canyon EIR/EIS)[3] $5,429 (Total Proj 32.9 Env/Studies)	$1,397 (Russian River Ph1 PS&E)[4]			$6,826 Proj 32.9 Nov -06 Allocation Request
Estimated Allocation Date (month/year)	Nov – 06	Nov – 06			

A. The Implementing Agency requests TCRP fund $6,826,000 concurrent with this Application.

B. The Implementing Agency requests an advance payment of $600,000.
Please explain and justify: NCRA estimates that the pre-construction phases of this project will take 6 months to complete, with the following cash flow requirement over the first six months:

	Dec-06	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Total
Billing	450	560	560	600	600	600	3,370
NCRA Invoice Payment	0	450	560	560	600	600	2,770
Program Reimbursement	0	0	450	560	560	600	2,170
NCRA Cash Requirement	*0*	*450*	*560*	*560*	*600*	*600*	*600*

NCRA receives operational cash flow from real estate easement payments, rail car leases and $20,000 per month from the Operator. This cash flow is adequate to cover daily operations, but is insufficient to pre-fund a multi-million dollar project. The advance funding would allow NCRA to pay contractor invoices, and then submit the invoices for reimbursement processing. The advance would be used to make the final payment to contractors once the reimbursement review is complete, and the reimbursement amount is approved.

C. The Implementing Agency requests the following rate of reimbursement be considered in association with the requested allocation:

_x_ Proportionally spread across all funding sources.
___ Other, please explain and justify:

[1] The entire cost for Environmental/Preliminary Engineering for the Russian River Phase 1 Reopening is $1.46 million. The balance of funding is from funds already allocated for Project 32.4

[2] The environmental document for the Ruasian River Division Phase 1 will include the entire Russian River Division from Lombard to Willits, therefore, an allocation for the Phase 2 Environmental cost is being requested now along with the Phase 1 cost. The entire cost for Environmental for the Phase 2 is $0.979 million. The balance of funding is from funds already allocated for Project 32.4.

[3] The entire cost for the Canyon EIR/EIS is $4 million. The balance of funding is from a concurrent funding request from Project 32.3 for $0.6 million and $0.1 million from NCRA's Operator.

[4] The entire cost for the Ruasian River Phase 1 Reopening PS&E is $1.557 million. The balance of funding is from funds already allocated for Project 32.4.

Section V. Funding Information for the Total Project (in $1,000s)

Source	Type		Phase 1	Phase 2	Phase 3	Phase 4	Total
TCRP 32.9	State	Committed	~~$ 800~~ $ 5,429	~~$ 5,100~~ $ 2,433	~~$ 100~~ $ 0	~~$ 25,000~~ $ 23,138	$ 31,000
		Proposed					
TCRP 32.3	State	Committed	~~$ 0~~ $ 600	~~$ 600~~ $ 0			~~$ 0~~ $ 600
		Proposed					
TCRP 32.4	State	Committed	$ 390	$ 261		$ 4,249	$ 4,900
		Proposed					
TCRP 32.7	State	Committed				$ 1,800	$ 1,800
		Proposed					
Demonstration Funds	Federal	Committed				$ 8,600	$ 8,600
		Proposed					
FEMA 1203-DR-CA[5]	Federal	Committed				$ 695	$ 695
		Proposed					
Measure M[6]	Local	Committed				~~$ 0~~ $ 3,000	~~$ 0~~ $ 3,000
		Proposed					
Operator[7]	Private	Committed	~~$ 0~~ $ 100				~~$ 0~~ $ 100
		Proposed	~~$ 0~~ $ 928	~~$ 0~~ $ 4,346		~~$ 0~~ $ 44,832	~~$ 0~~ $ 50,106
Other[8]	Future Funding Sources	Committed					
		Proposed	~~$ 0~~ $ 2,719	~~$ 0~~ $ 3,106		~~$ 0~~ $ 43,998	~~$ 0~~ $ 49,823
Project Totals:			~~$ 0~~ $10,166	~~$ 0~~ $10,146	~~$ 100~~ $ 0	~~$ 0~~ $130,312	~~$ 0~~ $150,624

Section VI. Additional Information

A. Will this project utilize Regional or Inter-Regional Transportation Improvement Program funding?

____Yes (application must be co-signed by regional planning agency or Caltrans, whichever is applicable.)

__x__ No

B. For Projects with a Right of Way or Construction/Procurement Phase, the Lead Agency must demonstrate that it is part of, or in conformity with, the appropriate Regional Transportation Plan. Attach a copy of the relevant section(s) of the Regional Transportation Plan.

[5] Funds from the FEMA Alternate Project were used to purchase signal equipment to be used in the Russian River Division Phase 1 and Phase 2 construction.

[6] Funds from Sonoma County Transportation Authority Measure M. Measure M authorized a 1/4 cent sales tax for transportation in Sonoma County in November 2004. A percentage of the proceeds have been committed to SMART by SCTA. SMART and SCTA are currently negotiating an agreement to allow the funds to be used for signal improvements along the Russian River Division.

[7] The Operator has committed to contributing $100,000 toward the Canyon EIR/EIS, and will pursue other financing alternatives as appropriate.

[8] Future sources include Railroad Rehabilitation and Improvement Funding through the FRA, future grant opportunities for Goods Movement projects, and the Governor's proposed infrastructure bond.

C. If this project will utilize other fund sources (i.e. STIP, local measure tax, demo funds, etc.), have they been programmed or committed? Please provide a narrative describing how they have been committed or a strategy that the Agency will undertake to commit necessary funds: The project costs for the Russian River Division Phase 1 reopening would be funded from TCRP funds and SCTA Measure M funds. Measure M authorized a 1/4 cent sales tax for transportation in Sonoma County in November 2004. A percentage of the proceeds have been committed to SMART by SCTA. SMART and SCTA are currently negotiating an agreement to allow the funds to be used for signal improvements along the Russian River Division. As of March 2006, SMART and NCRA have verbally agreed to have NCRA perform the signal work. SMART plans to compensate NCRA with $3 million of Measure M funds for the Phase 1 signal improvements.

The project costs for the Canyon EIR/EIS would include a $100,000 contribution from the Operator.

The fund request for the Russian River Division Phase 2 reopening would be a combination of TCRP and ISTEA funds. The ISTEA funds are earmarked for this purpose, and NCRA will be working with District 1 to commit these funds in the next six months. The project costs for reopening the Canyon and the North would primarily be funded through future funding sources that are not yet committed. As these future phases of the reopening are further refined, the funding programs associated with those future phases will also be refined.

Section VII. Justification for Alternative Project Application (N/A)

Section VIII. Signatures of Applicant Agencies

By affixing the signature(s) below, the agency certifies it has provided complete and accurate information necessary for the California Transportation Commission to review and process this Project Application; that the agency will in good faith pursue this work for the public's benefit in a timely and diligent manner and comply with all existing and future Commission policies and rulings; and that the Regional Planning Agency or Caltrans has reviewed and approved this project.

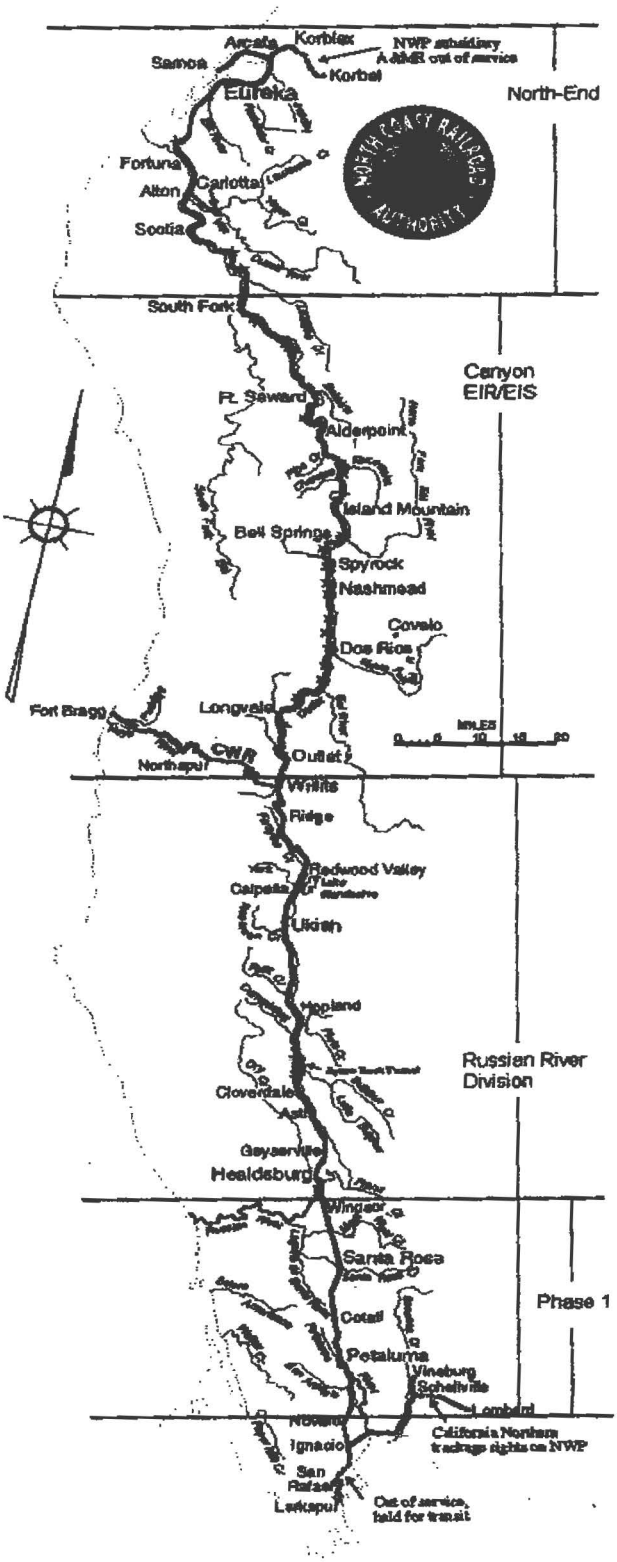
Mitch Stogner

Mitch Stogner, Executive Director – NCRA

9/18/06
Date

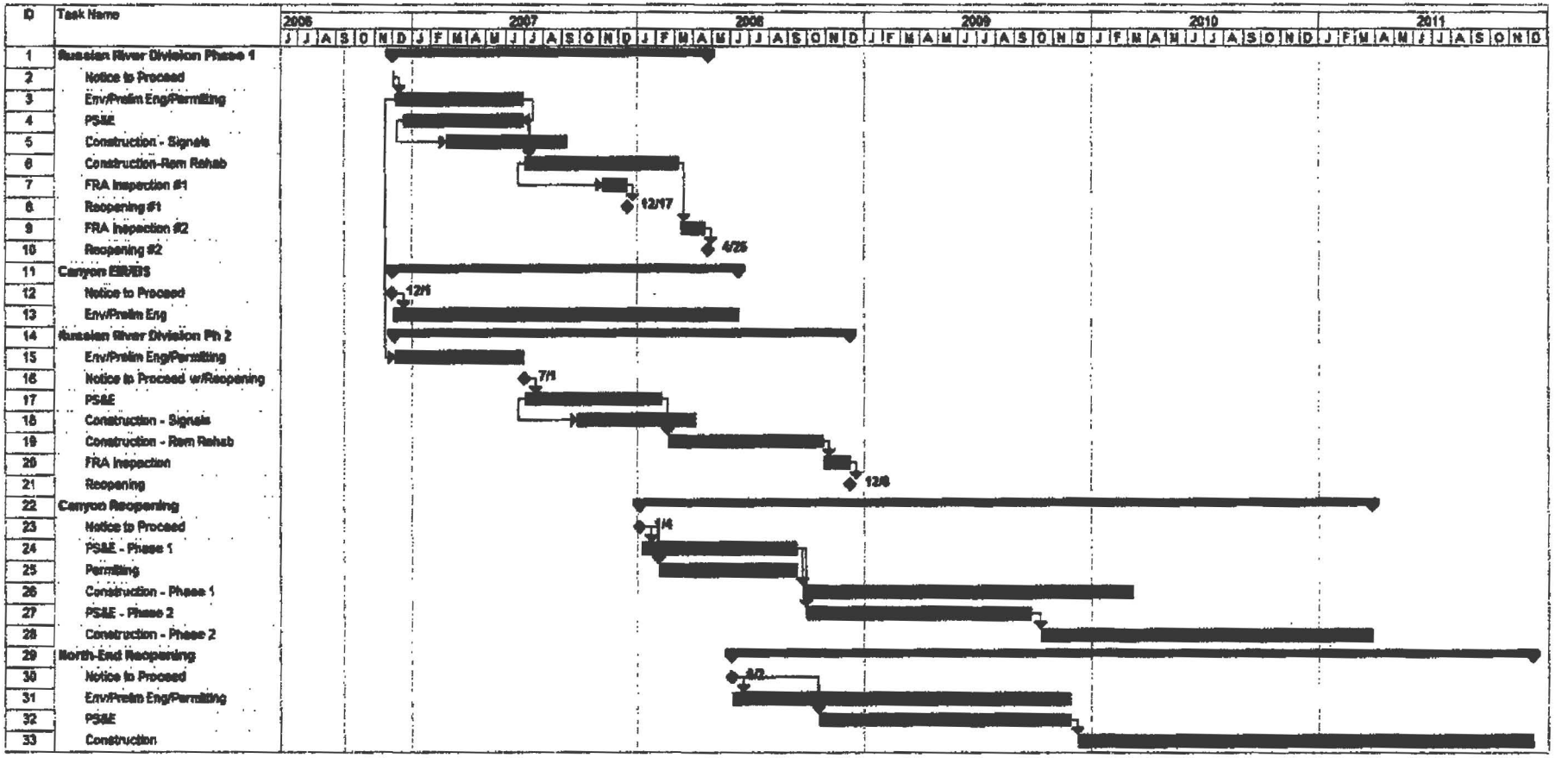
C:\Documents and Settings\Owner\My Documents\ARC\NCRA\TCRP October 2006\32.9 Application 11-9-06 final.doc

EXHIBIT A



CTC November 8/9, 2006

EXHIBIT B
PROJECT SCHEDULE



AR 06800

32.9 Nov 06

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

PROGRAM SUPPLEMENT/AMENDMENT
STATE FUNDED TRANSIT PROJECTS

PROGRAM SUPPLEMENT NO.:	01A0045-12	CTC PROJECT APPROVAL RESOLUTION NO.:	STIP	TCR TAA-06-60	Other
MASTER AGREEMENT NO.:	64A0045	ALLOCATION RESOLUTION NO.:		TFP-06-25	

PROVISION SECTION

This PROGRAM SUPPLEMENT hereby incorporates all of the provisions contained in MASTER AGREEMENT No. 64A0045, entered into between **STATE of California** and **NORTHCOAST RAILROAD AUTHORITY (RECIPIENT)** on February 21, 2001 and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is adopted in accordance with ARTICLE I of the aforementioned MASTER AGREEMENT under authority of Resolution 2001-02, approved by the **RECIPIENT** on April 18, 2001. The **RECIPIENT** further stipulates that, as a condition to the reimbursement of State funds obligated to this PROJECT, it accepts and will comply with the covenants, obligations, terms and conditions set forth in said MASTER AGREEMENT and on the following page(s) of this PROGRAM SUPPLEMENT.

FUND SOURCE	EFFECTIVE DATE	TERMINATION DATE	ALLOCATION AMOUNT	PROJECT PHASE
TCR	11/9/06	6/30/2009	$5,429,000	PA&ED
TCR	11/9/2006	6/30/2009	$1,397,000	PS&E

PROJECT TITLE: **#32.9 – NCRA; Upgrade to FRA Class 2 and 3 and Long-term Stabilization**

PROJECT SUMMARY: **Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The first phase of the project to be completed will result in an operable phase of the Russian River Division extending north from Lombard to Windsor and an EIR/EIS in the Canyon.**

REQUIRED SIGNATURES

Recipient: North Coast Railroad Authority	**State Dept.:** STATE OF CALIFORNIA Department of Transportation
By: Mitch Stog	**By:**
	CHERYL WILLIS
Title: MITCH STOGNER, Executive Director	**Title:** Deputy District Director, Planning D1
Date: 12-18-06	**Date:** 1/17/07

DISTRIBUTION LIST

Caltrans Headquarters Accounting (2)
Caltrans District 1 (1)
Recipient (1)
Caltrans Mass Transportation (1)
Caltrans Headquarters Audits (1)

LIST OF ATTACHMENTS INCLUDED

- [X] Scope of Work/Project Application
- [X] CTC/TCRP Resolution
- [X] Certification of Funds
- [ ] 3rd Party Agreements
- [X] Special Conditions

ATTACHMENT I

Scope of Work

(*Scope of Work* includes the CTC-approved Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan for the total project.)

Ia. Project Description

Agency Oversight

1. Prepare/maintain project work plan and schedule
2. Maintain project files
3. Coordinate with NCRA staff and Board
4. QA/QC all deliverables
5. Coordinate and attend project meetings
6. Field design data and investigations
7. Coordinate information between the on-call engineer, Operator, Caltrans, FRA and other interested parties
8. Strategy/status meetings and project management: on-going meetings through out the project and general project management activities.

Russian River Division Phase I and Phase II – Lombard to Willits Environmental Document

Preliminary Engineering

1. Preliminary engineering for Russian River Division Ph I (Lombard to Windsor)
   a. Prepare a Design Basis Memo indicating AREMA standards and other design standards to be reviewed by Caltrans, SMART, the Operator, and FRA.
   b. Perform data collection and design surveys of roadbed, rail, switches, culverts, crossings, structures and utilities
   c. Rail testing/inspection program
   d. Drainage/Hydrology report preparation including a matrix of condition and repairs.
   e. Mapping
   f. Geotechnical analysis for Haystack bridge pivot pier and Blackpoint approaches.
   g. Bridge Ratings for 4 steel bridges
   h. Gather detailed electrical and mechanical data for rehabilitation plans for 3 movable bridges
   i. Design assumes all work within NCRA right of way

2. Preliminary engineering for Russian River Division Ph II (Windsor to Willits)
   a. Obtain aerial mapping from Windsor to Willits
   b. Geotechnical analysis to define project requirements, recommendations for embankments and slope stabilization, and identify necessary temporary construction easements
   c. Develop project description

Environmental

1. Preliminary Project and Scoping Activities
   a. Project Description
   b. Preliminary Environmental Assessment Form
   c. Field Review
   d. Initial Study/EA
   e. NOP/NOI
   f. Additional Agency scoping, if needed

2. Draft EIR/EIS
   a. Prepare public participation materials
   b. Identify stakeholders, conduct informational meetings, and identify and prepare alternatives evaluation
   c. Prepare Preliminary Draft
   d. Prepare Technical Studies
      - Aesthetics
      - Agricultural resources
      - Air Quality
      - Biological Resources
      - Cultural Resources
      - Geology and soils
      - Hazards and hazardous materials
      - Hydrology and water quality
      - Land use and planning
      - Mineral resources
      - Noise and vibration
      - Population and housing
      - Public services/safety
      - Recreation and parks
      - Transportation and traffic
      - Utilities/energy and service systems

   e. Identify and prepare Cumulative Impact Evaluation
   f. Identify mitigation strategies
   g. Agency review, comments and revisions
   h. Notice of Completion of Draft EIR/EIS
   i. Public participation, comment period, Hearing and response to comments

3. Final EIR/EIS
   a. Revise draft per comments
   b. Agency review, comments and revisions
   c. Final EIR and Notice of Determination, and EIS and Record of Decision

Russian River Division Phase I – Lombard to Windsor Plans Specifications & Estimates

1. Preparation plans, specifications and engineer's estimate, construction staging and schedule for the following:

   a. Replacement of railroad grade crossings
      - Crossing Warning Systems
      - Roadway surface
   b. Repair of timber, concrete and steel bridges
      - Original design capacity
      - Plans for three movable bridges including potential automation of the Black Point bridge with controls on the ground and mechanical, electrical, and structural repairs
   c. Trackway repair plans (mainline and sidings)
      - Tie replacement program

- Ballast program
- Track surfacing program
- Switch upgrade program
- Rail and OTM (other track materials) replacement program

d. Culvert clean out/replacement/repair plans,
e. Roadbed restoration
f. Signage/Gates

- Mileposts, Whistle posts
- Private crossings

2. Three bid packages will be developed for construction:
   a. Replacement of grade crossings
   b. Prioritized bridge repairs
   c. Remainder of repairs: track and roadbed

Canyon EIR/EIS

1. Preliminary Project and Scoping Activities
   a. Project Description
   b. Preliminary Environmental Assessment Form
   c. Field Review
   d. Initial Study/EA
   e. NOP/NOI
   f. Additional Agency scoping, if needed

2. Draft EIR/EIS
   a. Prepare public participation materials
   b. Identify stakeholders, conduct informational meetings, and identify and prepare alternatives evaluation
   c. Prepare Preliminary Draft
   d. Prepare Technical Studies
      - Aesthetics
      - Agricultural resources
      - Air Quality
      - Biological Resources
      - Cultural Resources
      - Geology and soils
      - Hazards and hazardous materials
      - Hydrology and water quality
      - Land use and planning
      - Mineral resources
      - Noise and vibration
      - Population and housing
      - Public services/safety
      - Recreation and parks
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   e. Identify and prepare Cumulative Impact Evaluation
   f. Identify mitigation strategies

g. Agency review, comments and revisions
h. Notice of Completion of Draft EIR/EIS
i. Public participation, comment period, Hearing, and response to comments

3. Final EIR/EIS
   a. Revise draft per comments
   b. Agency review, comments and revisions
   c. Final EIR and Notice of Determination, and EIS and Record of Decision

Ib. Project Cost and Schedule ($ X 1,000)

Phase	*Scope*	*Start*	*End*	*Cost*
1	• Russian River Div. Reopening Lombard to Windsor	Dec 2006	June 2007	$1,460
	• Russian River Division Windsor to Willits	Dec 2006	June 2007	$979
	• Canyon EIR/EIS Preparation and PE	Dec 2006	June 2008	$4,000
	• Canyon Permitting	Feb 2008	Sep 2008	$928
	• North-end environmental/permit/PE	June 2008	Nov 2009	$2,799
2	• Russian River Div. Lombard to Windsor PS&E	Dec 2006	June 2007	$1,557
	• Russian River Div. Windsor to Willits PS&E	July 2007	Feb 2008	$1,084
	• Canyon PS&E	Jan 2008	Sep 2009	$4,346
	• North-end PS&E	Oct 2008	Nov 2009	$3,159
3	Not Applicable			
4	• Russian River Div. Lombard to Windsor (multiple contracts)	Feb 2007	Mar 2008	$22,613
	• Russian River Division Windsor to Willits (2 contracts)	Sep 2007	Oct 2008	$15,515
	• Canyon (two 18 month contracts)	Sep 2008	Mar 2011	$47,832
	• North-End (one 2-year contract)	Dec 2009	Dec 2011	$44,352
			Total:	**$150,624**

Ic. Funding Plan for Total Project

For the Total Project ($ X 1,000)

Source	*Type*		*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*	*Total*
TCRP 32.9	State	Committed	$5,429	$2,433		$23,138	$31,000
TCRP 32.3	State	Committed	$600				$600
TCRP 32.4	State	Committed	$390	$261		$4,249	$4,900
TCRP 32.7	State	Committed				$1,800	$1,800
Demo Funds	Federal	Committed				$8,600	$8,600
FEMA 1203-DR-CA	Federal	Committed				$695	$695
Measure M	Local	Committed				$3,000	$3,000
Operator – NWP Co.	Private Funds	Committed	$100				$100
		Proposed	$928	$4,346		$44,832	$50,106
Other	Future Funding Sources	Committed					
		Proposed	$2,719	$3,106		$43,998	$49,823
		Project Totals:	**$10,166**	**$10,146**		**$130,312**	**$150,624**

Id. Financial Plan for this Allocation

Phase of Work	*Activity*	*Agency Oversight Estimated Cost*	*On-call Engineer Estimated Cost*	*TOTAL ESTIMATED COST*
Phase 1	PA&ED Russian River Lombard to Willits	$64,000	$2,065,000	$2,129,000
Phase 1	Canyon EIR/EIS	99,000	3,201,000	**3,300,000**
Phase 2	PS&E Russian River Lombard to Windsor	42,000	1,355,000	**1,397,000**
TOTAL NOV-06 ALLOCATION				**$6,826,000**

ATTACHMENT II

CTC Resolution

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: November 8-9, 2006

Reference No.: 2.6e.(1)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Ross A. Chittenden
Division Chief
Transportation Programming

Subject: **FINANCIAL ALLOCATION FOR TRAFFIC CONGESTION RELIEF PROGRAM (TCRP) PROJECTS**
RESOLUTION TFP-06-25

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve Resolution TFP-06-25, allocating $19,806,000 in new TCRP funding for four TCRP projects, as identified on the attached vote list, with the stipulation that these allocations be under contract within six months.

ISSUE:

The attached vote list describes four TCRP projects totaling $19,806,000. The agencies for these projects are ready to proceed and are requesting an allocation at this time.

FINANCIAL RESOLUTION:

Resolved That:
The project(s), as component phases or in their entirety, appear under Government Code Section 14556.40(a) and are entitled to participate in this allocation.

Reimbursement of eligible costs is subject to the policies, restrictions and assurances as set forth in the Commission's policy for allocating, monitoring, and auditing TCRP projects, and is governed by the terms and conditions of the Fund Transfer Agreement, Program Supplement or Cooperative Agreement, and subsequent amendments to the same if required, as executed between the Implementing Agency and the Department.

Attachment

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
2.5a (1) Traffic Congestion Relief Program Allocations			Resolution TCRP-96-25
1 $600,000 North Coast Railroad Authority (NCRA) 01–Eureka	**Project #32.3 – North Coast Railroad: completion of the rail line from Willits to Arcata.** Reopen the railroad between Willits and Arcata. This allocation provides $600,000 in new TCRP funding for Project Approval and Environmental Document. The NCRA is requesting that $225,000 of the allocation be in the form of a cash advance.	Chapter 91 of the Statutes of 2000 899-3007 30.10.710.050	$600,000
2 $6,826,000 North Coast Railroad Authority (NCRA) 01 – Eureka	**Project #32.9 – North Coast Railroad; long-term stabilization.** Stabilization of landslides pursuant to Government Code Section 14556.50(i). This allocation provides a total of $6,826,000 in new TCRP funding, including $5,429,000 for Project Approval and Environmental Document and $1,397,000 for Project Specifications and Estimates. The NCRA is requesting that $600,000 of the allocation be in the form of a cash advance.	Chapter 91 of the Statutes of 2000 899-3007 30.10.710.050	$6,826,000
3 $10,500,000 Sacramento Area Council of Governments 03 - Sacramento	**Project #116 – Sacramento Emergency Clean Air/Transportation Plan (SECAT).** Reduce emissions from heavy-duty diesel engines through engine replacement or fleet modernization within the Sacramento federal ozone non-attainment area. This allocation provides $10,500,000 new TCRP funding for Phase 4 activities.	Chapter 91 of the Statutes of 2000 899-3007 20.30.710.077	$10,500,000
4			

ATTACHMENT III

Certification of Funds

TRAFFIC CONGESTION RELIEF PROGRAM

Name of Recipient:	North Coast Railroad Authority
Name of Project:	**#32.9 – Upgrade to FRA Class 2 and 3 and Long-term Stabilization**
CTC Resolution Number:	TFP-06-25
Date of Resolution:	November 9, 2006
Allocation Amount:	$6,826,000
Fund Source:	TCR
Date of Third Party Contract Award:	n/a
Period of Availability:	11/9/2006 through 6/30/2009

SOURCE DIST-UNIT	CHARGE DIST-UNIT	EXP AUTH NO.	OBJECT	ALLOCATION AMOUNT	LED	FY	ENCUMBRANCE DOCUMENT NO.	PROJECT #
01-804	01-804	R9497A	7049	$6,826,000	6/30/09	01	TRR9497A DD	32.9

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure Stated above.

Signature of Accounting Officer: John R Kimmel

Date: 4/4/06

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2660-689-3007	91	2000	200/2001

ATTACHMENT IV

Special Conditions

RECIPIENT agrees to exercise best efforts toward meeting the one remaining condition (of five) imposed by the Department of Transportation (Caltrans) on RECIPIENT for the release of State or federal funds. The five conditions were identified in the July 17, 1998 letter from the Director of Caltrans to the Executive Director of the North Coast Railroad Authority. The remaining condition is to "resolve audit deficiencies".

RECIPIENT continues to be designated as a "high risk grantee" by Caltrans Audits and Investigations (Caltrans Audits) based on CFR 49, Part 18.12 and is subject to enhanced monitoring and compliance conditions set forth in this section. RECIPIENT shall be reimbursed solely for subcontracted third party costs until such time that RECIPIENT demonstrates to the satisfaction of Caltrans Audits that recipient has the ability to accumulate and segregate reasonable, allocable and allowable in-house costs (in-house direct costs or any indirect costs). If RECIPIENT intends to seek reimbursement for in-house direct and indirect costs, the RECIPIENT is to enter three complete months of such costs into their accounting system and then request Caltrans Audits to perform a follow-up audit to determine the adequacy of the recipient's accounting system and internal management controls. RECIPIENT also agrees to request verification and approval of indirect and fringe benefit rates by Audits before billing these costs to any project. If it is determined, after the above follow-up audit is performed, that the RECIPIENT has an adequate financial management system and an approved indirect cost allocation plan, a formal written amendment will be required prior to reimbursement of in-house direct and indirect costs.

Actual costs reimbursed shall not exceed the estimated line items set forth in the financial plan. The maximum amount payable under this program supplement shall not exceed $6,826,000.

For the purposes of Cash Flow, RECIPIENT shall submit Progress Payment Requests. The process and timeline are defined below:

- After RECIPIENT has paid the contractor, RECIPIENT may seek reimbursement by submitting an invoice and supporting documentation to District 1.
- District 1 must receive from RECIPIENT all cancelled checks for all expenses claimed on said invoice within 30 calendar days of receipt of said invoice.
- The District will have 15 calendar days from the date that said invoice is received to process the request, verify supporting documentation, and forward it to HQ Accounting.
- HQ Accounting will have 15 calendar days to process the invoice and forward it to the State Controller's Office (SCO).
- SCO will have 15 calendar days to process the invoice and issue payment to RECIPIENT.
- Caltrans shall withhold 10% of the final billing. Upon receipt of all cancelled checks supporting the final invoice, the 10% retainer withheld by Caltrans shall be released to RECIPIENT per the above timeline.

In the event that RECIPIENT does not comply with the process as described above, this agreement becomes null and void and RECIPIENT will be required to submit cancelled checks concurrent with any future requests for reimbursement.

Approved as to form and procedure

BY: _____ 1/11/07
CALTRANS ATTORNEY *DATE*

32.9 MAR 07

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

PROGRAM SUPPLEMENT/AMENDMENT
STATE FUNDED TRANSIT PROJECTS

PROGRAM SUPPLEMENT NO.:	**01A0045-14**	**CTC PROJECT APPROVAL RESOLUTION NO.:**	STIP	TCR TAA-06-60	Other
MASTER AGREEMENT NO.:	**64A0045**	**ALLOCATION RESOLUTION NO.:**		TFP-06-32	

PROVISION SECTION

This PROGRAM SUPPLEMENT hereby incorporates all of the provisions contained in MASTER AGREEMENT No. 64A0045, entered into between **STATE of California** and **NORTHCOAST RAILROAD AUTHORITY (RECIPIENT)** on February 21, 2001 and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is adopted in accordance with ARTICLE I of the aforementioned MASTER AGREEMENT under authority of Resolution 2001-02, approved by the **RECIPIENT** on April 18, 2001. The **RECIPIENT** further stipulates that, as a condition to the reimbursement of State funds obligated to this PROJECT, it accepts and will comply with the covenants, obligations, terms and conditions set forth in said MASTER AGREEMENT and on the following page(s) of this PROGRAM SUPPLEMENT.

FUND SOURCE	EFFECTIVE DATE	TERMINATION DATE	ALLOCATION AMOUNT	PROJECT PHASE
TCR	3/15/2007	6/30/2010	$1,530,000	CON

PROJECT TITLE: **#32.9 – NCRA; Upgrade to FRA Class 2 and 3 and Long-term Stabilization**

PROJECT SUMMARY: **Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The first phase of the project to be completed will result in an operable phase of the Russian River Division extending north from Lombard to Windsor and an EIR/EIS in the Canyon.**

REQUIRED SIGNATURES

Recipient: North Coast Railroad Authority	**State Dept.:** STATE OF CALIFORNIA Department of Transportation
By: Mitch Stogner	**By:** Cheryl Willis
Title: MITCH STOGNER, Executive Director	**Title:** CHERYL WILLIS Deputy District Director, Planning D1
Date: 4-5-07	**Date:** 5/2/07

DISTRIBUTION LIST

Caltrans Headquarters Accounting (2)
Caltrans District 1 (1)
Recipient (1)
Caltrans Mass Transportation (1)
Caltrans Headquarters Audits (1)

LIST OF ATTACHMENTS INCLUDED

- [X] Scope of Work/Project Application
- [X] CTC/TCRP Resolution
- [X] Certification of Funds
- [ ] 3rd Party Agreements
- [X] Special Conditions

ATTACHMENT I

Scope of Work

(*Scope of Work* includes the CTC-approved Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan for the total project.)

Ia. Project Description

Signal improvements will be made within the Russian River Division Lombard to Windsor section. The types of improvements are described below and were originally established in the 2005 Capital Assessment Report date November 2005.

1. **Category 1 Inspect & Test:** requires minimal work for immediate reactivation. Inspection to include replacing broken or missing flasher units, broken counterweight arms and counterweights, resetting gate and flasher assemblies to plumb, realigning flashers, replacing all bulbs, replacing or repairing lenses, backgrounds and visors, installing missing fate arms, installing new gate arm wiring, and cleaning and preparation for painting. FRA compliance testing to include: meggering of cables, grounds tests, relay tests, etc. NCRA testing to include proper battery voltage tests.

2. **Category 2 Control Circuitry Replacement:** requires new prediction equipment, track leads and batteries, along with Category 1 work tasks.

3. **Category 3 Partial Replacement:** requires replacement of one or more flasher/gate assembly, shelter, and control circuitry to utilize crossing prediction equipment including new track leads, and new batteries, along with Category 1 work tasks.

In addition, the following items apply:

- All existing 8" incandescent flasher units are to be replaced with 12" LED units.
- New gate and flasher assemblies are to be installed complete with 12" LED units.
- Crossings with existing 12" incandescent flasher units can be placed back in service.
- CPUC to inform each municipality that the RR will be placed back in service and that signs and roadway striping is required and must be brought up to current standards.
- W10-1 signs will need to be relocated further away from crossings, per CPUC (This is typical at most crossings).

Ib. Project Cost and Schedule ($ X 1,000)

Phase	*Scope*	*Start*	*End*	*Cost*
1	• Russian River Div. Reopening Lombard to Windsor	Dec 2006	June 2007	$1,460
	• Russian River Division Windsor to Willits	Dec 2006	June 2007	$979
	• Canyon EIR/EIS Preparation and PE	Dec 2006	June 2008	$4,000
	• Canyon Permitting	Feb 2008	Sep 2008	$928
	• North-end environmental/permit/PE	June 2008	Nov 2009	$2,799
2	• Russian River Div. Lombard to Windsor PS&E	Dec 2006	June 2007	$1,557
	• Russian River Div. Windsor to Willits PS&E	July 2007	Feb 2008	$1,084
	• Canyon PS&E	Jan 2008	Sep 2009	$4,346
	• North-end PS&E	Oct 2008	Nov 2009	$3,159
3	Not Applicable			
4	• Russian River Div. Lombard to Windsor (multiple contracts)	Feb 2007	Mar 2008	$22,613
	• Russian River Division Windsor to Willits (2 contracts)	Sep 2007	Oct 2008	$15,515
	• Canyon (two 18 month contracts)	Sep 2008	Mar 2011	$47,832
	• North-End (one 2-year contract)	Dec 2009	Dec 2011	$44,352
			Total:	**$150,624**

Ic. Funding Plan for Total Project

For the Total Project ($ X 1,000)

Source	*Type*		*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*	*Total*
TCRP 32.9	State	Committed	$5,429	$2,433		$23,138	$31,000
TCRP 32.3	State	Committed	$600				$600
TCRP 32.4	State	Committed	$390	$261		$4,249	$4,900
TCRP 32.7	State	Committed				$1,800	$1,800
Demo Funds	Federal	Committed				$8,600	$8,600
FEMA 1203-DR-CA	Federal	Committed				$695	$695
Measure M	Local	Committed				$3,000	$3,000
Operator – NWP Co.	Private Funds	Committed	$100				$100
		Proposed	$928	$4,346		$44,832	$50,106
Other	Future Funding Sources	Committed					
		Proposed	$2,719	$3,106		$43,998	$49,823
		Project Totals:	**$10,166**	**$10,146**		**$130,312**	**$150,624**

ATTACHMENT II

CTC Resolution

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 14-15, 2007

Reference No.: 2.1c.(2)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **TRAFFIC CONGESTION RELIEF PROGRAM PROJECT APPLICATION AMENDMENT APPROVAL**
RESOLUTION TAA-07-06, AMENDING RESOLUTIONS TAA-06-15 AND TAA-06-60

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) approve Resolution TAA-07-06, amending the applications for Traffic Congestion Relief Program (TCRP) Projects #32.4 and #32.9 described below. The Department also recommends that the Commission approve the following condition on both projects: "The NCRA shall provide to the Department for approval the detailed scope of work prior to execution of a supplemental contract."

ISSUE:

The North Coast Railroad Authority (NCRA) is requesting to amend the applications for two TCRP projects.

For Project #32.4 – Upgrade rail line to Class II or III standards, NCRA is requesting to:

- Revise the scope.
- Redistribute a total of $172,000 from Environmental (PA&ED) to Design (PS&E).
- Update the project funding plan.

For Project #32.9 – Long-term stabilization, NCRA is requesting to:

- Revise the scope.
- Update the plan for the use of Federal funds.

BACKGROUND:

Project #32.4 is to upgrade the rail line to Class II or III standards. This includes debris removal, scour repair, levee/roadbed repairs, culvert repairs and vegetation control.

The NCRA proposes to revise the project scope to include the following:

- Construction of embankment levy repairs at the Fields Landing/King Salmon site;
- Flood debris removal at Robinson Creek and Shultz Slough;

- Initial reconnaissance to identify areas where scour is likely to be an issue.
- Levee roadbed repairs at Schultz Slough, San Antonio Creek, Schellville and Fields Landing.
- Characterization of culvert repair at the Schellville site; and
- A technical report regarding vegetation control will be filed with the California Regional Water Control Board containing a proposed project description, best management practices and a monitoring and reporting program (phase 1).

During the field investigations, the magnitude of certain projects was found to be significantly greater than estimated. As a result, NCRA is narrowing the scope to reflect better defined projects that can be completed within the available budget.

NCRA is proposing to redistribute $172,000 from PA&ED to PS&E. Fewer dollars are needed for PA&ED due to a decrease in the budgeted cost for scour and roadbed repair environmental clearance and reduced costs for permits. The transfer of funds to PS&E is needed to cover increased costs for the identified sites. The project funding plan is being revised to reflect the proposed redistribution of funds.

Project #32.9 is to replace ties, repair roadbed, repair structures, improve drainage, and improve crossing protection to permit operation of Federal Rail Administration Class II and, where possible, Class III service. The project will also provide landslide stabilization where required. The TCRP funds available for this project will primarily cover the first phase of reopening the Russian River Division from Lombard to Windsor, and preparing an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for work in the canyon. The remaining TCRP funds, and funds from additional sources, will be used for improvements to reopen the rest of the line.

NCRA is requesting to change the scope for the Russian River Division Phase 1 reopening to delete the National Environmental Policy Act (NEPA) documentation, since only California Environmental Quality Act (CEQA) documentation will be done to address cumulative effects of operations.

NCRA also will move the federal funding from the rehabilitation program for the Russian River Division Phase 2, and will instead designate it for future activities after discussions with Federal Highways Administration and the Department are underway.

Concurrent allocation requests for both projects are under Reference 2.6e.(2), and a concurrent allocation amendment for Project #32.4 is under Reference 2.6e.(4).

CHAIR AND COMMISSIONERS

Reference No. 2.4c.(2)
March 14-15, 2007
Page 3 of 5

RESOLUTION:

Resolved, with all conditions stipulated still in effect, the California Transportation Commission hereby revises TCRP Projects #32.4 and #32.8 as follows.

Revises:

County		District		BREF		TCRP								
multiple		1		32.4		$ 5,000								
Completion (FY)			Phase 1	06/07						Phase 3	2CA			
			Phase 2	06/07						Phase 4	07/08			
Lead Agency:		North Coast Railroad Authority (NCRA)												
Implementing:		NCRA												
Description:		Upgrade rail line to Class II or III standards.												
(DOLLARS IN THOUSANDS)														
FUND	TOTAL	Project Totals by Fiscal Year						Project Totals by Component						
		Prior	06/07	07/08	08/09	09/10	Beyond	R/W	CON	PA&ED	PS&E	R/W Supp	CON Supp	
TCRP														
Existing	5,000	751	4,249						4,249	490	261			
Change	0									[illegible]	172			
Proposed	5,000	751	4,249						4,249	318	433			
Total														
Existing	5,000	751	4,249						4,249	490	261			
Change	0	0	0						0	[illegible]	172			
Proposed	5,000	751	4,249						4,249	318	433			

And Revises:

County	District	RREF	TCRP					
multiple	1	32.0	$ 51,000					
Completion (FY)	Phase 1	09/10		Phase 3	NA			
	Phase 2	09/10		Phase 4	NA			
Lead Agency:	North Coast Railroad Authority (NCRA)							
Implementing:	NCRA							
Description:	Long-term stabilization							

(DOLLARS IN THOUSANDS)

FUND	TOTAL	Project Totals by Fiscal Year						Project Totals by Component					
		Prior	06/07	07/08	08/09	09/10	Beyond	R/W	CON	PA&ED	PS&E	R/W Supp	CON Supp
TCRP													
Existing	51,000		51,000						23,138	5,429	2,433		
Change	0												
Proposed	51,000		51,000						23,138	5,429	2,433		
TCRP Projects 32.3, 32.4 and 32.7													
Existing	7,300		7,300						6,042	995	261		
Change	0												
Proposed	7,300		7,300						6,042	995	261		
Federal Demonstration Funds													
Existing	8,600		8,600						8,600				
Change	0												
Proposed	8,600		8,600						8,600				
FEMA 1203-DR-CA													
Existing	695		695						695				
Change	0												
Proposed	695		695						695				
Local Measure M													
Existing	3,000		3,000						3,000				
Change	0												
Proposed	3,000		3,000						3,000				
Private Operator - Committed													
Existing	100		100							100			
Change	0												
Proposed	100		100							100			
Private Operator - Proposed													
Existing	50,106		50,106						44,832	928	4,346		
Change	0												
Proposed	50,106		50,106						44,832	928	4,346		
Future Funding Need													
Existing	49,823		49,823						43,998	2,719	3,106		
Change	0												
Proposed	49,823		49,823						43,998	2,719	3,106		
Total													
Existing	150,624		150,624						130,312	10,166	10,146		
Change	0		0						0	0	0		
Proposed	150,624		150,624						130,312	10,166	10,146		

CHAIR AND COMMISSIONERS

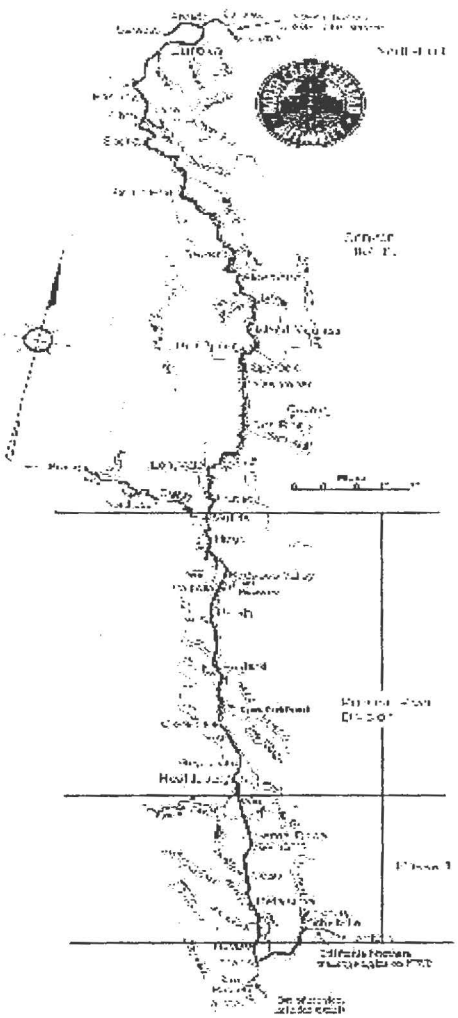
Reference No.: 2.1c.(2)
March 14-15, 2007
Page 5 of 5

TCRP AMENDMENT TAA-07-06

Location Map

Description:
#32.4 – North Coast Railroad: Sub-paragraph (d) upgrade rail line to Class II or III standards.

#32.9 – North Coast Railroad: Sub-paragraph (f) long-term stabilization.



"Caltrans improves mobility across California"

2.6. Mass Transportation Financial Matters

Project # / Allocation Amount / Implementing Agency / District-County	BREF # and Project Description / Description of Allocation	Item # / Program Code	Total Allocation Amount
2.6e.(1) Traffic Congestion Relief Program Re-Allocation			**Resolution TFP-06-31**
$31,000,000 San Francisco Bay Area Rapid Transit District (BART) 04 – Alameda and Contra Costa	**Project #1.1 – BART Extension from Fremont to Warm Springs** Extend BART 5.4 miles south of the existing Fremont Station Re-allocate $31,000,000 in previously allocated TCRP funding for Project Approval and Environmental Document, Plans, Specification & Estimates and Right-of-Way.	Chapter 91 of the Statutes of 2000 0869-3207 30.10.715.010	$31,000,000

Project # / Allocation Amount / Implementing Agency / District-County	BREF # and Project Description / Description of Allocation	Item # / Program Code	Total Allocation Amount
2.6e.(2) Traffic Congestion Relief Program Allocations			**Resolution TFP-06-32**
1 $5,000,000 San Francisco Bay Area Rapid Transit District (BART) 04 – Alameda and Contra Costa	**Project #12.1 – Bay Area Transit Connectivity: Route 4 Study and eBART System** Identify and evaluate short and long term transit alternatives in the Route 4 Corridor, to include BART, heavy rail, light rail and bus service such as express bus and feeder buses This allocation provides $5,000,000 in new TCRP funding for Project Approval and Environmental Document for the proposed eBART system (Related STIP item under 2.6a.(1), project #3.)	Chapter 91 of the Statutes of 2000 0869-3207 30.10.715.010	$5,000,000
2 $690,000 North Coast Railroad Authority 01 – Various	**Project #32.4 – North Coast Railroad: upgrade rail line to Class II or III standards** Upgrade the entire railroad to Federal Railroad Administration Class II or III standards pursuant to Government Code Section 14556.5(d). This allocation provides $690,000 in new TCRP funding for Construction	Chapter 91 of the Statutes of 2000 0869-3207 30.10.715.010	$690,000
3 $1,535,000 North Coast Railroad Authority 01 – Various	**Project #32.5 – North Coast Railroad: long term stabilization** Stabilize landslides pursuant to Government Code Section 14556.5(b), to include overall reopening of the railroad This allocation provides $1,535,000 in new TCRP funding for Construction	Chapter 91 of the Statutes of 2000 0869-3207 30.10.715.010	$1,535,000

Note: This document was prepared following the California Transportation Commission (CTC) meeting and is a reflection of the Department's interpretation of changes made to the Agenda

ATTACHMENT III

Certification of Funds

TRAFFIC CONGESTION RELIEF PROGRAM

Name of Recipient:	North Coast Railroad Authority
Name of Project:	**#32.9 – Upgrade to FRA Class 2 and 3 and Long-term Stabilization**
CTC Resolution Number:	TFP-06-32
Date of Resolution:	March 15, 2007
Allocation Amount:	$1,530,000
Fund Source:	TCR
Date of Third Party Contract Award:	n/a
Period of Availability:	3/15/2007 through 6/30/2010

SOURCE DIST-UNIT	CHARGE DIST-UNIT	EXP AUTH NO.	OBJECT	ALLOCATION AMOUNT	LED	FY	ENCUMBRANCE DOCUMENT NO.	PROJECT #
01-804	01-804	R9497B	7049	$1,530,000	6/30/10	01	TRR9497B	32.9

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure Stated above.

Signature of Accounting Officer: [signature]

Date: 4/3/07

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2660-689-3007	91	2000	200/2001

ATTACHMENT IV

Special Conditions

RECIPIENT agrees to exercise best efforts toward meeting the one remaining condition (of five) imposed by the Department of Transportation (Caltrans) on RECIPIENT for the release of State or federal funds. The five conditions were identified in the July 17, 1998 letter from the Director of Caltrans to the Executive Director of the North Coast Railroad Authority. The remaining condition is to "resolve audit deficiencies".

RECIPIENT continues to be designated as a "high risk grantee" by Caltrans Audits and Investigations (Caltrans Audits) based on CFR 49, Part 18.12 and is subject to enhanced monitoring and compliance conditions set forth in this section. RECIPIENT shall be reimbursed solely for subcontracted third party costs until such time that RECIPIENT demonstrates to the satisfaction of Caltrans Audits that recipient has the ability to accumulate and segregate reasonable, allocable and allowable in-house costs (in-house direct costs or any indirect costs). If RECIPIENT intends to seek reimbursement for in-house direct and indirect costs, the RECIPIENT is to enter three complete months of such costs into their accounting system and then request Caltrans Audits to perform a follow-up audit to determine the adequacy of the recipient's accounting system and internal management controls. RECIPIENT also agrees to request verification and approval of indirect and fringe benefit rates by Audits before billing these costs to any project. If it is determined, after the above follow-up audit is performed, that the RECIPIENT has an adequate financial management system and an approved indirect cost allocation plan, a formal written amendment will be required prior to reimbursement of in-house direct and indirect costs.

Actual costs reimbursed shall not exceed the estimated line items set forth in the financial plan. The maximum amount payable under this program supplement shall not exceed $1,530,000.

For the purposes of Cash Flow, RECIPIENT shall submit Progress Payment Requests. The process and timeline are defined below:

- After RECIPIENT has paid the contractor, RECIPIENT may seek reimbursement by submitting an invoice and supporting documentation to District 1.
- District 1 must receive from RECIPIENT all cancelled checks for all expenses claimed on said invoice within 30 calendar days of receipt of said invoice.
- The District will have 15 calendar days from the date that said invoice is received to process the request, verify supporting documentation, and forward it to HQ Accounting.
- HQ Accounting will have 15 calendar days to process the invoice and forward it to the State Controller's Office (SCO).
- SCO will have 15 calendar days to process the invoice and issue payment to RECIPIENT.
- Caltrans shall withhold 10% of the final billing. Upon receipt of all cancelled checks supporting the final invoice, the 10% retainer withheld by Caltrans shall be released to RECIPIENT per the above timeline.

In the event that RECIPIENT does not comply with the process as described above, this process becomes null and void and RECIPIENT will be required to submit cancelled checks concurrent with any future requests for reimbursement.

Approved as to form and procedure

BY: _____ 4/23/07

CALTRANS ATTORNEY *DATE*

32.9 Apr. 07

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

PROGRAM SUPPLEMENT/AMENDMENT
STATE FUNDED TRANSIT PROJECTS

MASTER AGREEMENT NO.:	64A0045 A01	PROGRAM SUPPLEMENT NO.:	01A0045-15 A1

PROVISION SECTION

This PROGRAM SUPPLEMENT AMENDMENT hereby incorporates all of the provisions contained in MASTER AGREEMENT AMENDMENT No. 64A0045 A01, originally entered into between **STATE** and **RECIPIENT** on February 21, 2001, and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT AMENDMENT is adopted in accordance with ARTICLE I of the aforementioned MASTER AGREEMENT AMENDMENT under authority of Resolution 2010-1 approved by **RECIPIENT** on February 10, 2010. The **RECIPIENT** further stipulates that, as a condition to the reimbursement of State funds obligated to this PROJECT, it accepts and will comply with the covenants, obligations, terms and conditions set forth in said MASTER AGREEMENT and on the following page(s) of this PROGRAM SUPPLEMENT AMENDMENT.

CTC RESOLUTION	RESOLUTION DATE	FISCAL YEAR	FUND	AMOUNT	EA	PHASE	3RD PARTY CONTRACT	TERMINATION DATE
TFP-06-36	4/26/07	06/07	TCRP	$7,495,000	R9497C	CON	N/A	6/30/10
TAA-09-24	**5/19/10**	**09/10**	**TCRP**	**$0**	**R9497C**	**CON**	**N/A**	**6/30/11**

PROJECT TITLE: **TCRP #32.9 – NCRA; Upgrade to FRA Class 2 and 3 and Long-term Stabilization**

PROJECT SUMMARY: Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The first phase of the project to be completed will result in an operable segment of the Russian River Division extending north from Lombard to Windsor and a geotechnical study with mapping in the Canyon. **This contract amendment updates the approved project schedule.**

REQUIRED SIGNATURES

AGENCY		STATE OF CALIFORNIA	
Recipient:	Northcoast Railroad Authority	State Dept.:	Department of Transportation
Signed By:	Mitch Stogner	Signed By:	Cheryl S Willis
Name:	MITCH STOGNER	Name	CHERYL WILLIS
Title:	Executive Director	Title:	Deputy Director, Division of Planning
Date:	10/10/10	Date:	6/28/10

DISTRIBUTION LIST

Caltrans Headquarters Accounting (2)
Caltrans District (1)
Recipient (1)
Caltrans Mass Transportation (1)

LIST OF ATTACHMENTS INCLUDED

- ☒ I. Scope of Work
- ☒ II. CTC Resolutions
- ☒ III. Certification of Funds
- ☐ IV. 3rd Party Agreement
- ☒ V. Special Conditions

ATTACHMENT I

Scope of Work

(*Scope of Work* includes the CTC-approved Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan for the total project.)

Project Description

This construction phase allocation is to be used for crossing signal improvements within the Russian River Division Lombard to Windsor section. The improvement plans address repairs for the following signals:

Signal No.	MP	Location	Repair/Rehabilitation Category*
		NOVATO	
8	5-25.9	Hanna Ranch Road	4
9	5-27.46D	Pedestrian Crossing	2
10	5-27.9	Grant Street	2
11	5-28.1	Olive Avenue	4
12	5-28.35X	Golden Gate Place	4
13	5-28.5	Rush Creek Road	4
		PETALUMA	
14	5-38.3	Hopper Road	n.a.
15	5-38.5	D Street	3
16	5-38.6	Washington Street	3
17	5-38.8	Lakeville Street	1
18	5-39.2	W. Payran Street	4
19	5-40.4	South Point Blvd.	1
20	5-40.7	McDowell Avenue	3
21	5-41.1	Corona Road	3
22	5-42.2	Ely Road	3
		PENNGROVE	
23	5-43.3	Main St./Petaluma Hill Road	3
24	5-43.6	Adobe Road	2
		COTATI	
25	5-44.8	East Railroad Avenue	4
26	5-43.6	East Cotati Avenue	4
		ROHNERT PARK	
27	5-46.8	Southwest Blvd.	4
28	5-46.9	Pedestrian Crossing	2
29	5-47.4	Expressway Avenue	3
30	5-48.5	Golf Course Drive	4
		SANTA ROSA	
31	5-49.4	Scenic Avenue	3
32	5-50.3	Todd Road	2
33	5-50.8	West Robles Avenue	2
34	5-51.3	Bellevue Avenue	3
35	5-52.2	Hearn Avenue	3

36	5-53.0	Barham Avenue	3
37	5-53.4	Sebastopol Avenue	2
38	5-53.7	Third Street	2
39	5-53.8	Sixth Street	1
40	5-53.9	Seventh Street	1
41	5-54.0	Eighth Street	2
42	5-54.1	Ninth Street	1
43	5-54.4	College Avenue	3
44	5-55.3	Guerneville Road	3
45	5-55.6	W. Steele Lane	2
46	5-56.3	Piner Road	3
		FULTON	
47	5-56.8	San Miguel Avenue	2
48	5-58.5	Fulton Road	4
49	5-58.8	River Road	4
50	5-59.9	Airport Road	3
51	5-60.2	Aviation Blvd.	1
		WINDSOR	
52	5-61.1	Shiloh Road	2
53	5-61.7	Mitchell Lane	N/A
54	5-62.9	Windsor/River Road	2

*Categories of rehabilitation level were established in the 2005 Capital Assessment Report dated November 2005. Some of the category levels assigned to signals have changed since the time of the report as a result of flooding and/or vandalism.

The four categories are:

1. Category 1 Inspect & Test: requires minimal work for immediate reactivation. Inspection to include replacing broken or missing flasher units, broken counterweight arms and counterweights, resetting gate and flasher assemblies to plumb, realigning flashers, replacing all bulbs, replacing or repairing lenses, backgrounds and visors, installing missing gate arms, installing new gate arm wiring, and cleaning and preparation for painting. FRA compliance testing to include: meggering of cables, grounds tests, relay tests, etc. NCRA testing to include proper battery voltage tests.
2. Category 2 control Circuitry Replacement: requires new prediction equipment, track leads and batteries, along with Category 1 work tasks.
3. Category 3 Partial Replacement: requires replacement of one or more flasher/gate assemblies, shelter, and control circuitry to utilize crossing prediction equipment including new track leads and new batteries, along with Category 1 work tasks.
4. Category 4 Complete Replacement: requires complete replacement with new shelter, control circuitry, charger and batteries, and ground equipment to include cables, gates, flashers, bells and cantilevers as required, and all Category 1 tests.

In addition, the following items apply:

- All existing 8" incandescent flasher units are to be replaced with 12" LED units.
- New gate and flasher assemblies are to be installed complete with 12" LED units.
- Crossings with existing 12" incandescent flasher units can be placed back in service.
- CPUC to inform each municipality that the RR will be placed back in service and that signs and roadway striping is required and must be brought up to current standards.

- W10-1 signs will need to be relocated further away from crossings, per CPUC (This is typical at most crossings).

Project Overall Funding Plan

(X $1,000)

Source	*Type*		*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*	*Total*
TCRP 32.9	State	Committed	$3,176	$1,437		$26,387	$31,000
TCRP 32.3	State	Committed	$600				$600
NCRA	Agency	Committed				$695	$695
Cities & Measure M	Local	Committed				$3,330	$3,330
Insurance Proceeds/ Private Crossings	Private Funds	Committed					
		Proposed				$220	$220
		Project Totals:	**$3,776**	**$1,437**		**$30,632**	**$35,845**

Project Financial Plan

(X $1,000)

Phase	*Scope*	*Cost*
1	• Russian River Div. Reopening Environmental/Permitting/Preliminary Engineering (allocation in Nov-2006)	$2936
	• Canyon Preliminary Engineering	$840
	SUB-TOTAL PHASE I	**$3776**
2	• Russian River Division Ph.1 PS&E (allocation Nov-2006)	$1,437
	SUB-TOTAL PHASE II	**$1437**
3	Not Applicable	
4	• Russian River Division Reopening Ph.1 (multiple contracts: signals, early bridge work/ roadway/ structures) (allocation in Mar-2007, Apr-2007, Jul-2007, Feb-2008)	$30,632
	SUB-TOTAL PHASE IV	**$30,632**
		$35,845

Project Schedule

Phase	*Scope*	*Start*	*End*
1	• Russian River Div. Reopening Environmental/Permitting/Preliminary Engineering (allocation in Nov-2006)	Dec 2006	June 2011
	• Canyon Preliminary Engineering	Dec 2006	June 2011
2	Russian River Division Ph.1 PS&E (allocation Nov-2006)	Dec 2006	Sep 2008
3	Not Applicable		
4	Russian River Division Reopening Ph.1 (multiple contracts: signals, early bridge work/ roadway/ structures)(allocation in Mar-2007, Apr-2007, Jul-2007, Feb-2008)	July 2007	June 2011

ATTACHMENT II

CTC Resolutions

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 19-20, 2010

Reference No.: 2.1a.(5)
Action Item

From: Norma Ortega
Chief Financial Officer

Prepared by: Rachel Falsetti
Division Chief
Transportation Programming

Subject: **TRAFFIC CONGESTION RELIEF PROGRAM PROJECT APPLICATION AMENDMENT APPROVAL**
RESOLUTION TAA-09-24, AMENDING RESOLUTION TAA-07-47

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) consider an application amendment for Traffic Congestion Relief Program (TCRP) Project 32.9, as described below.

ISSUE:

The North Coast Railroad Authority (NCRA) requests an application amendment for TCRP Project 32.9 – North Coast Railroad; long-term stabilization (PPNO T0329) to update the project schedule for completion of Environmental (PA&ED) and construction from Fiscal Year (FY) 2008-09 to FY 2010-11.

BACKGROUND:

On February 14, 2008, the Commission approved Resolution TAA-07-47, which revised the project scope, reprogrammed funds among project components, updated the project funding plan, and revised the project schedule for TCRP Projects 32.9 and 32.3. Also approved was the use of TCRP funds from both projects to fund a Geotechnical Study and Mapping of the Eel River Canyon (Canyon Study).

For Project 32.9, the scope of construction was revised under TAA-07-47 to focus the project on restoring a segment of the rail line within the Russian River Division. To coincide with that construction scope revision, PA&ED was also revised. Rather than produce an Environmental Impact Report addressing activities in the Eel River Canyon (one part of the original PA&ED scope of Project 32.9), NCRA was required to produce the Canyon Study, which was approved under TAA-07-47 to be funded under both TCRP Project 32.9 and 32.3.

As part of the original PA&ED scope of Project 32.9, NCRA is producing an "Environmental Impact Report (EIR) for Operation in the Russian River Division". This EIR evaluates the impact

of using the rail line for freight operations. The EIR is not affected by the change approved in February 2008, which left the Canyon Study as the remaining scope of PA&ED for Project 32.9.

On April 8, 2010, the Commission approved Resolution TAA-09-16 for Project 32.3, which established FY 2010-11 as the completion date for the Canyon Study.

In order to align the PA&ED allocations from both Project 32.3 and 32.9, for the Canyon Study, NCRA requests the Commission approve this new resolution, TAA-09-24, to complete PA&ED in FY 2010-11. NCRA needs this additional time because access into the canyon is limited due to seasonal water flows and private property concerns. By delaying its final field reviews for the Canyon Geotechnical study and mapping until May 2010, NCRA can enter the canyon along with other agencies who are conducting fish passage assessments under other projects unrelated to transportation.

For the remaining scope of construction for Project 32.9, NCRA filed a Notice of Categorical Exemption. Construction has been delayed but is ongoing and is not subject to the Canyon Study. NCRA will complete construction concurrently with their work on the Canyon Study.

Construction was delayed primarily due to litigation against NCRA initiated in September 2007 by the City of Novato. This litigation has been concluded, but there were additional delays to construction due to at-grade crossing issues in the city of Petaluma. Petaluna required an encroachment permit for signal work at a crossing near the intersection of Washington Street and D Street, which entailed additional design work for NCRA.

One segment of the construction scope for Project 32.9 cannot be completed until the California Department of Fish and Wildlife approves a permit for bridge work. NCRA applied for this permit in November 2009 but it has been delayed due to state staffing shortages. NCRA expects to have this permit by November 2010.

NCRA requests a project application amendment to update the project schedule to change the completion date for Environmental and construction from FY 2008-09 to FY 2010-11.

NCRA did not make this request prior to the end of FY 2008-09, which is when Program Supplements (contracts) reached their termination dates. Approval of this resolution would allow payment of outstanding invoices. NCRA requests that the new term for completion of Environmental and construction be retroactive to FY 2008-09 for both Environmental and construction.

RESOLUTION TAA-09-24

Be it Resolved, that the California Transportation Commission does hereby amend Traffic Congestion Relief Program Project 32.9 - North Coast Railroad; long-term stabilization (PPNO T0329) to update the project schedule for Environmental and construction, as described above.

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 25-26, 2007

Reference No.: 2.6e.(2)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **FINANCIAL ALLOCATION FOR TRAFFIC CONGESTION RELIEF PROGRAM PROJECTS RESOLUTION TFP-06-36**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve Resolution TFP-06-36, allocating $30,140,000 in new Traffic Congestion Relief Program (TCRP) funding for seven TCRP projects, as identified on the attached vote list, with the stipulation that these allocations be under contract within six months.

ISSUE:

The attached vote list describes seven TCRP projects totaling $30,140,000. The agencies for these projects are ready to proceed and are requesting allocations at this time.

FINANCIAL RESOLUTION:

Resolved That:
The project(s), as component phases or in their entirety, appear under Government Code Section 14556.40(a) and are entitled to participate in this allocation.

Reimbursement of eligible costs is subject to the policies, restrictions and assurances as set forth in the Commission's policy for allocating, monitoring, and auditing TCRP projects, and is governed by the terms and conditions of the Fund Transfer Agreement, Program Supplement or Cooperative Agreement, and subsequent amendments to the same if required, as executed between the Implementing Agency and the Department.

Attachment

Project # / Allocation Amount / Implementing Agency / District-County	BREF # and Project Description / Description of Allocation	Item # / Program Code	Total Allocation Amount
2.6a. Traffic Congestion Relief Program Allocations		Resolution TCRP-06-04	
1 $7,495,000 North Coast Railroad Authority 01 – Eureka	Project #32.9 – North Coast Railroad; long-term stabilization. Stabilization of landslides pursuant to Government Code Section 14556.5(d). This allocation provides $7,495,000 in new TCRP funding for Construction.	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.050	$7,495,000
2 $9,000,000 Los Angeles County Metropolitan Transportation Authority 07 – Los Angeles	Project #58.2 – Los Angeles-San Fernando Valley Transit Extension; (B) Build a North-South corridor bus transit project that interfaces with the foregoing East-West Burbank-Chandler corridor project and with the Ventura Boulevard Rapid Bus project. This allocation provides $9,000,000 in new TCRP funding for PA&ED.	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.010	$9,000,000
3 $1,248,000 City of Encinitas 11 – San Diego	Project #74.7 – Encinitas Grade Separation and Pedestrian Crossing. This allocation provides $1,248,000 in new TCRP funding for PA&ED and PS&E.	Chapter 91 of the Statutes of 2000 889-3007 30.20.710.010	$1,248,000
4 $6,000,000 California Department of Transportation 11 – San Diego	Project #82.2 – Extend an existing HOV lane from just south of Via de la Valle Drive to just south of Manchester Avenue and realign ramps at the Lomas Santa Fe Interchange. This allocation provides $6,000,000 in new TCRP funding for Construction.	Chapter 91 of the Statutes of 2000 889-3007 20.30.710.878	$6,000,000
5 $3,610,000 California Department of Transportation 11 – San Diego	Project #87.2 – Routes 54/125; build two new freeway connector ramps at Route 54/125 in Lemon Grove in San Diego County. This allocation provides $3,610,000 in new TCRP funding for PA&ED.	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$3,610,000
6 $587,000 California Department of Transportation 10 – Merced	Project # 184 – Route 99; build seven miles of new 6-lane freeway south of Merced, Buchanan Hollow Road to Healey Road in Merced County. This allocation provides $587,000 in new TCRP funding for Right of Way.	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$587,000
7 $2,200,000 California Department of Transportation 10 – Merced	Project #185 – Route 99; build two 4.5 miles of new 6-lane freeway, Madera County line to Buchanan Hollow Road in Merced County. This allocation provides $2,200,000 in new TCRP funding for Right of Way.	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$2,200,000

2.6 Mass Transportation Financial Matters

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
2 $2,650,000 California Department of Transportation 10 – Merced	Project #105 – Route 99; build two 4.5 miles of new six-lane freeway, Madera County line to Buchanan Hollow Road in Merced County.	Chapter 91 of the Statutes of 2000	
	Re-allocate $2,650,000 in previously allocated TCRP funding for PS&E.	889-3007 20.10.710.870	$2,650,000

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
1 $7,495,000 North Coast Railroad Authority 01 – Eureka	Project #32.3 – North Coast Railroad; long-term stabilization. Stabilization of landslides pursuant to Government Code Section 14556.50(f). This allocation provides $7,495,000 in new TCRP funding for Construction.	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.050	$7,495,000
2 $9,000,000 Los Angeles County Metropolitan Transportation Authority 07 – Los Angeles	Project #36.2 – Los Angeles-San Fernando Valley Transit Extension; (3) Build a North-South corridor bus transit project that interfaces with the foregoing East-West Burbank-Chandler corridor project and with the Ventura Boulevard Rapid Bus project. This allocation provides $9,000,000 in new TCRP funding for PA&ED.	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.010	$9,000,000
3 $1,248,000 City of Encinitas 11 – San Diego	Project #74.7 – Encinitas Grade Separation and Pedestrian Crossing. This allocation provides $1,248,000 in new TCRP funding for PA&ED and PS&E.	Chapter 91 of the Statutes of 2000 889-3007 30.20.710.010	$1,248,000
4 $6,000,000 California Department of Transportation 11 – San Diego	Project #82.2 – Extend an existing HOV lane from just south of Via de la Valle Drive to just south of Manchester Avenue and realign ramps at the Lomas Santa Fe Interchange. This allocation provides $6,000,000 in new TCRP funding for Construction.	Chapter 91 of the Statutes of 2000 889-3007 20.30.710.878	$6,000,000
5 $3,610,000 California Department of Transportation 11 – San Diego	Project #87.2 – Routes 94/125; build two new freeway connector ramps at Route 94/125 in Lemon Grove in San Diego County. This allocation provides $3,610,000 in new TCRP funding for PA&ED.	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$3,610,000
6 $587,000 California Department of Transportation 10 – Merced	Project # 184 – Route 99; build seven miles of new 6-lane freeway south of Merced, Buchanan Hollow Road to Healey Road in Merced County. This allocation provides $587,000 in new TCRP funding for Right of Way.	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$587,000

Note: This document was prepared following the California Transportation Commission (CTC) meeting and is a reflection of the Department's interpretation of changes made to the Agenda.

ATTACHMENT III

Certification of Funds

Name of Recipient:	Northcoast Railroad Authority
Name of Project:	#32.9 - Upgrade to FRA Class 2 & 3 and Long-term Stabilization
CTC Resolution Numbers:	TAA-09-24
Date of Resolution:	May 19, 2010
Allocation Amount:	$0
Fund Source:	TCR
Date of Third Party Contract Award:	N/A
Period of Availability:	4/26/07 through 6/30/11

***This contract amendment updates the approved project schedule.**

SOURCE DIST-UNIT	CHARGE DIST-UNIT	EXP AUTH NO.	OBJECT	ALLOCATION AMOUNT	LED	FY	ENCUMBRANCE DOCUMENT NO.	PPNO
01-804	01-804	R9497C	7049	$0	6/30/11	09/10	TRR9497C	

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure Stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR	Signature of Accounting Officer	Date
2660-689-3007	91	2000	2000/2001		6/22/10

Revised 07/28/06

ATTACHMENT IV

Special Conditions

RECIPIENT agrees to exercise best efforts toward meeting the one remaining condition (of five) imposed by the Department of Transportation (Caltrans) on RECIPIENT for the release of State or federal funds. The five conditions were identified in the July 17, 1998 letter from the Director of Caltrans to the Executive Director of the North Coast Railroad Authority. The remaining condition is to "resolve audit deficiencies".

RECIPIENT continues to be designated as a "high risk grantee" by Caltrans Audits and Investigations (Caltrans Audits) based on CFR 49, Part 18.12 and is subject to enhanced monitoring and compliance conditions set forth in this section. RECIPIENT shall be reimbursed solely for subcontracted third party costs until such time that RECIPIENT demonstrates to the satisfaction of Caltrans Audits that recipient has the ability to accumulate and segregate reasonable, allocable and allowable in-house costs (in-house direct costs or any indirect costs). If RECIPIENT intends to seek reimbursement for in-house direct and indirect costs, the RECIPIENT is to enter three complete months of such costs into their accounting system and then request Caltrans Audits to perform a follow-up audit to determine the adequacy of the recipient's accounting system and internal management controls. RECIPIENT also agrees to request verification and approval of indirect and fringe benefit rates by Audits before billing these costs to any project. If it is determined, after the above follow-up audit is performed, that the RECIPIENT has an adequate financial management system and an approved indirect cost allocation plan, a formal written amendment will be required prior to reimbursement of in-house direct and indirect costs.

Actual costs reimbursed shall not exceed the estimated line items set forth in the financial plan. The maximum amount payable under this program supplement shall not exceed $7,495,000.
For the purposes of Cash Flow, RECIPIENT shall submit Progress Payment Requests. The process and timeline are defined below:

- After RECIPIENT has paid the contractor, RECIPIENT may seek reimbursement by submitting an invoice and supporting documentation to District 1.
- District 1 must receive from RECIPIENT all cancelled checks for all expenses claimed concurrent with each invoice packet submitted for reimbursement.
- The District will have 15 calendar days from the date that said invoice is received to process the request, verify supporting documentation, and forward it to HQ Accounting.
- HQ Accounting will have 15 calendar days to process the invoice and forward it to the State Controller's Office (SCO).
- SCO will have 15 calendar days to process the invoice and issue payment to RECIPIENT.

In the event that RECIPIENT does not comply with the process as described above, this agreement becomes null and void and RECIPIENT will be required to submit cancelled checks concurrent with any future requests for reimbursement.

Approved as to form and procedure

BY: _____ 6/23/10

CALTRANS ATTORNEY *DATE*

Revised 07/28/06

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

_X_ County Clerk
County of Marin, Sonoma, Mendocino, Napa, Humboldt, Trinity

Project Title: Russian River Division Maintenance and Repairs

Project Location - Specific: NCRA Mileposts 1.0 to 62.9 (See Attached Figure 1)

Project Location - County: *Napa, Marin, Sonoma, and Mendocino*

Description of Nature, Purpose, and Beneficiaries of Project: North Coast Rail Authority (NCRA) shall engage in maintenance and repair activities from Milepost 1.0 to Milepost 62.9 (Russian River Division – Lombard to Windsor) to bring the rail line into conformance with FRA Class 2/3 standards, to address safety issues identified by local jurisdictions and to comply with the intent of an Environmental Consent Decree. The identified maintenance and repair activities will be within the existing NCRA right-of-way, will not involve any expansion of existing use and will not change the purpose or capacity of the structures being repaired. This Categorical Exemption is supported by a detailed description of work and justification supporting the determination of categorical exemption at each milepost.

Name of Public Agency Approving Project: *North Coast Railroad Authority*

Name of Person or Agency Carrying Out Project: North Coast Railroad Authority

Exempt Status: (*check one*)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b) (3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption: Classes 1,2,3,4,5,8,9,11,21 & 30, (PRC 21084; 14 CCR 15300 et seq.)
- ☐ Statutory Exemptions. State code number: 15269(b)(c)

Reasons why project is exempt: See attached Categorical Exemption Determination Form

Lead Agency Contact Person: Mitch Stogner Area Code/Telephone/Extension: (707) 463-3280

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: Mitch Stog Date: 6-4-07 Title: Executive Director

☒ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR:

CLARIFICATION OF ROUTINE MAINTENANCE AND REPAIR ACTIVITIES
Russian River Division Freight Rail Project

INTRODUCTION

The North Coast Rail Authority (NCRA) shall engage in routine maintenance and repair activities to the portion of the Northwestern Pacific Railroad (NWP) between Lombard, Napa County (Mile Post [MP] 1.0 to Willits, Mendocino County (MP 142.5). This segment of the NWP constitutes the NCRA's Russian River Division (RRD).

Currently, the routine maintenance and repair activities are only scheduled to proceed as far north as Windsor (MP 62.9). The following provides a detailed description of the scheduled routine maintenance and repair activities and justification for a Categorical Exemption (CE) under CEQA Article 19 Sections 15300 – 15330.

PURPOSE

Maintenance and repair activities are necessary to bring the rail line into conformance with the Federal Railroad Administration Class 3 standards, to address safety issues identified by local jurisdictions and to comply with the intent of an Environmental Consent Decree (ECD). NCRA has determined that the maintenance activities are needed to protect public health and safety, repair damaged portions of the existing RRD rail line, minimize potential future flood impacts and reduce future damage and potential loss of property associated with operation of the RRD. Funding for these repairs will not use Federal monies.

DISCUSSION

NCRA has reviewed the work required to resume rail operations and has identified those routine maintenance activities that will not generate significant impacts and do not require a permit(s). These activities are considered categorically exempt under CEQA. This determination was based on NCRA's knowledge of railroad maintenance and repair activities, detailed review of the specific construction and repair activities which would be required to bring the railroad to the appropriate safety standards, extensive site surveys of the railroad and surrounding areas (hy-rail surveys of the entire line), consultation with railroad engineering and environmental experts, review of existing documentation, discussions with natural resource agencies, and field studies of natural

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resources in the area (nesting activities, burrowing owls, endangered species, historical and cultural points of significance, etc.).

Key findings from the existing documentation, SMART technical studies and NCRA field surveys include (but not limited to) the following:

- The California Natural Diversity Data Base (CNDDB) did not document any occurrences of California Tiger Salamander (CTS) with in the railroad right-of-way. The closest occurrence of the CTS was 0.1 miles of the railroad just west of the right-of-way and south of Scenic Avenue north of Rohnert Park, and one adult CTS east of the right-of-way in the Cogan Creek flood control channel. (SMART Biological Technical Report, June 2005)

- Suitable habitat for the CTS is generally absent within the railroad right-of-way because of lack of suitable substrates for burrows within the railroad right-of-way. (SMART Biological Technical Report, June 2005)

- California red-legged frogs (CRLF) were not detected in the railroad right-of-way. The CNDDB contains two recent records of the CRLF within 2 miles of the right-of-way west of Petaluma. The USFWS has a record of this species in Miller Creek east of Highway 101 in the vicinity of the right-of-way. However, no CRLF were detected in protocol surveys conducted at Miller Creek in June 2004. (SMART Biological Technical Report, June 2005)

- There are no documented occurrences of the salt-marsh harvest mouse (SMHM) in the railroad right-of-way. The closest occurrence of this species recorded in the CNDDB is 0.2 miles east of the right-of-way in the city of Petaluma along the east back of the Petaluma River. There are also records of the SMHM in the vicinity of the railroad right-of-way in the Petaluma March between Novato and Petaluma and along the banks of Corte Madera Creek near Larkspur. (SMART Biological Technical Report, June 2005)

- The northwester pond turtle was observed during a survey in 2004 under the railroad bridge at Miller Creek (MP 22.1). (SMART Biological Technical Report, June 2005)

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- Surveys of nesting birds along the right-of-way have been conducted by several groups, including SMART and Kleinfelder (2007). BMPs have been developed and will be approved by the appropriate natural resources agencies to avoid significant impacts to birds of special interest along the railroad right-of-way.

- Surveys of native vegetation along the right-of-way have been conducted by several groups, including SMART and Kleinfelder (2007). BMPs have been developed and will be approved by the appropriate natural resources agencies to avoid significant impacts to plants of special interest along the railroad right-of-way.

- A 5.4 mile section from the Burdell Siding (MP 31.9) to the Haystack Swing Bridge (MP 36.7) appears potentially eligible for the NRHP at the local level due to its intact setting, materials and design.

The maintenance and repair activities will be conducted utilizing the appropriate NCRA's BMPs. Key requirements of the BMPs include (but not limited to) the following:

- The activities will all be located in the railroad right-of-way.

- The activities will be conducted from the rail using rail mounted equipment.

- None of the activities will involve any expansion of prior use.

- There will be no placement of sediment within the waters of the State.

- There will be no excavation or fill in the waters of the State and no alteration of the streambeds.

- There will be no work conducted in the waterways and wetlands.

- There will be no excavation of native soils.

- Grading will only involve the re-grading of existing railroad materials.

- Site access, staging, storage and parking areas will be located on ruderal (weedy), disturbed or developed lands not containing native vegetation.

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- Qualified resource specialists will monitor activities in any areas of potential concern identified during the consultations with the natural resource agencies.

The routine maintenance and repair activities will also be in accordance with the requirements set forth in the Environmental Consent Decree, described below.

The State of California Attorneys General office, Department of Fish and Game, Department of Toxic Substances Control, North Coast Regional Water Quality Control Board and the NCRA have entered into a Consent Decree in order that maintenance activities and railroad operations are conducted in a manner that is protective of human health and the environment. In addition, local agencies have notified NCRA that certain maintenance and repair activities are necessary in order to maintain public safety in their jurisdictions. Numerous activities identified in the CE are necessary in order to fully comply with the intent of the Consent Decree and to address the safety issues identified by local agencies.

Consultation with the appropriate natural resource agencies will be conducted prior to maintenance and repair activities in order to obtain their agreement that there is not a "reasonable possibility that the activity will have a significant effect on the environment" [CEQA Section 15300.2(c)] and that the CEQA documentation for the maintenance and repairs activities is appropriate. Documentation of the consultation with the resource agencies will be obtained.

A notification and informational package has been prepared for submittal to the natural resource agencies to meet the following objectives:

1. Notify the agencies of the proposed routine maintenance and repair activities,
2. Provide the agencies with sufficient information to have a thorough understanding of the activities, including a copy of the BMPs and results from previous field studies, and
3. Provide an opportunity to request discussions or meetings to further clarify the exact details of any of the repairs or maintenance being conducted and whether or not there is a reasonable possibility that the activities could have a significant effect on the natural resources of concern.

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A full Environmental Impact Report (EIR) under CEQA will be prepared to address operations of the railroad and maintenance and repair activities that have the potential to generate significant impacts prior to resuming the operations of the railroad.

Regulatory Jurisdiction

NCRA, as lead agency for the RDD Freight Rail Project, has determined that the maintenance and repair activities identified in the table below meet the requirements for Categorical Exemptions under Article 19 Sections 15300 – 15330.

Article 19 Section 15300 states:

> *"Section 21084 of the Pubic Resources Code requires the {CEQA} guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents."*
>
> *"Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances."*
>
> *"A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."*
>
> *"A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."*

The NCRA has determined that the Proposed Action is eligible to be declared Categorically Exempt, under the criteria of one or more of the following Sections of the CEQA Guidelines. Prior to the work being conducted, NCRA will consult with the appropriate resource agencies to confirm that the proposed activities do not present a reasonable possibility that the routine maintenance and repairs activities would have a significant effect on the environment.

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- Section 15301, Class 1 (Existing Facility). Class 1 consists of "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."

  Examples, not intended to be all-inclusive, of the types of projects that are considered Class 1 include:

  - 15301(c): Existing highways ... and similar facilities (including grading for the purpose of public safety)
  - 15301(d): Restoration or rehabilitation of deteriorated or damage structures, facilities or mechanical equipment to meet current standards of public health and safety.
  - 15301(f): Addition of safety or health protection devices for use during construction of or in conjunction with existing structures facilities or mechanical equipment or topographical features.
  - 15301(h): Maintenance of existing landscaping.

- Section 15302, Class 2 (Replacement or Reconstruction). Class 2 consists of "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced."

  - 15302(b): Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
  - 15302(c): Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

- Section 15303, Class 3 (New Construction or Conversion of Small Structures). Class 3 consists of "the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel."

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- Section 15304, Class 4 (Minor Alterations to Land). Class 4 consists of "minor public or private alterations in the condition of land, water, and/or vegetation, which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes."
  - 15304(a): Grading on land with a slope of less than 10%, except that grading shall not be exempt in a waterway, wetland, officially designated scenic area or areas officially mapped as geological hazards.
  - 15304(c): Filling of earth into previously excavated land with material compatible with the natural features of the site.
  - 15304(f): Minor trenching and backfilling where the surface is restored.
- Section 15305, Class 5 (Minor Alterations in Land Use Limitations). Class 5 consists of "minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density."
- Section 15308, Class 8 (Actions by Regulatory Agencies for Protection of the Environment). Class 8 consists of "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment."
- Section 15309, Class 9 (Inspections). Class 9 consists of "activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project."
- Section 15311, Class 11 (Accessory Structures). Class 11 consists of "construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities."
- Section 15321, Class 21 (Enforcement Action by Regulatory Agencies). Class 21 consists of "actions by regulatory agencies to enforce ... a law, general rule, standard or objective, administered or adopted by the regulatory agency. Such actions included, but are not limited to (1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney for judicial enforcement."

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- Section 15330, Class 30 (Minor actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances). Class 30 consists of "any minor cleanup actions taken to prevent, minimize, stabilize, mitigate or eliminate the release or threat of a hazardous waste or substance which are small or medium removal actions costing $1 million or less."

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
Block 1			
0.0 – 1.0	NA		
1.0 – 2.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of two 18" culverts and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry. No excavation of natural material is required. • No Signal work required. • Bridge (MP 1.6): Repair bridge deck ballast guard from the rail and top of the bridge.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structures with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
2.0 - 3.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • Bridge (MP 2.9): Repair bridge deck timber guards and perform maintenance on the electrical and mechanical systems. All work will be conducted from the bridge deck and will not require excavation of natural materials or work within the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
3.0 – 4.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 48"metal culvert and one 24" concrete culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • Signal work will include the replacement of the Milton Road signals. The work will include new signal foundations placed in the existing railroad embankment and minor clearing of vegetation. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
4.0 – 5.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of two 24"metal culverts, repair of existing concrete headwall and the clearing of debris/vegetation around the inlets and outlets. All work will be done during the	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	dry season when the culverts are dry. No excavation of natural material is required. • No Signal work • No Bridge work		vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
5.0 – 6.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 30" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail bed material during the dry season when the culverts are dry. No excavation of natural material is required. • No Signal work • Bridge (MP 5.56): Repair bridge wing wall struts. All work will be completed from within railroad right of way on dry disturbed road bed embankment material. • Bridge (MP 5.68): Repair bridge deck timber guards, replace bridge deck stringers. All work will be conducted from the bridge deck and will not require excavation of natural materials or work in the water. • Bridge (MP 5.9): Shim top of piles and stringers. All work will be conducted from the bridge deck and will not require excavation of natural materials	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	or work in the water.		
6.0 – 7.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the repair of one 18" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail bed material during the dry season when the culvert is dry. No excavation of natural material is required. • Signal work will include the replacement of the existing signals at Skaggs Island Road. Equipment will be placed on existing foundations. • Bridge (MP 6.4): Repair bridge pile at bent 2. Pile will be cut above the natural ground line and a new pile spliced on. All work will be completed from within railroad right of way. No excavation of natural material is required. • Bridge (MP 6.7): Repair bridge deck safety handrail, cut existing piles at bents 1&2 at the existing ground line and place a new bent above ground on top of the existing piles. All work will be completed from within railroad right of way. No excavation of natural material is required. • Bridge (MP 7.21): Replace bridge deck ties. All work will be conducted from the rail.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
7.0 – 8.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	• No Culvert work • No Signal • Bridge (MP 7.21): Replace bridge deck ties. All work will be conducted from the rail. • Bridge (MP 7.47): Replace bridge deck stringers. All work will be done from the bridge deck and will not require excavation of natural materials or work in the water. • Bridge (MP 7.92): Minor bridge deck repairs. All work will be completed from the rail. No excavation of natural material is required.		conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
8.0 – 9.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 24" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail bed material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • Bridge (MP 8.41): Replace bridge abutment sill plate. All work will be completed from within railroad right of way. No excavation of natural material is required. • Bridge (MP 8.47): Minor bridge deck repairs. All work will be completed from the bridge deck. No excavation of natural material is required. • Bridge (MP 8.57): Repair bridge deck timber guards. All work will be	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	conducted from the bridge deck and will not require excavation of natural materials. • Bridge (MP 8.83): Replace bridge abutment sill plate and repair bridge deck timber guards. All work will be completed from within railroad right of way, and no excavation of natural material is required.		
9.0 – 10.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 24" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail bed material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • Bridge (MP 9.44): Replace bridge safety handrail planks, and replace bridge safety handrail planks. All work will be completed from the bridge deck. No excavation of natural material is required.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
10.0 – 11.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the replacement of the existing signals at State Route 121. Equipment will be	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	placed on existing foundations. Work will also include the repair of the roadway crossing surfaces, including the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 10.38): Replace bridge safety handrail planks and walkway supports. All work will be completed from the bridge deck, and no excavation of natural material is required. • Bridge (MP 10.57): Replace bridge deck safety walkway grate. All work will be completed from the bridge deck, and no excavation of natural material is required. • Bridge (MP 10.70): Replace bridge deck stringers and repair bridge piles at bents 1, 2, 4, and 5. Piles will be cut above the natural ground line and a new pile spliced on. All work will be completed from within railroad right of way, no excavation of natural material is required, and no work will be completed in the water.		vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
11.0 – 12.5	• Track work to include the removal and replacement of deteriorated ties, adding ballast, and repair/replace rail and rail appurtenances for both the mainline track and sidings. Some minor track embankment repairs are required. All work will be within the railroad right of way and will not require excavation of natural material. • Culvert work will include the replacement of eight 36" culverts. All work will be conducted at or above existing culvert invert elevations and within the rail bed material during the dry season when the culverts are dry. No excavation of natural material is required. • No Signal work • Bridge (MP 12.42): Replace bridge deck safety walkway planks, replace deck guard rail timbers, and replace bent cap beams and bent bracing. All	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	work will be completed from the bridge deck, no excavation of natural material is required, and no work is required in the water.		
12.5 – 13.5	• This area is not included in the CE. Work in this area will be included in the repairs to storm damage that the Department of Fish and Game levee caused. Repairs will be conducted by DFG with separate CEQA documentation.		
13.5 – 15.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • Bridge (MP 13.63): Repair bridge deck guard timbers and roadway planks and bracing at bent #6. All work will be completed from the bridge deck, no excavation of natural material is required, and no work is required in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
15.0 – 16.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 24" culvert and the clearing of debris/vegetation around	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail bed material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • No Bridge work		accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
16.0 – 17.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • Bridge (MP 16.63): Repair bridge deck guard timbers and safety handrail planks. All work will be completed from the bridge deck, no excavation of natural material is required, and no work is required in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
17.0 – 18.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of three 18" metal culverts and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • Signal work will include the replacement of the Highway 37 signals. The signals will be placed on existing foundations. • No Bridge work		the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
18.0 – 19.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • No Bridge work	Class 1, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			railroad line.
19.0 – 20.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 48" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
20.0 – 21.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work except signage • No Bridge work	Class 1, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			• The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
21.0 – 22.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work except signage • No Bridge work	Class 1, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
22.0 – 23.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work (MP 22.4) will include the cleaning of one 12x18" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • No Signal work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line. • Note: In 2004 a northwestern pond turtle was observed under the railroad bridge at Miller Creek (MP 22.1). (SMART Biological Technical Report, June 2006) Maintenance and repair activities are not planned for this area.
22.55	• Bridge (MP22.55): Work not included in the CE.		
23.0 – 24.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signals at Grandview Ave and Stonetree Lane. Work will also include the repair of the roadway	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	crossing surface at Grandview. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • No Bridge work		the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
24.0 - 25.8	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 18x48" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • Signal work will include the repair of the existing signals at Hanna Ranch Road. The work will include new foundations placed at the existing locations in the existing railroad embankment and the work will also include the repair of the roadway crossing surface. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 25.13): Replace bridge deck guard timbers, repair bent bracing, and repair bridge piles at bents 7 & 8 by cutting the existing pile above the natural ground line and splicing a new pile on top of the cut pile. Repair bents 2 & 11 by cutting all the piles at the ground line and placing a new bent on top of the cut piles. All work will be completed from within	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	railroad right of way, no excavation of natural material is required, and no work will be completed in the water.		
Block 2			
25.8 - 27	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 48" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • Bridge (MP 26.04): Replace bridge deck safety walkway planks and handrail. All work will be completed from the bridge deck. No excavation of natural material is required, and no work is required in the water. • Bridge (MP 26.93): Repair will consist of the replacement of all stringers, cap beams, deck ties, walkway and the splicing of some piles above the waterline. All work will be completed from the rail. No excavation of natural material will be required.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
27.0 - 28.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signals at Pedestrian	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	Crossing and at Grant Avenue. Work will also include the repair of the roadway crossing surface at Grant Avenue. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • No Bridge work		• Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
28.0 – 29.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of two 18" culverts and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • Signal work will include the complete replacement of the existing signals at Olive Avenue and Golden Gate Place. The work will include new foundations placed at the existing locations in the existing railroad embankment. The work will also include the repair of the roadway crossing surfaces, the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
29.0 – 30.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 24" culvert and one 36" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted during the dry season when the culverts are dry, and no excavation of natural material is required. • No Signal work • No Bridge work		wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
30.0 – 31.0	• Track work to include removal and replacement of deteriorated ties, adding ballast, and repair/replace rail and rail appurtenances including the replacement of an existing spring switch. All work will be from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 36" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be done at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
31.0 – 32.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, and repair/replace rail and rail appurtenances. All work will be conducted from rail-mounted	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	equipment and will not require excavation of natural material. • No Culvert work • No Signal work • No Bridge work		wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line. • Note: A 5.4 mile section from MP 31.3 and 36.7 appears potentially eligible for the NRHP at the local level due to the intact setting, materials and design. This section of the track will not require repair that would impact the historical nature of the track. The contractor will be excluded from performing work on the items in this area that are potentially eligible to be listed in the NRHP. Because of the potential NRHP eligibility NCRA is restricting the maintenance to the mainline track which has been routinely maintained over the years.
32.0 – 33.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			• Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line. • Note: A 5.4 mile section from MP 31.3 and 36.7 appears potentially eligible for the NRHP at the local level due to the intact setting, materials and design. This section of the track will not require repair that would impact the historical nature of the track. The contractor will be excluded from performing work on the items in this area that are potentially eligible to be listed in the NRHP. Because of the potential NRHP eligibility NCRA is restricting the maintenance to the mainline track which has been routinely maintained over the years.
33.0 – 34.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • Bridge (MP 33.49): Bridge work will include the repair and replacement of safety handrail, the replacement of bridge deck guard timbers and the splicing of pile. All work will be conducted from the bridge deck and will not require the excavation of natural material or work to be performed in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			a significant impact on historical buildings or structures near the railroad line. • Note: A 5.4 mile section from MP 31.3 and 36.7 appears potentially eligible for the NRHP at the local level due to the intact setting, materials and design. This section of the track will not require repair that would impact the historical nature of the track. The contractor will be excluded from performing work on the items in this area that are potentially eligible to be listed in the NRHP. Because of the potential NRHP eligibility NCRA is restricting the maintenance to the mainline track which has been routinely maintained over the years.
34.0 – 35.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 24 x 24" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be conducted at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line. • Note: A 5.4 mile section from MP 31.3 and 36.7 appears potentially eligible for the NRHP at the local level due to the intact setting, materials and

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST
(Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			design. This section of the track will not require repair that would impact the historical nature of the track. The contractor will be excluded from performing work on the items in this area that are potentially eligible to be listed in the NRHP. Because of the potential NRHP eligibility NCRA is restricting the maintenance to the mainline track which has been routinely maintained over the years.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
35.0 – 37.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line. • Note: A 5.4 mile section from MP 31.3 and 36.7 appears potentially eligible for the NRHP at the local level due to the intact setting, materials and design. This section of the track will not require repair that would impact the historical nature of the track. The contractor will be excluded from performing work on the items in this area that are potentially eligible to be listed in the NRHP. Because of the potential NRHP eligibility NCRA is restricting the maintenance to the mainline track which has been routinely maintained over the years.
37.0 – 38.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	require excavation of natural material. • No Culvert work • No Signal work • Bridge (MP 37.19): Work will include the repair of the bridges mechanical and electrical systems, repair of the center pivot pier by splicing new piles above the waterline and replacing pier platform in-kind. The repairs will also include the repair of approach spans including repairs to bracing and safety walkways. All of these repairs will be completed from the bridge and will not require excavation of natural material or work in the water.		conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • There will be no work conducted at this MP that could cause a substantial adverse change in the significance of a historical resource. The SHPO has previously reviewed the proposed repair activities at this bridge and determined that the activities would not have a significant impact on the historical nature of the bridge. The appropriate agencies have been notified that additional routine maintenance and repair activities are scheduled to be conducted on the railroad right-of-way along the bridge. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
38.0 – 39.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert • Signal work will include the repair of the existing signals at Hopper Road, D Street, Washington Street. The work will include the repair of the roadway crossing surfaces, the removal of existing roadway pavement, repair of track bed, and replacement of the road surface. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
39.0 – 40.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the complete replacement of the existing signal at West Payran. The signals will be placed on existing foundations and the work will also include the repair of the roadway crossing surfaces. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 39.74): Bridge work will include the replacement of safety walkway planks and supports, bridge deck ballast guards, and the splicing of	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy

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Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	piles. The piles to be spliced will be cut above the ground line and a new pile will be spliced on. All the work will be from within the railroad right of way and will not require the excavation of natural materials or work in the water.		equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
40.0 – 41.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 24" culvert and one 36" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be done during the dry season when the culverts are dry. No excavation of natural material is required. • Signal work will include repairs to the signals at McDowell Avenue and South Point Blvd the repairs will not include any foundation work. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
41.0 – 42.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 18" culvert and the clearing of debris/vegetation around the inlet and outlet. All work will be done during the dry season when the culverts are dry. No excavation of natural material is required. • Signal work will include replacement of	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	the signal at Corona Road the repairs will not include any new foundation work. • No Bridge work		surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
42.0 – 43.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include repair of the signal at Ely Road. The repairs will not require any new foundation work. The work will also include the repair of the roadway crossing surface, the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 42.42) work will include the replacement of the bridge deck ballast guard. All the work will be from the bridge deck and will not require the excavation of natural materials or work in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
43.0 – 44.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 18" culvert and one 36" culvert and	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	the clearing of debris/vegetation around the inlet and outlet. All work will be done during the dry season when the culverts are dry, No excavation of natural material is required. • Signal work will include repair of the signal at Main Street and Adobe Road the repairs will not require any new foundation work, the work will also include the repair of the roadway crossing surfaces, the removal of existing roadway pavement, repair of track bed, and replacement of road surfaces. • No Bridge work		accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
44.0 – 45.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the replacement of one 24" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be done at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • Signal work will include the complete replacement of the existing signal at East Railroad Avenue. The signals will be placed on new foundations at the existing location and the work will also include the repair of the roadway crossing surfaces, removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 44.37) work will include the replacement of the deck ballast guard and the repair of bent bracing. All this work will be completed from within the railroad right of way and will not require	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	the excavation of natural material or work in the water.		
45.0 – 46.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 36" culvert and the clearing of debris/vegetation around the inlet and outlet. All work will be done at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
46.0 – 47.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 36" culvert and the clearing of debris/vegetation around the inlets and outlets. All work will be done at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • Signal work will include the complete replacement of the existing signal at	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy

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Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	East Cotati Avenue. The signals will be placed on new foundations at the existing location and the work will also include the repair of the roadway crossing surfaces. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • Bridge (MP 46.97) work will include the replacement of the ballast deck and ballast guard. All this work will be completed from the bridge deck and will not require the excavation of natural material.		equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
47.0 – 48.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of two 36" culverts and the clearing of debris/vegetation around the inlets and outlets. All work will be done at or above the existing culvert invert elevation and within the rail embankment material during the dry season when the culvert is dry. No excavation of natural material is required. • Signal work will include the repair of the existing signal at Rohnert Park. Expressway and will not require any new foundation work. • Bridge (MP 47.54) work will include the repair of the safety handrail. The work will be completed from the bridge deck and will not require the excavation of natural material.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
48.0 – 49.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • All activities will be conducted in

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	require excavation of natural material. • No Culvert work • Signal work will include the replacement of the existing signal at Golf Course Drive and will require new foundation work at the existing location. • No Bridge work		accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
49.0 – 50.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of three 24" culverts and the clearing of debris/vegetation around the inlets and outlets. This work will not require the excavation of natural material. • Signal work will include the repair of the existing signal at Scenic Avenue and will not require any new foundation work. • Bridge (MP 49.12) work will include the repair of the safety handrail and replacement of the bridge deck guard timbers. The work will be completed from the bridge deck and will not require the excavation of natural material.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
50.0 – 51.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signals at Todd Road and West Robles Avenue and will not require any new foundation work. • No Bridge work		the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
51.0 – 52.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 24" culvert and the clearing of debris/vegetation around the inlet and outlet. This work will not require the excavation of natural material. • Signal work will include the repair of the existing signal at Bellevue Avenue and will not require any new foundation work. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
			railroad line.
52.0 – 53.9	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signals at Hearn Avenue, Barham Avenue, Sabastopol Avenue, Third Street, Sixth Street, and Seventh Street. This work will not require any new foundation work. • Bridge (MP 52.25) work will include the replacement of the ballast deck, stringers, and the repair of the east back wall planks; the work will all be within the railroad right of way, there will be some excavation of the existing railroad embankment required to repair the east back wall. There will be no excavation of natural material required or any work in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
Block 3			
53.9 – 55.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of four 24" culverts and the clearing of debris/vegetation around the inlets and outlets. This work will not require the excavation of natural material. • Signal work will include the repair of the existing signals at Eighth Street, Ninth Street, and College Avenue. This work will not require any new foundation work.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	• No Bridge work		Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
55.0 – 56.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signals at Guerneville Road and West Steel Lane. This work will not require any new foundation work. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
56.0 – 57.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of two 24" culverts and the clearing of debris/vegetation around the inlets and outlets. This work will not require the excavation of natural material.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	• Signal work will include the repair of the existing signals at Piner Road and San Miguel Avenue. This work will not require any new foundation work. • No Bridge work		the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
57.0 – 58.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • Culvert work will include the cleaning of one 24" culvert and the clearing of debris/vegetation around the inlet and outlet. The work will not require the excavation of natural material. • No Signal work • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
58.0 – 59.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • All activities will be conducted in

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	• No Culvert work • Signal work will include the complete replacement of the existing signals at Fulton Road and River Road. The signals will be placed on existing foundations and the work will also include the repair of the roadway crossing surfaces. This work will include the removal of existing roadway pavement, repair of track bed, and replacement of road surface. • No Bridge work		accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
59.0 – 60.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signal at Airport Road. This work will not require any new foundation work. • Bridge (MP 59.5) work will include the replacement of the safety walkway planks, deck guard timbers, and pier cap beams. The work will all be within the railroad right of way there will be no excavation of natural material required or any work in the water.	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
60.0 – 61.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signal at Aviation Blvd. This work will not require any new foundation work. • No Bridge work	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.
61.0 – 63.0	• Track work to include the removal and replacement of deteriorated ties, adding ballast, repair/replace rail and rail appurtenances, and brushing of vegetation 15 feet from centerline. All work will be conducted from rail mounted equipment and will not require excavation of natural material. • No Culvert work • Signal work will include the repair of the existing signal at Shiloh Road and Windsor River Road. This work will not require any new foundation work. • Bridge (MP 61.58) work will include the replacement of the west end sil plate. The work will all be within the railroad right of way. There will be no excavation of natural material required or any work in the water. • Bridge (MP 62.41) work will include replacement of safety walkway	Class 1, 2, 4, 8, 21, 30	• Repair of existing structure with no expansion outside of NCRA right of way. • There will be no work in the Waters of the United States, waterways and/or wetlands. • No excavation of native soils will be conducted. • All activities will be conducted in accordance with NCRA's BMPs. • Surveys of nesting birds and native vegetation have been completed and the brushing work will be conducted in accordance with the results of those surveys and NCRA's BMPs. • Removal of deteriorated ties will be conducted in conformance with the Environmental Consent Decree. • The maintenance and repair activities will not include the use of heavy

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ROUTINE MAINTENANCE AND REPAIR ACTIVITIES BY MILE POST (Continued)

Location (Mile Post)	Repair/Maintenance Activity	CEQA Categorical Exemption	Justification
	supports, and the repair of back wall planks. The work will all be within the railroad right of way. There will be some excavation of the existing railroad embankment required to repair the back wall. There will be no excavation of natural material required or any work in the water.		equipment that could result in excessive vibration which could have a significant impact on historical buildings or structures near the railroad line.

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32.9 July 07

Northcoast Railroad Authority
01A0045-16A
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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

PROGRAM SUPPLEMENT/AMENDMENT
STATE FUNDED TRANSIT PROJECTS

PROGRAM SUPPLEMENT NO.:	01A0045-16A	CTC PROJECT APPROVAL RESOLUTION NO.:	STIP	TCR TAA-07-47	Other
MASTER AGREEMENT NO.:	64A0045	ALLOCATION RESOLUTION NO.:		TFP-07-02	

PROVISION SECTION

This PROGRAM SUPPLEMENT hereby incorporates all of the provisions contained in MASTER AGREEMENT No. 64A0045, entered into between **STATE of California** and **NORTHCOAST RAILROAD AUTHORITY (RECIPIENT)** on February 21, 2001 and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is adopted in accordance with ARTICLE I of the aforementioned MASTER AGREEMENT under authority of Resolution 2001-02, approved by the **RECIPIENT** on April 18, 2001. The **RECIPIENT** further stipulates that, as a condition to the reimbursement of State funds obligated to this PROJECT, it accepts and will comply with the covenants, obligations, terms and conditions set forth in said MASTER AGREEMENT and on the following page(s) of this PROGRAM SUPPLEMENT.

FUND SOURCE	EFFECTIVE DATE	TERMINATION DATE	ALLOCATION AMOUNT	PROJECT PHASE
TCR	7/25/07	2/21/2010	$13,588,000	CON

PROJECT TITLE: **#32.9 – NCRA; Upgrade to FRA Class 2 and 3 and Long-term Stabilization**

PROJECT SUMMARY: **Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The first phase of the project to be completed will result in an operable phase of the Russian River Division extending north from Lombard to Windsor and a geotechnical study with mapping of the Canyon.**

REQUIRED SIGNATURES

Recipient: North Coast Railroad Authority	**STATE OF CALIFORNIA**
By: Mitch Stogner	**State Dept.:** Department of Transportation
Title: MITCH STOGNER, Executive Director	**By:** Cheryl Willis
Date: 12-8-08	**Title:** CHERYL WILLIS, Deputy District Director, Planning D1
	Date: 1/13/09

DISTRIBUTION LIST

Caltrans Headquarters Accounting (2)
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Recipient (1)
Caltrans Mass Transportation (1)
Caltrans Headquarters Audits (1)

LIST OF ATTACHMENTS INCLUDED

- [X] Scope of Work/Project Application
- [X] CTC/TCRP Resolution
- [X] Certification of Funds
- [ ] 3rd Party Agreements
- [X] Special Conditions

AR 08077

ATTACHMENT I

Scope of Work

(*Scope of Work* includes the CTC-approved Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan for the total project.)

Ia. Project Description

This construction phase allocation is to be used for crossing signal improvements, to repair timber bridge structures (replacement in kind), rehabilitate movable bridges, and restore the NWP roadbed to permit operation of FRA Class 2 and 3 service within the Russian River Division Lombard to Windsor section. All of the proposed work can be characterized as repair or replacement. Several of the bridges in their present condition restrict the use of work trains, and will be rehabilitated to allow for the use of track equipment.

Crossing Signal Improvements

The improvement plans address repairs for the following signals:

Signal No.	MP	Location	Repair/Rehab Category*
		SCHELLVILLE	
3	5H-72.4	Hwy 121 Cherry Tree	4
4	5H-40.4	Hwy 121 Depot	3
5	5H-33.4	Hwy 37	4
		NOVATO	
8	5-25.9	Hanna Ranch Road	4
9	5-27.46D	Pedestrian Crossing	2
10	5-27.9	Grant Street	2
11	5-28.1	Olive Avenue	4
12	5-28.35X	Golden Gate Place	4
13	5-28.5	Rush Creek Road	4
		PETALUMA	
13.5	5-38.1	Caulfield Lane	4
14	5-38.3	Hopper Road	Retire Signal.
15	5-38.5	D Street	3
16	5-38.6	Washington Street	3
17	5-38.8	Lakeville Street	1
18	5-39.2	W. Payran Street	4
19	5-40.4	South Point Blvd.	1
20	5-40.7	McDowell Avenue	3
21	5-41.1	Corona Road	3
22	5-42.2	Ely Road	3
		PENNGROVE	
23	5-43.3	Main St./Petaluma Hill Road	3
24	5-43.6	Adobe Road	2
		COTATI	
25	5-44.8	East Railroad Avenue	4
26	5-43.6	East Cotati Avenue	4
		ROHNERT PARK	
27	5-46.8	Southwest Blvd.	4

29	5-47.4	Expressway Avenue	3
30	5-48.5	Golf Course Drive	4
		SANTA ROSA	
31	5-49.4	Scenic Avenue	3
32	5-50.3	Todd Road	2
33	5-50.8	West Robles Avenue	2
34	5-51.3	Bellevue Avenue	3
35	5-52.2	Hearn Avenue	3
36	5-53.0	Barham Avenue	3
37	5-53.4	Sebastopol Avenue	2
38	5-53.7	Third Street	2
39	5-53.8	Sixth Street	1
40	5-53.9	Seventh Street	1
41	5-54.0	Eighth Street	2
42	5-54.1	Ninth Street	1
43	5-54.4	College Avenue	3
44	5-55.3	Guerneville Road	3
45	5-55.6	W. Steele Lane	2
46	5-56.3	Piner Road	3
		FULTON	
47	5-56.8	San Miguel Avenue	2
48	5-58.5	Fulton Road	4
49	5-58.8	River Road	4
50	5-59.9	Airport Road	3
51	5-60.2	Aviation Blvd.	1
		WINDSOR	
52	5-61.1	Shiloh Road	2
53	5-61.7	Mitchell Lane	1
54	5-62.9	Windsor/River Road	2

*Categories of rehabilitation level were established in the 2005 Capital Assessment Report dated November 2005. Some of the category levels assigned to signals have changed since the time of the report as a result of flooding and/or vandalism.

The four categories are:

1. Category 1 Inspect & Test: requires minimal work for immediate reactivation. Inspection to include replacing broken or missing flasher units, broken counterweight arms and counterweights, resetting gate and flasher assemblies to plumb, realigning flashers, replacing all bulbs, replacing or repairing lenses, backgrounds and visors, installing missing gate arms, installing new gate arm wiring, and cleaning and preparation for painting. FRA compliance testing to include: meggering of cables, grounds tests, relay tests, etc. NCRA testing to include proper battery voltage tests.

2. Category 2 control Circuitry Replacement: requires new prediction equipment, track leads and batteries, along with Category 1 work tasks.

3. Category 3 Partial Replacement: requires replacement of one or more flasher/gate assemblies, shelter, and control circuitry to utilize crossing prediction equipment including new track leads and new batteries, along with Category 1 work tasks.

4. Category 4 Complete Replacement: requires complete replacement with new shelter, control circuitry, charger and batteries, and ground equipment to include cables, gates, flashers, bells and cantilevers as required, and all Category 1 tests.

In addition, the following items apply:

- All existing 8" incandescent flasher units are to be replaced with 12" LED units.
- New gate and flasher assemblies are to be installed complete with 12" LED units.
- Crossings with existing 12" incandescent flasher units can be placed back in service.
- CPUC to inform each municipality that the RR will be placed back in service and that signs and roadway striping is required and must be brought up to current standards.
- W10-1 signs will need to be relocated further away from crossings, per CPUC (This is typical at most crossings).

Structures

- The repair of 32 timber bridges. All these repairs consist of replacement of in-kind members like the replacement of cap beams, pile slicing, cross bracing, stringers, and walkway and railing planks. Nine of the timber bridges have been identified as requiring extensive structural work to allow for work trains.
- The rehabilitation of three movable bridges including structural, mechanical, and electrical repairs. Haystack Landing Bridge, Black Point Bridge, and Brazos Bridge are movable bridges on the Russian River Division owned by SMART. Black Point and Brazos will require electrical and mechanical maintenance and Haystack Landing will need structural repairs and mechanical and electrical systems rehabilitation and approach signals. Rail traffic can be resumed on these bridges under restrictive speed after the proposed repairs and maintenance are performed. Because these bridges are owned by SMART, their future replacement would be programmed in concert with their needs.

Roadbed Improvement

- General restoration of roadbed undermined by erosion.
- Surface drainage improvements.
- Replacement/repair of culverts and installation of culvert extensions along with placement of headwalls and debris racks and rock at the outlets for energy dissipation.
- Replacement of defective cross ties to achieve FRA Class 3 standards, and disposal of replaced ties.
- Surfacing of track along the entire 62 miles as required to achieve FRA Class 3 standards.
- Re-establishment of rail anchor pattern, joint bars, bolts, and other track repair items.
- Total reconstruction of track in areas of roadbed restoration as the result of washouts using existing rail with solid used or new ties and new ballast.
- Cleaning of flangeways and repair to grade crossing roadway surfaces.
- Repair or replacement of switches.
- Clearing of heavy, overgrown vegetation along the tracks, and disposal of vegetation from clearing operations.
- Replacement and repair of milepost signs, whistle posts, gates, and miscellaneous items.

Ib. Project Cost and Schedule ($ X 1,000)

Phase	*Scope*	*Start*	*End*	*Cost*
1	• Russian River Div. Reopening Environmental/Permitting/Preliminary Engineering (Allocation in Nov-06)	Dec 2006	July 2008	$2936
	• Canyon Preliminary Engineering (Allocation in Nov-06 & Amended Appl. Jan-08)	Dec 2006	June 2008	$840
	SUB-TOTAL PHASE I			**$3776**
2	• Russian River Division Phase I PS&E (Allocation in November 2006)	Dec 2006	Sep 2008	$1437
	SUB-TOTAL PHASE II			**$1437**
3	Not Applicable			
4	• Russian River Div. Reopening Ph.1 (Multiple contractsL signals, early bridge work/ roadway/structures) (Allocation in Mar-2007, Apr-2007, Jul-2007, Feb-2007)	Feb 2007	Oct 2008	$30,632
	SUB-TOTAL PHASE IV			**$30,632**
			Total:	**$35,845**

Ic. Funding Plan for Total Project

For the Total Project ($ X 1,000)

Source	*Type*		*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*	*Total*
TCRP 32.9	State	Committed	$3,176	$1,437		$26,387	$31,000
TCRP 32.3	State	Committed	$600				$600
Measure M & Cities	Federal	Committed				$3,330	$3,330
Insurance Proceeds/Private Crossings	Future Funding Sources	Committed					
		Proposed				$220	$220
NCRA Agency Funds						$695	$695
		Project Totals:	**$3,776**	**$1,437**		**$30,632**	**$35,845**

ATTACHMENT II

CTC Resolution

State of California
DEPARTMENT OF TRANSPORTATION
Memorandum

Business, Transportation and Housing Agency

To: CHAIR AND COMMISSIONERS

CTC Meeting: July 25-26, 2007

Reference No.: 2.6e.(2)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **FINANCIAL ALLOCATION FOR TRAFFIC CONGESTION RELIEF PROGRAM PROJECTS RESOLUTION TFP-07-02**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve Resolution TFP-07-02, allocating a net total of $93,936,000 in new Traffic Congestion Relief Program (TCRP) funding for 15 TCRP projects, as identified on the attached vote list, with the stipulation that these allocations be under contract within six months.

ISSUE:

The attached vote list describes 15 TCRP projects requesting a net total of $93,936,000, including one request to de-allocate $1,074,000 in identified savings from a completed project. The agencies for these projects are ready to proceed and are requesting allocations at this time.

FINANCIAL RESOLUTION:

Resolved That:
The project(s), as component phases or in their entirety, appear under Government Code Section 14556.40(a) and are entitled to participate in this allocation.

Reimbursement of eligible costs is subject to the policies, restrictions and assurances as set forth in the Commission's policy for allocating, monitoring, and auditing TCRP projects, and is governed by the terms and conditions of the Fund Transfer Agreement, Program Supplement or Cooperative Agreement, and subsequent amendments to the same if required, as executed between the Implementing Agency and the Department.

Attachment

CTC Financial Vote List **July 25-26, 2007**

2.6 Mass Transportation Financial Matters

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
1 $1,881,000 Metropolitan Transportation Commission 04 – Various	Project # 11.1 – Video Tolling Demonstration Project for state-owned toll bridges in Alameda, San Francisco, Contra Costa, Marin and San Mateo Counties. This allocation provides $1,881,000 in new TCRP funding for PA&ED. Output/Outcome: Study impact on congestion from implementation of video tolling, which does not require a vehicle stop at the toll plaza. (Related item under 2.1c.(1).)	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.040	$1,881,000
2 $3,000,000 Bay Area Rapid Transit District Alameda County Congestion Management Agency 04 – Alameda	Project # 12.3 – Bay Area Transit Connectivity; complete studies of, and fund related improvements for, the I-580 Livermore Corridor. This allocation provides $3,000,000 in new TCRP funding for PA&ED. Output/Outcome: Preserve right-of-way dedicated for a vital median transit corridor along Interstate 580 for future use by transit. (Related item under 2.1c.(2).)	Chapter 91 of the Statutes of 2000 889-3007 30.20.710.010	$3,000,000
3 $6,000,000 San Francisco County Transportation Authority 04 – San Francisco	Project # 22 – Route 101; environmental study for reconstruction of Doyle Drive, from Lombard St./Richardson Avenue to Route 1 interchange in City and County of San Francisco. This allocation provides $6,000,000 in new TCRP funding for PS&E. Output/Outcome: Reconstruction of Doyle Drive to improve seismic, structural and traffic safety. (Related item under 2.1c.(3).)	Chapter 91 of the Statutes of 2000 889-3007 20.30.710.878	$6,000,000
4 $3,000,000 San Mateo County Transportation Authority 07 – San Mateo	Project # 23 – Caltrain Peninsula Corridor; complete reconstruct grade separations at Poplar Avenue, 25th Avenue and Dillon Avenue and adjacent bridge crossings in San Mateo County. This allocation provides $3,000,000 in new TCRP funding for PS&E. Output/Outcome: Reconstruct an obsolete crossing to meet current design and safety standards and simplify the future electrification of Caltrain right-of-way. (Related item under 2.1c.(4).)	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.010	$3,000,000
5 $500,000 City of Richmond 04 – Contra Costa	Project # 29 – Parking Structure at Transit Village at Richmond BART Station in Contra Costa County. This allocation provides $500,000 in new TCRP funding for PS&E. Output/Outcome: Construct parking to allow for development of mixed-use transit village at the current BART surface parking lot, leading to increased use of BART. (Related item under 2.1c.(5).)	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.010	$500,000
6 $13,588,000 North Coast Railroad Authority 01 – Various	Project # 32.9 – North Coast Railroad; long-term stabilization. This allocation provides $13,588,000 in new TCRP funding for Construction. Output/Outcome: Stabilization of landslides and upgrading rail line to Federal Railroad Administration Class 2 and 3 standards for the overall re-opening of the North Coast Railroad.	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.050	$13,588,000

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: February 13-14, 2008

Reference No.: 2.1a.(5)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **TCRP PROJECT AMENDMENT**
RESOLUTION TAA-07-47, AMENDING RESOLUTIONS TAA-06-60 AND TAA-07-09

RECOMMENDATION:

The California Department of Transportation (Department) is submitting this request to the California Transportation Commission (Commission) for consideration. Resolution TAA-07-47 will amend Traffic Congestion Relief Program (TCRP) Projects #32.3 and #32.9 described below.

ISSUE:

The North Coast Railroad Authority (NCRA) is requesting to amend two TCRP projects as follows:

TCRP Project #32.3 – North Coast Railroad; completion of rail line from Willits to Arcata;

- Revise the project scope.
- Update the project schedule and funding plan.

TCRP Project #32. 9 – North Coast Railroad; long-term stabilization;

- Revise the project scope.
- Re-distribute programmed funds totaling $3,249,000 from Environmental (PA&ED) ($2,253,000) and Design (PS&E) ($996,000) to Construction.
- Update the project schedule and funding plan.

BACKGROUND:

TCRP Project #32.3 was approved for the preparation of an Environmental Impact Report/Statement (EIR/EIS) for the area of the railroad called the "Canyon", from Willits to South Fork. Since this scope was approved in November 2006, it has been determined that the original estimate and schedule for completing the Canyon EIR/EIS was significantly underestimated. Therefore, sufficient funds are not available to complete the EIR/EIS, and NCRA is requesting to change the scope to a Geotechnical Study that includes mapping and cost estimates. This will allow NCRA to evaluate the feasibility of rehabilitating the railroad through the Canyon. The project schedule and funding plan are being revised to reflect this scope change.

TCRP Project #32.9 is to replace ties, repair roadbed, repair structures, improve drainage, and improve crossing protection to permit the operation of Federal Rail Administration Class II and, where possible, Class III service. The project will also provide landslide stabilization where required. NCRA is requesting to revise the scope to focus the project on restoring a segment within the Russian River Division. This includes changing the scope of PA&ED from preparing an EIR/EIS for the Canyon to preparing a Geotechnical Study with mapping.

Consistent with this scope change, NCRA requests to re-distribute programmed funds totaling $2,253,000 from PA&ED and $996,000 from PS&E to Construction, and update the project schedule and funding plan.

A concurrent TCRP allocation of $1,561,000 ($40,000 for PS&E and $1,521,000 for Construction) is under item 2.6e.(2) and a concurrent TCRP allocation amendment to move $2,253,000 of already allocated funds from PA&ED to Construction is under item 2.6e.(3). In addition, there is a concurrent request to extend the award deadline for a portion of the construction funds allocated in July 2007, under item 2.8b.(3).

ATTACHMENT III

Certification of Funds

TRAFFIC CONGESTION RELIEF PROGRAM

Name of Recipient:	North Coast Railroad Authority
Name of Project:	**#32.9 – Upgrade to FRA Class 2 and 3 and Long-term Stabilization**
CTC Resolution Number:	TFP-07-02
Date of Resolution:	July 25-26, 2007
Allocation Amount:	$13,588,000
Fund Source:	TCR
Date of Third Party Contract Award:	n/a
Period of Availability:	7/25/07 through 2/21/2010

SOURCE DIST-UNIT	CHARGE DIST-UNIT	EXP AUTH NO.	OBJECT	ALLOCATION AMOUNT	LED	FY	ENCUMBRANCE DOCUMENT NO.	PROJECT #
01-804	01-804	R9497D	7049	$13,588,000	2/21/10	01	TRR9497D	32.9

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure Stated above.				Signature of Accounting Officer	Date
ITEM	CHAPTER	STATUTES	FISCAL YEAR		
2660-689-3007	91	2000	200/2001	Gregory Evers	1-2-09

ATTACHMENT IV

Special Conditions

RECIPIENT agrees to exercise best efforts toward meeting the one remaining condition (of five) imposed by the Department of Transportation (Caltrans) on RECIPIENT for the release of State or federal funds. The five conditions were identified in the July 17, 1998 letter from the Director of Caltrans to the Executive Director of the North Coast Railroad Authority. The remaining condition is to "resolve audit deficiencies".

RECIPIENT continues to be designated as a "high risk grantee" by Caltrans Audits and Investigations (Caltrans Audits) based on CFR 49, Part 18.12 and is subject to enhanced monitoring and compliance conditions set forth in this section. RECIPIENT shall be reimbursed solely for subcontracted third party costs until such time that RECIPIENT demonstrates to the satisfaction of Caltrans Audits that recipient has the ability to accumulate and segregate reasonable, allocable and allowable in-house costs (in-house direct costs or any indirect costs). If RECIPIENT intends to seek reimbursement for in-house direct and indirect costs, the RECIPIENT is to enter three complete months of such costs into their accounting system and then request Caltrans Audits to perform a follow-up audit to determine the adequacy of the recipient's accounting system and internal management controls. RECIPIENT also agrees to request verification and approval of indirect and fringe benefit rates by Audits before billing these costs to any project. If it is determined, after the above follow-up audit is performed, that the RECIPIENT has an adequate financial management system and an approved indirect cost allocation plan, a formal written amendment will be required prior to reimbursement of in-house direct and indirect costs.

Actual costs reimbursed shall not exceed the estimated line items set forth in the financial plan. The maximum amount payable under this program supplement shall not exceed $13,588,000.

For the purposes of Cash Flow, RECIPIENT shall submit Progress Payment Requests. The process and timeline are defined below:

- After RECIPIENT has paid the contractor, RECIPIENT may seek reimbursement by submitting an invoice and supporting documentation to District 1.
- District 1 must receive from RECIPIENT all cancelled checks for all expenses claimed on said invoice with the invoice submittal package.
- The District will have 15 calendar days from the date that said invoice is received to process the request, verify supporting documentation, and forward it to HQ Accounting.
- HQ Accounting will have 15 calendar days to process the invoice and forward it to the State Controller's Office (SCO).
- SCO will have 15 calendar days to process the invoice and issue payment to RECIPIENT.
- Caltrans shall withhold 10% of the final billing. Upon verification of the final product and all supporting documentation, the 10% retainer withheld by Caltrans shall be released to RECIPIENT per the above timeline.

Approved as to form and procedure

BY: _____ 1/6/09
CALTRANS ATTORNEY *DATE*

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

RECEIVED
JAN 20 2009
BY:----------

Flex your power!
Be energy efficient!

To: MITCH STOGNER
Executive Director,
North Coast Railroad Authority

Date: January 15, 2009

File:

From: LEISHARA WARD
Associate Transportation Planner
Transportation Planning, District 1

Subject: Program Supplement Amendment # 01A0045-16A

The attached Program Supplement has been amended to incorporate a change in scope and programming. Please keep this original signed copy for your files.

Let me know if you have any questions. Thanks!

Attachment / Enclosure
Program Supplement #01A0045-16A

c: District 1 – Leishara Ward
Audits & Investigations – Cliff Vose
Division of Programming – Scott Kingsbury
Local Programs – Jane Fong
State Controller's – Jane Fong

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE NW
SUITE 300
WASHINGTON DC 20037

TELEPHONE (202) 663-7820
FACSIMILE (202) 663 7849



Robert A Wimbish

Direct Dial (202) 663-7824
E-Mail rwimbish@bakerandmiller.com

August 9, 2007

220020

BY HAND DELIVERY
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
AUG 10 2007
Part of
Public Record

RE: ***Northwestern Pacific Railroad Company – Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC***
Finance Docket No. 35073

Dear Secretary Williams:

Enclosed please find an original and eleven copies of a notice of exemption for a change of operators under 49 CFR 1150.31(a)(3), pursuant to which Northwestern Pacific Railroad Company would assume operation of certain lines owned by North Coast Railroad Authority and Sonoma-Marin Area Rail Transit District and over which Northwestern Pacific Railway Co., LLC currently possesses operating rights. Also enclosed is a draft *Federal Register* notice pursuant to 49 CFR 1150.34.

Finally, pursuant to 49 CFR 1002.2(f)(11)(ii) please find enclosed a check for $1,600.00 covering the applicable filing fee. Please acknowledge the receipt and filing of the enclosed notice of exemption by time stamping the eleventh copy and returning it to the courier for delivery to me. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by email. wmullins@bakerandmiller.com.

Respectfully submitted,

FILED
AUG - 9 2007
SURFACE TRANSPORTATION BOARD

R. A. Wimbish
Robert A. Wimbish
Attorney for Northwestern Pacific Railroad Company

Enclosures

FEE RECEIVED
AUG - 9 2007
TRANSPORTATION BOARD



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY
— CHANGE IN OPERATORS EXEMPTION —
NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

220020

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1150.31., ET SEQ

ENTERED
Office of Proceedings
AUG 10 2007
Part of
Public Record

FEE RECEIVED
AUG - 9 2007
SURFACE
TRANSPORTATION BOARD

FILED
AUG - 9 2007
SURFACE
TRANSPORTATION BOARD

Douglas H. Bosco
Northwestern Pacific Railroad Company
37 Old Courthouse Square
Suite 200
Santa Rosa, CA 95404
Phone: (707) 525-8999
Facsimile: (707) 542-4752

August 9, 2007

William A. Mullins
Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

Attorneys for Northwestern Pacific
Railroad Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY
— CHANGE IN OPERATORS EXEMPTION —
NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1150.31 , ET SEQ

Northwestern Pacific Railroad Company ("NWPCO"), a noncarrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the "Board") to permit NWPCO to assume from the Northwestern Pacific Railway Co., LLC ("NWPY") the common carrier rights and obligations associated with certain lines of railroad owned by North Coast Railroad Authority ("NCRA") and Sonoma-Marin Area Rail Transit District ("SMART") The proposed transaction would effect a voluntary change in operators on the subject rail lines consistent with 49 CFR 1150.31(a)(3), and would thereby terminate NWPY' s common carrier obligations over those lines.

The rail properties that NWPCO will lease and operate pursuant to this notice (and over which NWPCO will replace NWPY) include the following: (1) the Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles; (2) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg, CA, to NWP milepost 26 96 near Novato, CA, a distance of approximately 41 2 miles; (3) the Novato Segment extending from NWP milepost 26.96 near

AR 08104

Novato to NWP milepost 25.6 near Ignacio, CA, a distance of approximately 1.4 miles; and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, CA, SP milepost 63.4, a distance of approximately 25.3 miles. (Hereafter, the above-referenced line segments will be referred to collectively as the "Line") [1]

In support of this Notice of Exemption, NWPCO submits the following information as required by 49 CFR 1150.33:

a. Full name and address of applicant:

Northwestern Pacific Railroad Company
385 Sherman Avenue, Ste. 1
Palo Alto, CA 94306-1840

b. Applicant's Representatives:

Douglas H. Bosco
Northwestern Pacific Railroad Company
37 Old Courthouse Square
Suite 200
Santa Rosa, CA 95404
Phone: (707) 525-8999
Facsimile: (707) 542-4752

William A. Mullins
Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

c. Statement that an agreement has been reached or details about when an agreement will be reached:

[1] NCRA acquired the authority to operate the Line pursuant to North Coast Railroad Authority — Lease and Operation Exemption — California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33115 (STB served Sept. 27, 1996). NCRA, in turn, contracted its surface freight easement rights on these line segments to NWPY pursuant to Northwestern Pacific Railway Co., LLC -- Lease and Operation Exemption — North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001) ("NWPY – Exemption"). SMART obtained an ownership interest in the southern portion of the Line pursuant to Sonoma-Marin Area Rail Transit District – Acquisition Exemption – Northwestern Pacific Railroad Authority, STB Finance Docket No. 34400 (STB served Mar. 10, 2004) ("SMART Exemption"). As contemplated by this Notice of Exemption, NWPY's operating rights over the Line would convey to NWPCO, which will replace NWPY as the common carrier operator.

Agreements will be reached among NWPCO, NCRA, and SMART that will govern NWPCO's accession of exclusive operating rights and common carrier obligations over the Line.

d. Operator of the property:

The operator of the property will be NWPCO.

e. Summary of proposed transaction:

1. The names and addresses of the rail entities transferring operating interests in the property are:

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

Sonoma-Marin Area Rail Transit District
ATTENTION: Lillian Hames
4040 Civic Center Drive
Suite 200
San Rafael, CA 94903

Northwestern Pacific Railway Co., LLC
ATTENTION: Brian Whipple
P.O. Box 318
Tomales, CA 94971-0318[2]

2. The proposed time schedule for the consummation of the transaction:

NWPCO intends to consummate this transaction on or after September 8, 2007.

3. The mileposts of the subject property, including any branch lines

NWPCO will acquire the rights to, and will operate, certain rail lines that were the subject of the NWPY – Exemption and SMART – Exemption notices, specifically: (1) the Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles; (2) the Healdsburg Segment

[2] Attached as Exhibit 1 is a Verification from John Darling, president of NWPY, which acknowledges that NWPY will relinquish its common carrier status on the Line consistent with the objectives of this notice.

AR 08106

extending from NWP milepost 68.2 near Healdsburg, CA, to NWP milepost 26 96 near Novato, CA, a distance of approximately 41 2 miles; (3) the Novato Segment extending from NWP milepost 26.96 near Novato to NWP milepost 25.6 near Ignacio, CA, a distance of approximately 1.4 miles; and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, CA, SP milepost 63.4, a distance of approximately 25.3 miles.

4. Total route miles being acquired:

Approximately 142 miles.

f. Map:

A map of the Line is attached as Exhibit 2.

g. Certificate of Compliance with the provisions of 49 CFR 1150.33(g):

Such certification is attached as Exhibit 3.

Other information and supporting materials.

A caption summary, as required by 49 CFR 1150.34, is attached as Exhibit 4.

Pursuant to 49 CFR 1150.32(b), NWPCO will give notice of the proposed transaction to affected shippers concurrently with the filing of this class exemption.

No environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Hence, this Notice of Exemption does not require environmental documentation under 49 CFR 1105.6(b)(4) and (c)(2)(i).

An historic report is not required because NWPCO will operate the Line, NWPCO would be required to obtain further Board approval to discontinue service, and there are no plans to

AR 08107

dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 CFR 1105.8(b)(1).

NWPCO's projected annual revenues would not exceed $5 million See certification attached hereto as Exhibit 3. Accordingly, the advance notice and posting requirements of 49 CFR 1150 32(e) do not apply

This action will not significantly affect either the quality of the human environment or energy conservation

Respectfully submitted,

R. G Wimbish

William A. Mullins
Robert A Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

Attorneys for Northwestern Pacific Railroad Company

Douglas H. Bosco
Northwestern Pacific Railroad Company
37 Old Courthouse Square
Suite 200
Santa Rosa, CA 95404
Phone: (707) 525-8999
Facsimile. (707) 542-4752

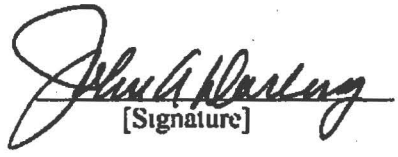
Dated: August 9, 2007

AR 08108

EXHIBIT 1-RELINQUISHMENT

VERIFICATION

I, John Darling, President of Northwestern Pacific Railway Co., LLC ("NWPY"), hereby verify that I am authorized to make this verification and that I have read the foregoing notice of exemption and concur in the proposed change in operators contemplated therein



[Signature]

8/2/2007
Date

EXHIBIT 2–MAP

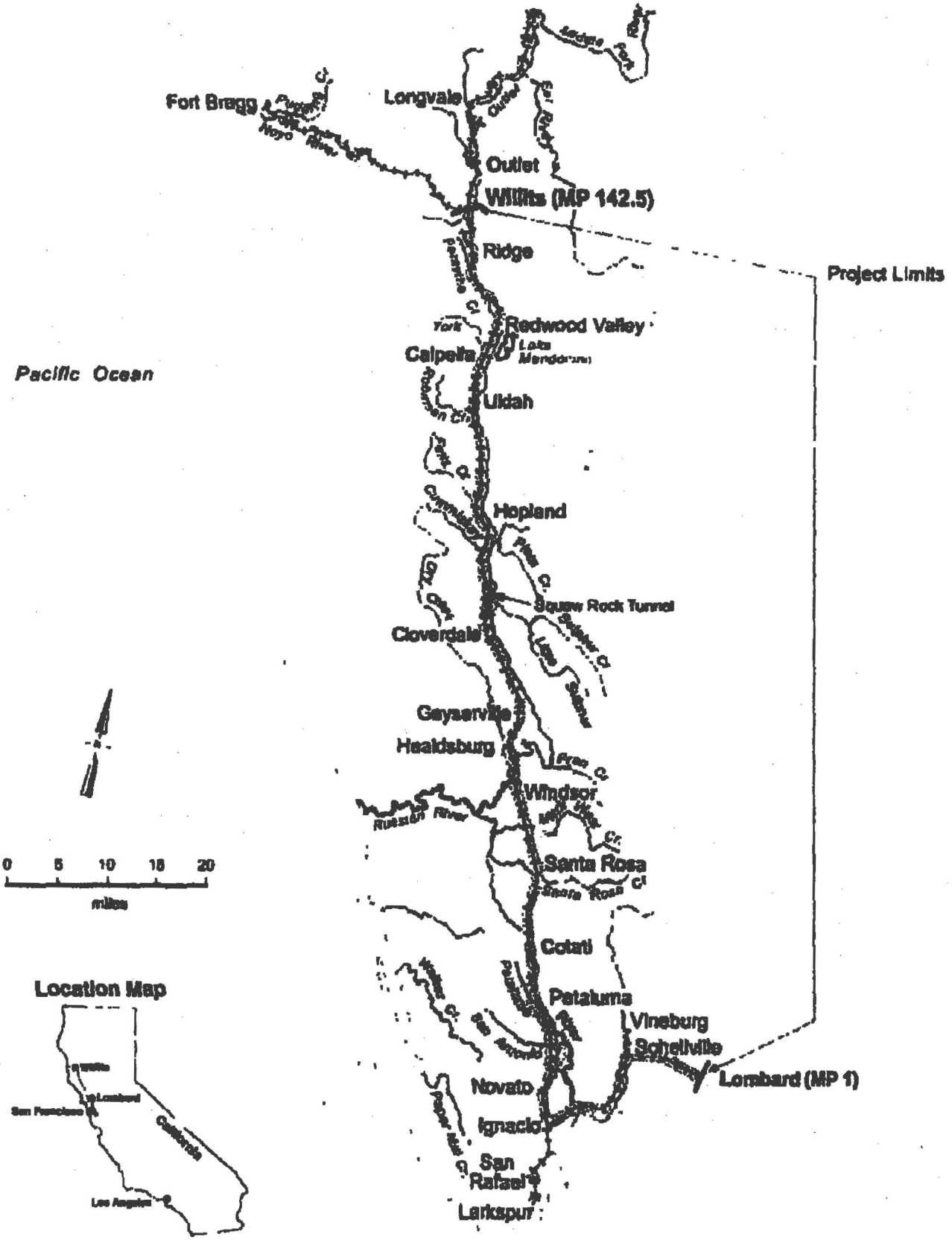

Fort Bragg
Longvale
Outlet
Willits (MP 142.5)
Ridge
Project Limits
Redwood Valley
Calpella
Ukiah
Pacific Ocean
Hopland
Squaw Rock Tunnel
Cloverdale
Geyserville
Healdsburg
Windsor
Santa Rosa
Cotati
Petaluma
Vineburg
Schellville
Lombard (MP 1)
Novato
Ignacio
San Rafael
Larkspur
0 5 10 15 20
miles
Location Map

EXHIBIT 3 CERTIFICATION

CERTIFICATION

I, John H Williams, President of Northwestern Pacific Railroad Company ("NWPCO"), hereby certify that NWPCOs projected annual revenues from the rail operations would not exceed those that would make it a Class III carrier under 49 C F R. Part 1201(1-1) I further certify in connection with 49 CFR 1150.32(c) that NWPCO's projected annual revenues will not exceed $5 million

John H. Williams
[Signature]

August 3, 2007
Date

AR 08114

EXHIBIT 4- CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY
— CHANGE IN OPERATORS EXEMPTION —
NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

Northwestern Pacific Railroad Company ("NWPCO"), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150 31 to operate approximately 142 miles of rail line owned by North Coast Railroad Authority ("NCRA") and Sonoma-Marin Area Rail Transit District ("SMART") The rail line consists of the following segments, which together total about 142 route miles: (1) the Willits Segment extending from NWP milepost 142 5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles; (2) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg, CA, to NWP milepost 26.96 near Novato, CA, a distance of approximately 41.2 miles; (3) the Novato Segment extending from NWP milepost 26.96 near Novato to NWP milepost 25 6 near Ignacio, CA, a distance of approximately 1 4 miles, and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, CA, SP milepost 63.4, a distance of approximately 25.3 miles.

With respect to the line segments described above, NWPCO will replace Northwestern Pacific Railway Co., LLC ("NWPY"), which has been operating over the those lines pursuant to Northwestern Pacific Railway Co., LLC — Lease and Operation Exemption — North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001).

AR 08116

NWPCO will become a Class III rail carrier upon consummation of the transaction. NWPCO certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier and that such revenues would not exceed $5 million annually.

The transaction is scheduled to take place on or after September 8, 2007.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35073 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Douglas H. Bosco, Northwestern Pacific Railroad Company, 37 Old Courthouse Square, Suite 200, Santa Rosa, California 95404, (707) 525-8999, and Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037, (202) 663-7820. Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August —, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

EXHIBIT 5

VERIFICATION

I, John H Williams, President of Northwestern Pacific Railroad Company ("NWPCO"), hereby verify that I am authorized to make this verification and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief

[Signature]

August 3, 2007
Date

AR 08119

[Federal Register: August 24, 2007 (Volume 72, Number 164)]
[Notices]
[Page 48729-48730]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr24au07-145]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35073]

Northwestern Pacific Railroad Company--Change in Operators Exemption--North Coast Railroad Authority, Sonoma-Marin Area Transit District and Northwestern Pacific Railway Co., LLC

Northwestern Pacific Railroad Company (NWPCO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators from Northwestern Pacific Railway Co., LLC (NWPY) to NWPCO on a line of railroad owned by North Coast Railroad Authority (NCRA) and Sonoma-Marin Area Rail Transit District (SMART). The line, entirely within California, includes: (1) The Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, a distance of approximately 74.3 miles; (2) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg to NWP milepost 26.96 near Novato, a distance of approximately 41.2 miles; (3) the Novato Segment extending from milepost 26.96 near Novato to NWP milepost 25.6 near Ignacio, a distance of approximately 1.4 miles; and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, SP milepost 63.4, a distance of approximately 25.3 miles. These segments (``the Line'') total approximately 142 miles.\1\ This change

[[Page 48730]]

in operators is exempt under 49 CFR 1150.31(a)(3).\2\

\1\ NCRA acquired the authority to operate the Line pursuant to North Coast Railroad Authority--Lease and Operation Exemption--California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33115 (STB Served Sept. 27, 1996). In turn, NCRA contracted its surface freight easement rights on the Line to NWPY pursuant to Northwestern Pacific Railway Co., LLC--Lease and Operation Exemption--North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001). SMART obtained an ownership interest in the southern portion of the Line pursuant to Sonoma-Marin Area Rail Transit District--Acquisition Exemption--Northwestern Pacific Railroad Authority, STB Finance Docket No. 34400 (STB served Mar. 10, 2004).

\2\ In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.32(b). NWPCO has certified that it will give notice of the

proposed transaction to affected shippers concurrently with the filing of this notice of exemption.

NWPCO certifies that upon consummation of the transaction, it will become a Class III rail carrier, that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues would not exceed $5 million annually. NWPCO indicates that it intends to consummate the transaction on or after September 8, 2007.\3\ The earliest the transaction could be consummated was August 16, 2007 (7 days after the exemption was filed).

\3\ This transaction renders moot the notice of exemption filed in STB Docket No. 34842, Sonoma-Marin Area Rail Transit District--Acquisition Exemption--Northwestern Pacific Railroad, which will be dismissed in a separate decision.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 3073, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E. Street, SW., Washington, DC 20523-0001. In addition, a copy of each pleading must be served on Douglas H. Bosco, Northwestern Pacific Railroad Company, 37 Old Courthouse Square, Suite 200, Santa Rosa, CA 95404, and Robert A. Wimbish, Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at http://www.stb.dot.gov

Decided: August 16, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7-16475 Filed 8-23-07; 8:45 am]

BILLING CODE 4915-01-P

[Federal Register Volume 72, Number 168 (Thursday, August 30, 2007)]
[Notices]
[Page 50161]
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
[FR Doc No: E7-17164]

[[Page 50161]]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35073]

Northwestern Pacific Railroad Company--Change in Operators Exemption--North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC \1\

\1\ This notice corrects the notice published on August 24, 2007, at 72 FR 48729, which erroneously stated the earliest date for consummation of this transaction to be August 16, 2007 and, in one instance, misstated the docket number.

Northwestern Pacific Railroad Company (NWPCO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators from Northwestern Pacific Railway Co., LLC (NWPY) to NWPCO on a line of railroad owned by North Coast Railroad Authority (NCRA) and Sonoma-Marin Area Rail Transit District (SMART). The line, entirely within California, includes: (1) The Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, a distance of approximately 74.3 miles; (2) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg to NWP milepost 26.96 near Novato, a distance of approximately 41.2 miles; (3) the Novato Segment extending from milepost 26.96 near Novato to NWP milepost 25.6 near Ignacio, a distance of approximately 1.4 miles; and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, SP milepost 63.4, a distance of approximately 25.3 miles. These segments (``the Line'') total approximately 142 miles.\2\ This change in operators is exempt under 49 CFR 1150.31(a)(3).\3\

\2\ NCRA acquired the authority to operate the Line pursuant to North Coast Railroad Authority--Lease and Operation Exemption--California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33115 (STB Served Sept. 27, 1996). In turn, NCRA contracted its surface freight easement rights on the Line to NWPY pursuant to Northwestern Pacific Railway Co., LLC--Lease and Operation Exemption--North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001). SMART obtained an ownership interest in

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the southern portion of the Line pursuant to Sonoma-Marin Area Rail Transit District--Acquisition Exemption--Northwestern Pacific Railroad Authority, STB Finance Docket No. 34400 (STB served Mar. 10, 2004).

\3\ In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.32(b). NWPCO has certified that it gave notice of the proposed transaction to affected shippers concurrently with the filing of this notice of exemption.

NWPCO certifies that upon consummation of the transaction, it will become a Class III rail carrier, that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues would not exceed $5 million annually. NWPCO indicates that it intends to consummate the transaction on or after September 8, 2007, which is the earliest the transaction can be consummated (30 days after the exemption was filed).\4\

\4\ This transaction renders moot the notice of exemption filed in STB Docket No. 34842, Sonoma-Marin Area Rail Transit District--Acquisition Exemption--Northwestern Pacific Railroad, which will be dismissed in a separate decision.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 31, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35073, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW., Washington, DC 20523-0001. In addition, a copy of each pleading must be served on Douglas H. Bosco, Northwestern Pacific Railroad Company, 37 Old Courthouse Square, Suite 200, Santa Rosa, CA 95404, and Robert A. Wimbish, Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at http://www.stb.dot.gov.

Decided: August 24, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

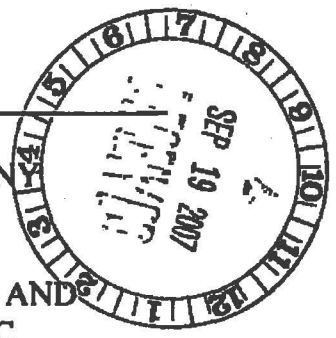
[FR Doc. E7-17164 Filed 8-29-07; 8:45 am]

BILLING CODE 4915-01-P

220370

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO.35073



NORTHWESTERN PACIFIC RAILROAD COMPANY
- CHANGE IN OPERATORS EXEMPTION -
NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

FRIENDS OF EEL RIVER'S PETITION TO REVOKE THE EXEMPTION FOR NORTHWESTERN PACIFIC RAILROAD COMPANY

ENTERED
Office of Proceedings
OCT - 1 2007
Part of
Public Record

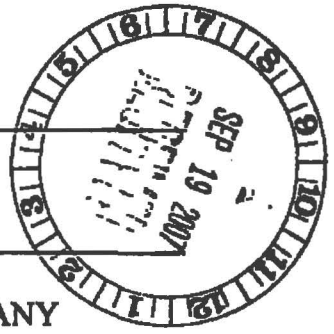
ELLISON FOLK (State Bar No. 149532)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
Tel: (415) 552-7272
Fax: (415) 552-5816

Dated: September 14, 2007

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TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO.35073

NORTHWESTERN PACIFIC RAILROAD COMPANY
- CHANGE IN OPERATORS EXEMPTION -
NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

FRIENDS OF EEL RIVER'S PETITION TO REVOKE THE EXEMPTION FOR NORTHWESTERN PACIFIC RAILROAD COMPANY

Friends of the Eel River, a California non-profit organization, hereby petitions to revoke the exemption ("Notice") for the Northwestern Pacific Railroad Company ("NWPCO"), filed on August 9, 2007. NWPCO proposes to replace the Northwestern Pacific Railway Co., LLC ("NWP") as the operator over segments of railway currently owned by the North Coast Railroad Authority ("NCRA").

1. Friends of the Eel River ("FOER") is a 501 (c)(3) organization dedicated to the protection of the Eel River in California. FOER is concerned about the environmental impacts associated with NWPCO's plans to restart operation of the North Coast Railway.

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2. TOER requests that the exemption be revoked on the ground that the Notice is not accurate in its description of the existing level of use of the railway segments that are the subject of the Notice. Specifically, on page 1 the Notice states that NWP "has been operating over the lines .. ." that are the subject of the exemption. This statement is not accurate. A large segment of the North Coast Railway has not been operational since 1998 when the Federal Railroad Administration issued Emergency Order No. 21, attached as Exhibit A. This Order prohibited operation of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 83.4 between Schellville and Napa Junction, California – an area that includes the segment that is subject to NWPCO's Notice.

3. The Notice makes no mention of the current prohibition on operation on the North Coast Railway. Indeed, by stating that the NWP "has been operating" the segment, the Notice, at a minimum, implies that the line is currently operational. As a result, the Notice fails to disclose the effect of transferring operation to NWPCO, which has plans to reopen the segment to railway operation. This reoperation of the railway will necessarily result in increase in train traffic in excess of the limits set by 49 C.F.R. 1105.7(c)(5). Therefore, the Notice and transfer of operation cannot be approved without environmental review

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4. The Notice also fails to indicate that NWPCO is currently preparing to reoperate that segment of rail line that is subject to the Notice. NWPCO has already published a Notice of Preparation ("NOP") of an Environmental Impact Report under the California Environmental Quality Act ("CEQA"). *See* Exhibit B. This NOP indicates that with reoperation, the rail line is anticipated to support at least 2 round trips of freight traffic per day. Inasmuch as there is no freight traffic on the current rail line, this represents more than a 100 percent increase over the nonexistent current operations. As indicated in the NOP, this reoperation will result in significant environmental impacts, which are not reflected in the Notice.

5. Based on the foregoing, FOER requests that the exemption be revoked.

Dated: Sept 14, 2007 SHUTE, MIHALY & WEINBERGER LLP

By: _____
Ellison Folk

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Petition to Revoke the Exemption For Northwestern Pacific Railroad Company by facsimile transmission and mailing by prepaid first class mail copies to the following:

Robert A. Wimbish
William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Counsel for Northwestern Pacific Railroad Co.

Douglas H. Bosco
Northwestern Pacific Railroad Co.
37 Old Courthouse Square
Suite 200
Santa Rosa, CA 95404
Tel: (707) 525-8999
Fax: (707) 542-4752

Counsel for Northwestern Pacific Railroad Co.

Fritz R. Kahn
1920 N. St. NW (8th Floor)
Washington, D.C. 20035
Tel: (202) 263-4152
Fax: (202) 331-8330

Counsel for Mendocino Railway and Baywood Partners

Dated at San Francisco, California this 14th day of September, 2007.

Ellison Folk

[P:\TOFR\Krenkel-13 (pet to revoke)\21 FINAL.wpd]

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EXHIBIT A

Improvements; Extend Runway 2/20; Acquire Snow removal Equipment; Update storm water protection plan; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs. FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois, on December 2, 1998.

Basilio De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region

[FR Doc. 98-32733 Filed 12-8-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 1]

Northwestern Pacific Railroad; Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage From Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Northwestern Pacific Railroad (NWP) of Eureka, California, to discontinue operation by anyone of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the NWP inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (*Ibid.*)

Background

The NWP operates on a 296-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Operations are currently being conducted under contract by Rail-Ways, Inc.

The majority of NWP's operations involve the transportation of freight, however, in the past, the railroad also has conducted passenger operations between Willits and Healdsburg. The NWP connects to the California Northern Railroad, another freight railroad, at Schellville. It also connects to the California Western Railroad, which operates both freight and passenger trains, at Willits. The California Western operates over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP traditionally hauls mostly timber and wood products, but it also hauls some hazardous materials, especially over the portion of the line south of Willits. Maximum authorized train speed on the line is 30 m.p.h., although train speed over that portion of the line affected by Emergency Order No. 14 is restricted to 10 m.p.h.

The NWP is subject to the jurisdiction of FRA. Portions of its operations currently are subject to Emergency Order No. 14 issued on June 7, 1990, when the line of railroad was known as the Eureka Southern Railroad. Emergency Order No. 14 remains in effect from mile post 145.5 near Willits to Ft. Seward, mile post 216.6. It prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. Concurrent with this emergency order, FRA is amending Emergency Order No. 14 to prohibit the transportation of hazardous materials until the track complies with class 1 track standards.

Northern Portion, Willits to Arcata

In 1990, FRA became concerned about the track conditions on the NWP, then known as the Eureka Southern Railroad, between Willits and Eureka. At the time, the railroad hauled over the line passengers and liquified petroleum gas, a regulated hazardous material. FRA found that the track between Willits and Eureka did not meet class 1 track standards and posed an immediate threat of death or injury to persons. FRA issued Emergency Order No. 14 under which the Eureka Southern Railroad was prohibited from hauling passengers until the track met class 1 track standards and from hauling hazardous materials until the track either met class 1 standards or was designated by the railroad as excepted. The excepted track provision, found at 49 CFR 213.4, limits the hauling of hazardous materials to five cars per train and places other restrictions on the designated track.

On October 1, 1990, because of improved conditions, FRA lifted Emergency Order No. 14 between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka. Since 1990, the NWP has complied with the terms of the emergency order for the remainder of the affected area by discontinuing hauling passengers and hazardous materials between Fort Seward and Willits.

The northern portion of the NWP has been subject to flooding for the past several years. Due to flooding which occurred within the last year, the NWP has discontinued operations on the northern portion from Nashmead (mile post 175.5) to Arcata. The railroad continues to operate on the northern portion between Willits and Nashmead. The NWP has applied to the Federal Emergency Management Agency (FEMA) for funding for repair of flood damage that occurred in 1995, 1997 and 1998. As a result of the application, FEMA, with FRA's assistance, recently conducted a survey of track conditions between Willits and Eureka. FEMA has agreed to provide $1 million to NWP for repair of flood damage.

Southern Portion, Willits to Mile Post 63.4

In 1997, FRA, in partnership with the California Public Utilities Commission

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(CPUC), reviewed NWP's compliance with Federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting numerous inspections of the NWP in the previous years, FRA and CPUC inspectors identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC.

The review conducted by FRA and CPUC also revealed that the NWP was not performing required periodic tests of its locomotive air brake equipment, and that all of the railroad's locomotives exhibited defective conditions which posed a hazard to the personal safety of NWP personnel operating the equipment. FRA and the CPUC concluded that the NWP was in need of a system-wide program to train its employees to recognize safety violations and to perform necessary repairs promptly and correctly.

On June 11, 1997, representatives of FRA and the CPUC met with NWP's executive director, Dan Hauser, and its general manager, Jack Tramain, as well as two members of the railroad's Board of Directors. The group agreed to and signed a Safety Compliance Agreement under which the NWP would perform specified repairs and employee training by determined deadlines. However, one year after the agreement was executed, the NWP had performed only three of the 21 action items identified by the Compliance Agreement. On June 28, 1998, the Federal Railroad Administrator issued a Compliance Order based mostly upon the terms of the prior Agreement. In summary, the Compliance Order, which remains in effect, directs the NWP to:

1. Cease passenger operations between Willits and Schellville until the track is repaired to class 1 track standards;

2. Limit hauling of hazardous materials between Willits and Schellville to two cars per train, and prohibit hauling of any hazardous materials over trackage that is within 100 feet of a bridge or public road and which does not meet class 1 track standards;

3. Develop and furnish to FRA and the CPUC a track maintenance plan and program;

4. Establish a program of employee training on the Federal Track Standards;

5. Certify abilities of each individual conducting track inspections;

6. Establish a program of employee training regarding inspections of locomotive power and equipment;

7. Certify abilities of each individual conducting inspections of locomotive power and equipment;

8. Certify inspection reports of locomotive power and equipment inspections;

9. Certify that proper repairs have been made of all defects found as a result of locomotive power and equipment inspections;

10. Perform testing on passenger and freight cars relative to angle cock tests and repair tests.

FRA reviewed NWP's compliance with the Compliance Order in September and October, 1998, and found that the railroad is not following many of the Order's directives. Track inspections conducted by FRA and the CPUC discovered that the trackage within 100 feet of bridges and public road between Willits and mile post 63.4, over which hazardous material are hauled, does not meet class 1 track standards. The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track.

Recent Safety Surveys

In light of the NWP's failure to comply with the Compliance Order after several months, FRA and the CPUC surveyed operations on the southern portion of the railroad in September and October, 1998, to assess its overall safety. In October and November, 1998, FRA inspectors accompanied inspectors from the FEMA on surveys of track damage caused by past flooding on the northern portion. In both portions, the inspectors found numerous defects that pose an immediate hazard of death or injury to persons.

Grade Crossing Signals

FRA's regulations addressing grade crossing signal system safety, found at 49 CFR part 234, require railroads to repair, "without undue delay," any essential component of a grade crossing signal that fails to perform its intended function, and until the repair is made, the railroad is to provide alternative measures of safeguarding the crossing. *See* 49 CFR 234.207. These temporary measures, delineated in 49 CFR 234.105, provide for manual flagging by railroad personnel whenever a train must occupy a grade crossing where the signals are not properly functioning. Properly functioning grade crossing signals, and temporary flagging in the event of a signal failure, are absolutely essential to the safety of the grade crossing. Trains traveling through a grade crossing, even at very slow speeds, are not able to stop suddenly to avoid a car in the crossing. Therefore, motorists attempting to cross a grade crossing must be adequately warned about a train's approach so that a potentially deadly accident can be averted.

In recent inspections of grade crossings on the NWP and from information provided by the railroad itself, FRA and CPUC inspectors found that 32 of the railroad's 127 grade crossing signals are not operational. While the railroad has instructed train crews to stop and flag each crossing where the signal is out of service, FRA and CPUC inspectors found one instance when a train crew did not perform this safety duty. Furthermore, many of the grade crossing signals have been out of service for several months, in violation of the Federal regulations' requirement to repair the signals "without undue delay."

Many of the grade crossings where the signals are out of service are situated in towns along the NWP line. In Petaluma, one grade crossing serves 22,000 vehicles per day, while another serves 13,000 every day. The NWP operates four to six train movements through these crossings each day, Monday through Friday. At other crossings where the grade crossing signals are out of service, the daily vehicle count ranges from 200 to 6,000. Vehicles in these counts include trucks carrying hazardous materials, including flammable substances.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts. Tests required by FRA's grade crossing safety regulations are past due at all 127 grade crossings, including relay, insulation resistance, and warning tests. In addition, the NWP lacks sufficient parts and materials to adequately maintain the warning system. Numerous NWP circuit plans are out-dated, illegible, or simply non-existent. They need to be corrected,

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redrawn, and in some cases, redesigned, yet the railroad lacks procedures to correct or redraw circuit plans.

Track Safety

FRA's track safety regulations, found at 49 CFR part 213, prescribe minimum safety requirements for railroad track. There are six classes of track defining maximum speed and minimum maintenance requirements. By designating track as a certain class, a railroad commits to maintaining that track to the standards established by the track safety regulations for that class. Much of the NWP's trackage from Willits to Schellville is designated as class 2 track. However, the numerous track defects found by FRA and the CPUC, as well as the NWP's apparent lack of commitment to properly repair the track, indicate that much of the track does not meet even the standards for class 1, the lowest class of track.

FRA and the CPUC conducted track inspections on the southern portion of the NWP between September 28 and October 15, 1998. A total of six inspections covered the line from mile post 83.4 between Schellville and Napa Junction to Willits at mile post 139.3. Inspectors identified 298 defective conditions in 148 miles of track. The majority of the defects (254) were defective crosstie conditions, including defective joint ties and ties not effectively distributed to support 39 feet of track. In many places, the ties were broken, split, or impaired to the extent that they allowed the ballast to work through. They could not hold spikes and they were allowing the tie plates or the base of the rail to move laterally more than a half inch.

These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support, the track gage, the distance between the inside faces of the rail heads, may become too wide or too tight. Gage that is either wider or narrower than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping off the rails.

The FRA and CPUC track inspectors also found 12 areas where water carrying facilities associated with the track were inadequate to perform proper drainage. Two of these drainage facilities are associated with railroad bridges. At one location, a wooden box culvert has collapsed. Under the regulations (49 CFR § 213.33) each drainage facility associated with a track structure must be kept free of obstruction to accommodate expected water flow for the area it serves. If drainage surrounding the track is not adequate, the condition can lead to wash-outs which will disturb the lateral and vertical support of the rail causing wide or tight gage and possible derailments. Adequate drainage is especially important for the NWP during the winter months when rainfall typically is greater.

Finally, the track safety regulations require that vegetation immediately adjacent to the track bed must be controlled so that it does not pose a fire hazard, obstruct visibility of signs and signals, interfere with railroad employees' trackside duties, prevent proper functioning of signals, or prevent employees from inspecting moving equipment. See 49 CFR 213.37. FRA and CPUC inspectors report that in many areas along the NWP trackage they inspected, the vegetation obstructs any view of the track structure. Some vegetation creates a fire hazard to timber bridges, trestles, and wooden box culverts. Other vegetation obstructs the visibility of signs and signals along the right-of-way and at grade crossings. While vegetation naturally occurs and re-occurs along any railroad track, it cannot be allowed to flourish to the extent that it inhibits the safe operation of the railroad. Vegetation that has been allowed to grow to the point where signals cannot operate properly or cannot be seen, or where it prevents railroad personnel from inspecting the track, or where it becomes conducive to setting fire to bridges and other wooden track structures, poses an imminent threat to the safety to railroad employees and to the traveling public.

Between November 4 and November 13, 1998, FRA and FEMA inspectors surveyed 282 separate locations on the northern portion of the railroad that the NWP identified as storm damaged. The inspectors found numerous locations where proper drainage is not possible because the drainage facilities are plugged or in disrepair or because ditches are plugged, overgrown or inadequate. The area between Willits and Arcata is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate the flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install the culverts at the correct depth or angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is quickly crushed by the weight of work trains. It is not likely that the drainage facilities in place will be adequate to withstand the next rainy season this winter.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. The FRA and FEMA inspectors found numerous locations where the track surface, alignment, and crosslevel were unacceptable for class 1 track standards. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations, the vegetation poses a fire hazard to track carrying structures.

Finding and Order

The results of the surveys by FRA, CPUC, and FEMA inspectors of tracks and signals along the NWP line have led FRA to conclude that continued use of this rail line poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by the NWP to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the NWP to make the necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is ordered that the Northwestern Pacific Railroad shall discontinue, and shall not permit, the operation of trains over its trackage between mile post 295.5 near Arcata and mile post 83.4 between Schellville and Napa Junction while this Emergency Order remains in effect. This Emergency Order is not meant to prohibit the operation of work trains operated for the specific and sole purpose of effecting repairs on the railroad. Maximum speed of such train movements shall be 10 m p h.

Relief

The NWP may obtain full relief from this Emergency Order by performing the following requirements.

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. The standards and instructions should be submitted in writing to the Regional Administrator

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for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37.

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 5:01 p.m. [PST] on November 27, 1998, and apply to all operations of trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98-32349 Filed 12-8-98; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 148.6 near Willits, California to mile post 216.6 near Ft. Seward, California.

Background

FRA issued Emergency Order No. 14 on June 7, 1998, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

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EXHIBIT B

INITIAL STUDY
NORTH COAST RAILROAD AUTHORITY
RUSSIAN RIVER DIVISION
FREIGHT RAIL PROJECT

Prepared for:

Prepared by:

KLEINFELDER

5015 Shoreham Place
San Diego, California 92122
(858) 320-2000

July 2007

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ACRONYMS AND ABBREVIATIONS

BMPs	best management practices
BCDC	Bay Conservation and Development Commission
CD	Consent Decree
CE	Categorical Exemption
CEQA	California Environmental Quality Act
CPUC	California Public Utilities Commission
CWA	Clean Water Act
DFG	Department of Fish and Game
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
ERD	Eel River Division
FRA	Federal Railroad Administration
IS	Initial Study
LOMA	Locomotive Operations and Maintenance Area
NCRA	North Coast Railroad Authority
NCRWQCB	North Coast Regional Water Quality Control Board
NBI	North Bay, Inc.
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NWP	Northwestern Pacific Railroad
NWPRA	Northwestern Pacific Railroad Authority
OHP	Office of Historic Preservation
RRD	Russian River Division
RWQCB	Regional Water Quality Control Board
SLC	California State Lands Commission
SMART	Sonoma-Marin Area Rail Transit
SPCC	spill prevention, control, and countermeasures plan
SWPPP	Storm water pollution and prevention plan
UBC	Uniform Building Code
USACE	US Army Corps of Engineers
USFWS	US Fish and Wildlife Service
WMP	waste management plan

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1.0 INTRODUCTION AND OVERVIEW

This Initial Study has been prepared by Kleinfelder on behalf of the North Coast Railroad Authority (NCRA), pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15063 NCRA has proposed this project to resume freight rail service from Willits, Mendocino County to Lombard, Napa County. The following Initial Study has been prepared in order to address potential impacts associated with the proposed project, which includes operations and features supporting operations

The Initial Study contains the following: project description; the potential environmental impacts associated with the project; and mitigation measures to reduce impacts to less than significant levels. In summary, potential significant environmental impacts associated with the project have been identified, and therefore, an Environmental Impact Report (EIR) will be prepared under CEQA.

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. The rail corridor, commonly known as the Northwestern Pacific Railroad (NWP), generally parallels US 101 running north-south in Mendocino, Sonoma and Marin counties In Novato, Marin County, the rail corridor turns east and runs along California Highways 37 and 121 to Lombard, Napa County. Freight service will not extend south of the US 101 interchange with California Highway 37 Additionally, this project does not propose nor authorize freight service north of Willits.

Mendocino, Sonoma, Marin, and Napa counties are located on the west coast of California north of San Francisco In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include the Cities of Willits and Ukiah In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include the Cities of Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes the City of Novato. The Napa County portion of the project does not traverse any city boundaries and is completely in unincorporated County lands

This Initial Study was prepared in compliance with the CEQA of 1970 (as amended) and the CEQA Guidelines.

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2.0 PROJECT DESCRIPTION

The North Coast Railroad Authority (NCRA) is proposing to resume rail service over the Russian River Division (RRD) of the Northwestern Pacific Railroad (NWP) The NWP is an existing railroad that has provided rail service dating back to the early 1900's. The RRD of the NWP is approximately 142 miles long extending from Willits in Mendocino County, California to Lombard, Napa County, California This rail corridor runs parallel to U.S. Highway 101 corridor through Mendocino, Sonoma, and Marin counties to Novato, California. At Ignacio, south of Novato, the rail corridor runs east/west along CA Highways 37 and 121 near the north shore of San Pablo Bay, to Lombard, north of the City of American Canyon, where the NWP connects to the currently operating California Northern Railroad. .

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act, Government Code Sections 93000, *et seq.* The Act was intended to ensure continuation of railroad service in Northwestern California and envisioned a railroad playing a significant role in the transportation infrastructure serving a vital part of the State that suffers from restricted access and limited transport options. In 1992, the state purchased the Eel River Division (ERD) of the NWP In 1996, NCRA purchased the segment of the railroad line from Willits to Healdsburg, including a perpetual easement to operate rail freight service between Healdsburg and Lombard.

Currently, the NWP Line from Willits to Healdsburg is owned by NCRA, and from Healdsburg to Lombard is owned by the Sonoma-Marin Area Rail Transit (SMART) District NCRA has a perpetual freight service easement over SMART right-of-way, and SMART has a perpetual passenger service easement over the portion of the right-of-way owned by NCRA between Healdsburg and Cloverdale. SMART's enabling legislation (Assembly Bill (AB) 2224) provides that the District must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties." Coordination of SMART's passenger rail service and NCRA's freight service is governed by an existing Operating Agreement, which generally provides that freight service shall be subordinate to passenger rail service. Prior to the institution of commuter service a coordination agreement will be negotiated with SMART to address dispatching trains and related issues.

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2.1 PROJECT OBJECTIVE, PURPOSE AND NEED

This section summarizes the project objectives, purpose, and need; describes the history of development of the proposed project and existing characteristics of the project corridor; provides a description of the project's operational components; and establishes the basis for the environmental analysis.

NWP Co., NCRA's selected rail operator, proposes to resume the operations of freight service in the rail corridor from Willits to Lombard for transport of general freight to serve the communities in the rail corridor. In this rail corridor, NWP Co. could also transport solid waste to landfills beyond the four-county area, replacing the truck hauling currently used for this service. The project does not propose the transport of hazardous waste, dangerous, highly flammable or explosive material. This area has historically been serviced by the railroad and this project will reestablish reliable and cost effective service to the businesses and public utility entities within the service area, and resumes service to former customers whose businesses have been adversely impacted by the lack of service

The need for a renewed reliable freight service in Mendocino, Sonoma, Marin, and Napa Counties is apparent by the rapidly growing congestion and truck traffic along U.S. Highway 101 from Willits to Novato, and on CA Highway 37 that connects U S. Highway 101 in Novato to Interstate Highway 80 in Solano County. The capacity of the highway system to accommodate quick and cost-effective commercial truck traffic has not kept pace with the growth of travel demand in this area, and this trend is expected to continue in the future in spite of several major highway improvement projects that are currently in progress. Reestablishing the rail service will help reduce the truck traffic on the local highways and community roads

The need for a cost-efficient, alternative method of transportation to deliver commercial goods and freight in the area is supported by

- Capacity constraints on existing systems, particularly U.S. and CA Highways 101, 121, 37, and 12 that result in travel delays and congestion. The rail service would remove a portion of the current commercial truck traffic on the roadways thus reducing traffic congestion "Depending on the density of the commodity, one railcar may move the same weight or volume as four or five trucks." Freight-Rail

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Bottom Line Report, American Association of State Highway and Transportation Officials, January 2003, p. 26)

- Increasing unreliability and safety concerns of existing travel modes due to congestion, inclement weather, and accidents. A reduction in the number of commercial trucks on the local roadways will result in increased safety on the roads.
- The absence of four-lane highways and freeways connecting U S Highway 101 with Interstate Highway 80.
- By removing a portion of the current commercial (freight including solid waste) truck traffic on the roadways, rail service would decrease diesel emissions from trucks, resulting in a net improvement in air quality and reduction in greenhouse gas emissions. Movement of freight on rail is measurably more efficient. One ton of goods can be moved more than 400 miles with one gallon of fuel according to the Association of American Railroads' Railroad Facts, 2003 Edition.

The purpose of the proposed project is to provide efficient, reliable, and cost-effective rail service in Mendocino, Sonoma, Marin, and Napa counties. The following project objectives have been identified to achieve this goal:

- Provide an alternative transportation option to trucking for commercial freight across the four-County area.
- Provide an alternative transportation option to trucking for hauling solid waste across the four-county area.
- Provide an alternative cost-effective option to the disposal of solid waste in local landfills.
- Fulfill the State mandate to provide the continuation of railroad service to Northwestern California and help alleviate the growing concerns for efficient goods movement.

2.2 PROJECT LOCATION

The proposed project corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. Mendocino, Sonoma, Marin and Napa counties are located on the west coast of California north of

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San Francisco. In Mendocino County, the incorporated local jurisdictions in the proposed project corridor include Willits and Ukiah. In Sonoma County, the incorporated local jurisdictions in the proposed project corridor include Cloverdale, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati and Petaluma. In Marin County, the incorporated local jurisdiction in the project corridor includes Novato Freight rail service will not pass through any incorporated jurisdiction in Napa County.

A map of the proposed project corridor is shown in Figure 2-1.

2.3 OVERVIEW OF NWP HISTORY AND FACILITIES

2.3.1 History of the NWP Facilities (Russian River and Eel River Divisions)

The NWP was created in 1907 through the consolidation of six separate railroad companies held by the Santa Fe and Southern Pacific railroads.

Prior to 1907, rail service from Eureka to San Francisco was not possible because of the 106-mile gap within the Eel River canyon In January 1907, the Southern Pacific and the Santa Fe formed the jointly-owned NWP, and agreed to build the last segment of the line. The articles of incorporation stipulated that the two companies would take turns managing the line in alternate years. Eight years later, in October, 1914 the Eel River section was completed and the cities of Eureka and San Francisco celebrated the achievement with a gold spike ceremony at Cain Rock, four miles south of Alderpoint

In 1984, ownership of the NWP was split at Willits between two organizations. The Southern Pacific Railroad operated the RRD, while the ERD between Willits and Arcata was sold to the Eureka Southern Railroad. Between 1984 and 1996, the ERD of the NWP and the RRD of the NWP were operated separately as two distinct and economically independent rail lines serving their respective regions.

NCRA was formed in 1989 by the California Legislature under the North Coast Railroad Authority Act to ensure continuation of railroad service in Northwestern California. Although it was chartered by a state mandate, only the acquisition of the then ERD was funded by the State and no operating funding was provided at the time of acquisition

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In 1992, NCRA purchased the ERD. A separate transaction in 1996 added the portion of the RRD between Healdsburg (Sonoma County) and Willits to NCRA's holdings In 1993, NCRA; the Golden Gate Bridge, Highway, and Transportation District (Bridge District); and Marin County set up a joint-powers authority called the Northwestern Pacific Railroad Authority (NWPRA) This public-private partnership took over the ownership of rail facilities and tracks along the RRD between Healdsburg and Lombard (Napa County) where the railroad then connects to the national rail network through the California Northern Railroad.

Freight service and related maintenance of this portion of the NWP became the responsibility of NCRA under an agreement with NWPRA dated August 19, 1996. Until 1998, freight service operated twice daily along the NWP, carrying mainly natural resource products. Both the Russian River and Eel River Divisions became inoperable as a result of damage sustained during the winter storms of 1997-1998

Once NCRA completed essential disaster-related repairs to the RRD, commercial freight service resumed between Lombard and Penngrove, Sonoma County, in January 2001 However, service was temporarily discontinued in September 2001 because the operator lacked capital to continue operations. Subsequently, NCRA identified additional repairs, and maintenance and infrastructure improvements that would be necessary to restore facilities on the RRD. Meanwhile, the repair of the ERD continued to be delayed due to the lack of funding required for extensive repairs.

In 1997, the Sonoma County Transportation Authority and Marin Planning Agency conducted a study that recommended that a commission be formed to guide the design and implementation of passenger train service In 1998 the Counties of Sonoma and Marin formed the SMART Commission to carry out this direction On January 1, 2003 the Sonoma-Marin Area Rail District was created with the passage of California State Assembly Bill 2224. The district consolidated the existing SMART Commission, NWPRA, and the Golden Gate Bridge, Highway and Transportation District Authority and assets over the rail corridor into a single rail district. The ERD is not part of this rail district.

The NWP from Healdsburg to Lombard is owned by the SMART District. NCRA has a perpetual freight service easement over SMART right-of-way between Healdsburg and Lombard, and SMART has a perpetual passenger service easement over the portion of

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the right-of-way owned by NCRA between Healdsburg and Cloverdale. AB 2224 provides that SMART must work with NCRA and the FRA "to achieve safe, efficient, and compatible operations of both passenger rail and freight service along the rail line in Sonoma and Marin Counties."

2.3.2 Current Status and Operational Issues

The rail line is an operating railroad per the Surface Transportation Board (STB), and it will be operated by NWP Co However, rehabilitation of the line is required before trains may safely resume operations on the line. Rehabilitation activities are necessary to bring the rail line into conformance with FRA Class 2/3 standards, and to address safety issues identified in FRA Emergency Order No 21 The rehabilitation activities are being funded by the State and investments by the operator.

As NCRA's rail operator, NWP Co. will be required to be in compliance with a Consent Decree that was signed by the North Coast Regional Water Quality Control Board (NCRWQCB), Department of Toxic Substance Control (DTSC), and Department of Fish and Game (DFG) The Consent Decree, among other things, requires that NCRA prepare and implement plans to clean up existing waste (currently scattered rail ties), conduct all rail operations in accordance with State environmental laws, and to handle, manage, store, transport, and dispose of hazardous materials and waste in a manner that is protective of human health and the environment.

2.3.3 Existing Facilities of the Russian River Division

Description of the Rail Corridor Alignment

The NCRA rail corridor extends approximately 142 miles from Willits in Mendocino County, California southward to Lombard in Napa County. From Willits the line runs southward generally following Highway 101 through the towns of Redwood Valley, Calpella, Ukiah, Hopland, Cloverdale, Geyserville, Healdsburg, Windsor, Santa Rosa, Rohnert Park, Cotati, Petaluma, and Novato. South of Novato, at Highway 37, the line runs eastward near the shore of San Pablo Bay, over the Petaluma River, past Black Point, past the old station at Shellville, over the Napa River, and terminates in Lombard north of the city of American Canyon Freight service will not extend south of Highway 37 along the Highway 101 corridor. Additionally, this project does not propose nor authorize freight service north of Willits.

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Mainline Track, Sidings, & Spur Tracks

The RRD consists of one mainline track and sidings and the sidings are strategically placed along the mainline for train meets (train passing) and temporary storage. It is anticipated that these sidings will be used for the same purposes during the proposed operations.

Rail Yards, Stations and Maintenance Facilities

Along the rail line are a number of former railroad stations, a maintenance and switching yard at Willits, and a storage facility at Cloverdale.

Stations

The majority of the railroad stations are planned to be renovated by SMART, in the future, to be used in conjunction with their proposed passenger rail service. NWP Co does not plan to use any of these stations for operations.

Willits Yard

The former Willits Yard is located in the northern part of the town of Willits. For much of the railroad's history this site was the primary location for major repairs and maintenance of rail equipment, engines, and refueling operations. At one time, the Yard had several structures for administrative purposes, a rail depot, a roundhouse for engine repair, and two Bunker-C above ground storage tanks.

The RRD will not use the Willits Yard for major repairs or maintenance. The operator will contract with existing modern facilities outside the RRD right of way for major repair and maintenance. The Willits Yard will be used for train switching, storage, and for light repairs and light maintenance.

The Willits Yard was also a major switching station for the line The Yard includes several yard tracks, three of which are over a mile in length.

Cloverdale Depot and Maintenance Facility

Two modern facilities are present along the line east of downtown Cloverdale. The first is a modern passenger train depot that includes a small office. Just north of the depot is a modern maintenance building used primarily for equipment storage and minor repairs

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and servicing of NCRA maintenance-of-way equipment NWP Co plans to use this facility for similar purposes.

Grade Crossings, Tunnels and Bridges

There are 104 wood, asphalt, gravel, or concrete road crossings along the rail line between Willits and Lombard Several of these have been repaired or upgraded in recent years.

Signals and gates are present at major crossings and intersections, and these are currently being repaired or replaced to meet FRA and CPUC standards, and to be compatible with possible future upgrades by SMART Depending upon the volume of traffic and type of road, the crossings will have various warning devices Railroad locomotive horns will blow at crossings to be in compliance with FRA safety regulation requirements.

There are 121 bridges and 5 tunnels located between Willits and Lombard. Most of the bridges are small wood trestle structures that span drainage channels or creeks feeding the Russian River, Petaluma River, and San Pablo Bay. Several steel bridges are present as well the Russian River bridge at Healdsburg, the Haystack Landing bridge crossing the Petaluma River in Petaluma, the Black Point bridge crossing the Petaluma River near Black Point east of Novato, the Wingo Bridge crossing an inlet creek in the former town of Wingo, and the Brazos vertical lift bridge crossing the southern Napa River See Section 2.5 for details on proposed bridge rehabilitation.

2.4 PROPOSED OPERATIONS

2.4.1 Frequency and Size of Trains

The proposed project will include general railroad freight service (to and from customers along the line) and potential hauling of solid waste.

The start up phase of reestablishing freight service operation is anticipated to begin in April 2008 and will consist of three round trips per week (three north bound and three south bound). The number of cars per train is estimated to be fifteen cars

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As the freight service becomes established, it is anticipated that the economics of the region could support an increase in the number of trains to two round trips per day (two north bound and two south bound), six days a week The number of cars per train is estimated to be 25 cars for one round trip and 60 cars for the other round trip The 60-car train would go from Willits to Lombard The other trains would initiate with 10 cars in Willits and increase to up to 25 cars from Redwood Valley to Lombard.

Reestablishing freight service in the region may involve the addition of a train providing solid waste hauling services for the area. Although speculative at this point, the train could run from Santa Rosa to the Cal Northern connection at Lombard. The solid waste services could involve one round trip per day (one north bound and one south bound), six days a week. The number of cars per train is estimated to be 60 cars. The railroad operator could load and unload highway trailers that contain solid waste on railroad flat cars using sidings and ramps. Although this potential is speculative, the impacts are being analyzed at this time so that the possible impacts can be considered

The train size and volumes are based on an analysis by NWP Co., the operator of the rail line Figure 2-2 provides a diagram of the total train movements associated with both general freight traffic and potential solid waste hauling once rail service is recontinued Figure 2-2 shows the train movements that will be analyzed in the EIR.

2.4.2 Facilities

Use of Existing NCRA Facilities Located Adjacent to the Railroad

It is planned that NWP Co. will use some of the existing areas located within their potential rail customers' facilities for the parking of engines and rail cars, switching, and light running maintenance and fueling of diesel engines and support equipment. When necessary, the support equipment for the railroad will be upgraded or revitalized to assure reliability and compliance with current regulations.

When fueling along the line is necessary, it will be conducted by transferring fuel directly from a tanker truck to the railroad diesel locomotives. No above ground or underground storage tanks will be constructed. Tanker trucks will access the line along access roads that are present throughout the line. Fueling will be conducted in compliance with State

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and Federal laws, the Consent Decree, and in conformance with NCRA's Best Management Practices (BMPs)

Light running maintenance includes minor servicing activities such as brake repair, minor engine repair, oil changes, and other scheduled servicing tasks. Servicing activities will involve storage and handling of relatively small amounts of petroleum-based hazardous materials, particularly oil, waste oil, grease, and small amounts of diesel fuel. These materials will be stored, handled, and disposed of in accordance with Federal and State regulations, and an environmental Consent Decree (see Chapter 3.5-Hazardous Materials) Anticipated work plans include a waste management plan (WMP), storm water pollution and prevention plan (SWPPP), and a spill contingency plan.

Locomotives and other heavy equipment will be transported to offsite railroad maintenance facilities for routine and major scheduled and non-scheduled repairs and servicing

New Facilities

Major scheduled and non-scheduled repairs and servicing will be conducted off the project site in existing facilities; therefore, no additional maintenance yards or fueling stations will need to be constructed. Additional sidings are not necessary prior to the start-up of freight service except for the construction of a one mile siding between MP 1 and MP 2 to allow interchange with the Cal Northern line near Lombard. A new embankment will be constructed requiring up to 4 feet of material, a concrete box will be installed for drainage purposes, and rail and ties will be added. It is anticipated that the addition will require permits for the importation of clean fill material by rail, construction of the embankment and rail line, and placement of the drainage box. This document is written assuming that NCRA begins freight service before SMART begins passenger service If the SMART project is approved and funded, additional sidings to handle train meets would be necessary and are contemplated by SMART and its EIR

2.5 PROPOSED REHABILITATION ACTIVITES

NCRA is performing rehabilitation of its track, signals, embankments, and bridges in order to raise the line to the required safety standards. A Categorical Exemption under CEQA was approved to allow routine rehabilitation and repairs of the rail line within the

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rail right-of-way, including signal upgrades, bridge and culvert repair, new rails and roadbed improvements. One bridge which requires repair and two other repair sites where severe erosion within creeks have occurred may cause a significant impact and therefore will be analyzed in this EIR The three repair sites are summarized below.

2.5.1 Black Point Bridge

The Black Point Bridge is a steel through truss swing span bridge built in 1911 across the Petaluma River at Black Point, east of the city of Novato In its open position, the bridge is parallel to the River allowing ships and barges to navigate between pile-supported fenders on either side of the River. When a train needs to cross the River, the bridge rotates over the River and connects the rail line by a motor-driven center pivot.

Planned repairs to the bridge include splicing piles, repairing drifting piles, replacing bracing and caps, repairing concrete at the east landing pier, and replacing the mechanical and electrical systems of the swing span. The work will be conducted *in situ* using a barge that will be docked against the bridge.

2.5.2 Bakers Creek

At Bakers Creek, North of Redwood Valley, the line is built on an embankment fill about 50 feet high During a very intense rain storm in the winter of 2005-2006, the culverts under the fill became plugged or could not effectively pass the large quantity of runoff As a result, water dammed behind the embankment, causing the embankment to fail.

Engineered plans for repair of the embankment will not be finalized until consultation with the DFG, the NCRWQCB, and other agencies are completed. For the purpose of this EIR, it is assumed that the repair of the embankment will occur off-winter when Bakers Creek is dry. Clean imported fill material will be transported by rail, and a new embankment will be constructed in kind, including the installation of a new culvert Because failure of the embankment introduced silt into Bakers Creek, it is likely that some form of stream restoration permit or agreement will be required.

2.5.3 Foss Creek

Foss Creek is a small feeder creek that flows into the Russian River north of Healdsburg. At one location where it runs sub-parallel to the rail line, the creek abandoned its course for about 30 feet of its length, shifted about 10 feet to the east,

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and scoured the railroad embankment As in the case of Baker Creek, the final engineered plans for repair of the embankment will not be finalized until appropriate consultation with the regulatory agencies is completed. It is assumed that the repair will require permitted restoration of the creek to its original course and character, importation of clean fill material by rail, reconstruction of the embankment and rail line, and the placement of scour protection- likely rip rap- along the base of the embankment to prevent scour during high flows

2.6 CUMULATIVE BASELINE

CEQA requires that impacts of cumulative projects be considered in the EIR. The project may have environmental effects that are individually limited, but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects. The identification of probable future projects will be based on the standards of practicality and reasonableness. Probable future projects include unapproved projects that are undergoing environmental review at the time that the NOP is submitted

The EIR will identify cumulative projects, including probable future projects that are undergoing environmental review at the time that the NOP is filed for the NCRA RRD freight rail project and include an evaluation of the impacts of the identified cumulative projects.

2.7 INTENDED USE OF THE ENVIRONMENTAL IMPACT REPORT

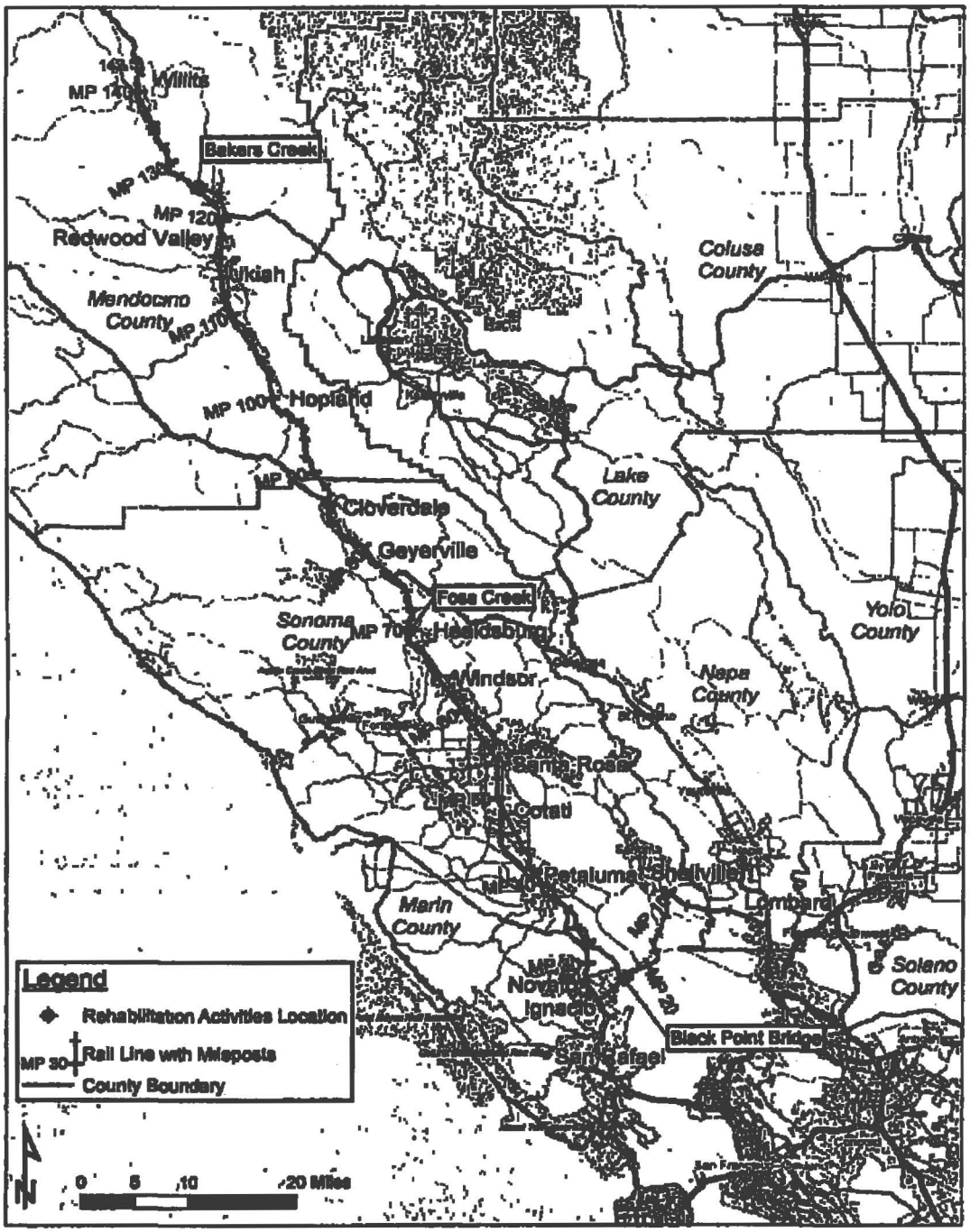
The NCRA, as lead agency, will prepare a draft Environmental Impact Report (DEIR) to provide the public, regulatory agencies and other interested parties an analysis of the potential environmental impacts of the operation of the RRD and certain identified rehabilitation activities The DEIR will be prepared in accordance with the California Environmental Quality Act (CEQA), the State Environmental Impact Report Guidelines and California Administrative Code, Title 14.

The rehabilitation activities that will be identified in the DEIR will require consultation with and potentially permits from some of the following regulatory agencies:

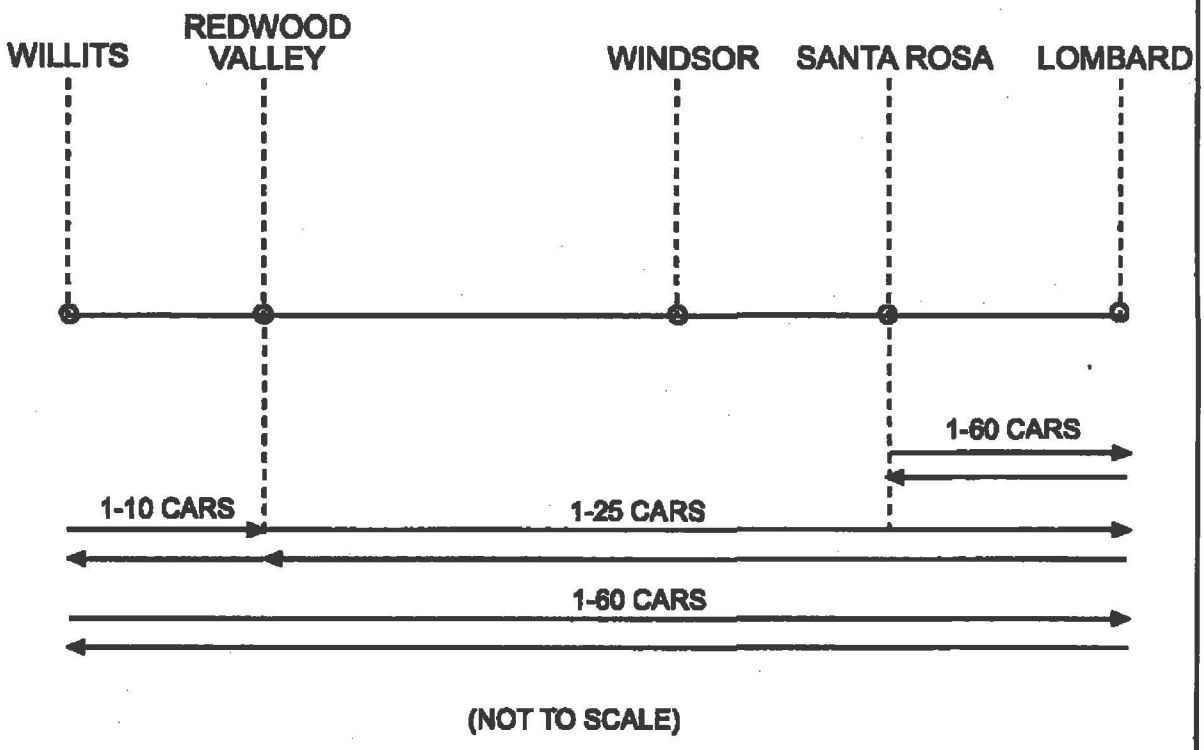
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- California Department of Fish and Game
- U S. Fish and Wildlife Services
- U.S. Army Corp of Engineers
- Air Quality Districts
- Regional Water Quality Control Board
- Bay Conservation and Development Commission
- National Marine Fisheries Service
- Office of Historic Preservation
- California State Lands Commission
- Local cities and counties

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KLEINFELDER 5015 SHOREHAM PLACE SAN DIEGO, CA 92122 PHONE: 858-320-2000 FAX: 858-320-2001 APPROVED BY Bradley Emkins	PROJECT LOCATION NORTH COAST RAILROAD AUTHORITY RUSSIAN RIVER DIVISION *FREIGHT RAIL PROJECT* PROJECT NO 76207 FILE NAME: RR_project_location_1.mxd	DRAWN 02/15/2007 REVISION C DRAFTED BY GTBT CHECKED BY BE PLATE Figure 2 - 1



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DRAFTED BY S CALLAHAN	FILE NO. Fig2_2 fh11
PROJECT NO: 78207	DATE: 07-10-07

NUMBER OF FREIGHT TRAINS AND THEIR CARS AT VARIOUS LOCATIONS ALONG THE RAIL CORRIDOR

FIGURE NO
2-2

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3.0 ENVIRONMENTAL CHECKLIST FORM

1. Project Title	North Coast Railroad Authority Russian River Division Freight Rail Project
2. Lead Agency Name and Address:	North Coast Railroad Authority
3 Contact Person and Phone Number:	North Coast Railroad Authority Attention: Mitch Stogner 419 Talmage Road, Suite M Ukiah, California, 95482 (707) 463-3280
4. Project Location:	Mendocino, Sonoma, Marin and Napa counties
5. Project Sponsor's Name and Address:	See No. 2, Lead Agency, above
6. General Plan Designation:	N/A
7. Zoning:	N/A
8 Description of Project	Resume freight rail service from Willits, Mendocino County to Lombard, Solano County.
9. Surrounding Land Uses and Setting:	Rural, agricultural, suburban
10. Other public agencies who may be involved in reviewing and approving aspects of the freight operations or who may require consultation and permits for rehabilitation at Bakers Creek, Foss Creek, and Black Point Bridge include:	• USACE • USFWS • Air Quality Districts • BCDC • NMFS • OHP • CSLC • DTSC • DFG • RWQCB • Mendocino, Sonoma, Marin, and Napa Counties • Cities of Ukiah, Willits, Cloverdale, Healdsburg, Windsor, Santa Rosa, Petaluma, and Novato

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3.1 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology / Soils
☒ Hazards & Hazardous Materials	☒ Hydrology / Water Quality	☒ Land Use / Planning
☐ Mineral Resources	☒ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☒ Transportation / Traffic
☐ Utilities / Service Systems	☒ Mandatory Findings of Significance	

DETERMINATION: (To be completed by Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared

☒ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

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3.2 POTENTIAL ENVIRONMENTAL IMPACTS

This section describes the environmental consequences, including direct, indirect, and cumulative impacts, of the Proposed Action, as well as recommended best management practices and/or mitigation measures

A direct environmental impact is one that is immediately caused by the project and that occurs at or near the time and place of the action. Indirect impacts are caused by the project but may occur some time later or at some distance. Indirect impacts may, for example, include induced changes in the pattern of land use or population density or growth rate and their related effects on natural systems or other social systems. They may also include secondary impacts associated with mitigation measures Cumulative impacts occur in combination with other actions or projects that are occurring or are projected to occur within the region of the Proposed Action.

To provide a clear classification of impacts, this Initial Study defines five types of impacts, including:

- **Significant Impact.** A significant impact includes effects that exceed established or defined thresholds. For example, noise levels that exceed local noise level standards would be considered a significant adverse impact.
- **Potentially Significant Impact.** A potentially significant impact includes effects that may be significant but there is insufficient information to verify the magnitude of the effect. For example, to determine vehicular noise impacts for a new development from a nearby roadway requires information on traffic volume, topography, building location and orientation, construction material, window types and treatment, and height and mass of any structure between the residents and the vehicles. Lack of information relating to these details precludes a definitive conclusion as to whether interior noise levels meet or exceed local or state noise standards.
- **Less Than Significant Impact.** A less than significant impact includes effects that are perceptible, but do not exceed established or defined thresholds. For example, alterations in the development intensity of a site would be noticeable but would not necessarily represent a significant change in land use compatibility, especially if the Proposed Action is consistent with local development standards.

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- **Less Than Significant Impact with Mitigation.** A less than significant impact with mitigation indicates that the effects of a significant or potentially significant impact have been reduced below established thresholds through the implementation of specific mitigation measures. For example, implementation of best management practices (BMPs) for stormwater runoff—including silt fences, infiltration galleries and vehicle maintenance—may reduce potential water quality impacts to less than significant.
- **No Impact.** A Proposed Action with no impact will have no perceptible effect on the resources in question.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.1 Aesthetics

Would the project:

a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

Discussion

a,b,c) Rail service previously operated on the existing rail line for more than 100 years and is a long established visual feature in the landscape. Therefore, resumption of freight rail operations would not induce additional visual disruptions to nearby receptors. No additional impact is anticipated and aesthetics will not be addressed in the EIR

d) The proposed project would not introduce any new sources of light and glare into the area. Maintenance and storage needs for the rail line would utilize existing facilities No expansion of these facilities is necessary to accommodate the freight service, therefore, no new lighting would be required for expansion or security purposes. No impact is anticipated and aesthetics will not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.2 Agriculture Resources

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒

Discussion

a,b,c) Agricultural activities occur within the vicinity of the project site. The proposed project site is entirely located within an existing railroad right-of-way except for some rehabilitation activities that may be required at Bakers Creek. No alterations or expansions of right-of-way boundaries will be required. Train operations and routine maintenance would not impact any agricultural resources in the vicinity. No conversions of farmland or conflicts with zoning or the Williamson Act would result from project implementation Herbicide spraying adjacent to agricultural areas will be conducted in conformance with BMP's outlined in the Herbicide Spraying Plan that was prepared per the requirements of the North Coast Regional Water Quality Control Board No impacts are anticipated and impacts to agriculture will not be addressed in the EIR

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.3 Air Quality

Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☒	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☒	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☒	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☒	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☒	☐	☐	☐

Discussion

a) The proposed project will generate emissions during operations. An air quality analysis will be conducted as a portion of the EIR that will determine whether the proposed project will conflict with any air quality management plans.

b) The air quality analysis for the proposed project will address the emissions associated with the proposed project and address any potential air quality violations.

c) The air quality analysis will analyze the cumulative air quality impacts of this project together with the cumulative baseline This baseline will include other rail proposals, other projects in the region and existing truck emissions.

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d,e) Use of diesel locomotives and other equipment may expose sensitive receptors to PM-10 and 2.5, as well as generate odors. This will be evaluated in the air quality analysis of the EIR

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3.2.4 Biological Resources

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS?	☒*	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFG or USFWS?	☒*	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but *not limited to, marsh, vernal pool, coastal, etc.)* through direct removal, filling, hydrological interruption, or other means?	☐	☒*	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☒*	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☒*	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan?	☒*	☐	☐	☐

**** Potentially significant impacts are restricted to rehabilitation activities at Black Point Bridge, Bakers Creek, and Foss Creek. Potential impacts associated with the operation of the railroad are considered less than significant with mitigation. See Discussion.***

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Discussion

a,d) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially result in a substantial adverse effect, directly or through habitat modifications, on species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS The project at these sites may also have potential to substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. These issues will be addressed in the EIR.

b, f) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could potentially have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations or by the CDFG or USFWS. Additionally, the project at these sites may also potentially conflict with local policies or ordinances protecting biological resources, or with the provisions of adopted Habitat Conservation or Natural Community Conservation Plans, as well as other approved local, regional, or state habitat conservation plans These issues will be addressed in the EIR.

c, e) During rehabilitation activities at Bakers Creek, Foss Creek, or the Black Point Bridge, the proposed project could have a substantial adverse effect on Federally protected wetlands as defined by Section 404 of the CWA, through direct removal, filling, hydrological interruption, or other means. Additionally, the project at these sites may also potentially conflict with local policies or ordinances protecting biological resources, or with the provisions of adopted Habitat Conservation or Natural Community Conservation Plans, as well as other approved local, regional, or state habitat conservation plans. Potential impacts associated with the operations of the railroad will be mitigated by implementing appropriate BMPs to a less than significant level. These issues will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.5 Cultural Resources				
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☒	☐	☐
b) Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?	☐	☒	☐	☐
c) Directly or indirectly destroy a unique paleonotological resource or site or unique geologic feature?	☐	☒	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☒	☐	☐

Discussion

a,b,c,d) Preliminary review of previous studies of the project corridor has identified that historic, archeological, and unique paleontological or geologic resources may be present along the rail corridor. It is not known if there are any cultural resources at the Bakers Creek and Foss Creek rehabilitation sites. It is therefore determined that a cultural resource records search be conducted for the entire right-of-way and off right-of-way use areas to determine what resources are historically significant. As such, potential impacts to Cultural Resources will be addressed in the EIR.

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3.2.6 Geology and Soils

	Potentially Significant Impact	*Less Than Significant With Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☒	☐	☐	☐
ii) Strong seismic ground shaking?	☒	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☒	☐	☐
iv) Landslides?	☐	☒	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☒	☐	☐
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☒	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (UBC) (1997), creating substantial risks to life or property?	☒	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒

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Discussion

a,b,c,d) The proposed project is located in an area that is seismically active and has experienced strong quake activity in the past. As such, geological and soil conditions will be addressed in the EIR.

e) No septic tanks or wastewater disposal systems are included with the proposed project design and therefore no impacts are anticipated and no further analysis is required

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3.2.7 Hazards and Hazardous Materials

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☒	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☒	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☒	☐

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☒	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☒	☐

Discussion

a,b,c) The operator does not intend to haul any hazardous waste, dangerous, highly flammable or explosive materials. Operations for the proposed project could potentially result in a potentially significant impact due to an upset or accidental release of diesel fuel in the case of a derailment. Therefore, these issues will be addressed in the EIR.

d) It is currently not known if the proposed project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. This issue will be addressed in the EIR

e,f) The operations of the railroad will not involve the management of significant quantities of hazardous materials and the potential impacts to airports is considered less than significant and no further analysis is required.

g) Except for rehabilitation activities at Bakers Creek, the proposed project would be limited to the existing NWP right-of-way and would not require the alteration of any public roadways. The proposed project would also be limited to the restoration of previously existing railroad facilities and would not impair the implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Potential impact is anticipated to be-less-than-significant and no further analysis is required. h)The proposed project is rehabilitation and operation of existing railroad facilities and would not introduce elements that would expose people or structures to significant risks involving wildland fires beyond previously existing conditions.

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Potential impact is anticipated to be less than significant and no further analysis is required.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.8 Hydrology and Water Quality				
Would the project				
a) Violate any water quality standards or waste discharge requirements?	☐	☒	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g , the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion of siltation on or off-site?	☐	☐	☒	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	☐	☐	☒	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
f) Otherwise substantially degrade water quality?	☐	☐	☒	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☒	☐	☐
j) Inundation of seiche, tsunami, or mudflow?	☐	☐	☐	☒

Discussion

a,c,d,e,f) Rehabilitation and maintenance operations could potentially result in significant impacts from erosion and siltation in waterways. Because the project is rehabilitation of an existing facility, improvements will not contribute runoff water that would exceed the capacity of existing or planned stormwater systems. Without mitigation, grading, excavation and rehabilitation activities could contribute to minimal soil erosion and a subsequent degradation in water quality. It is expected that implementation of standard erosion control techniques during project maintenance activities would reduce potential water quality impacts to less-than-significant levels These issues will be addressed in the EIR.

b) The proposed project would not utilize groundwater or interfere substantially with groundwater recharge. No impact on groundwater is anticipated and no further analysis is required.

g,h) The rail line is an existing site feature The proposed project would not place housing or structures that would impede or redirect flow within a 100-year flood hazard area. No impact is anticipated and no further analysis is required.

i) The proposed project does not include elements that would expose people or structures to significant risks involving flooding or dam failure. No impact is anticipated and no further analysis is required.

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j) The proposed project is the restoration of an existing railroad line that has been in existence for over 100 years. The proposed project would not place new development that would be subject to seiches, tsunamis, or mudflows. No impact is anticipated and no further analysis is required.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.9 Land Use and Planning				
Would the project.				
a) Physically divide an established community?	☐	☐	☒	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☒	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☒	☐	☐	☐

Discussion

a) The proposed freight rail service restoration project contains no new elements that would potentially divide an established community. Impact to established communities is anticipated to be less-than-significant and no further analysis is required. Potential traffic-related impacts at railroad crossings will be addressed in the Transportation/Traffic section of the EIR.

b,c) It is not presently known if the proposed project would conflict with any applicable land use plan, habitat conservation plan, natural community conservation plan, or regulation that was adopted for the purpose of avoiding or mitigating an environmental effect. These issues will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.10 Mineral Resources

Would the project

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Discussion

a,b) Project implementation would not result in the loss of availability of mineral resources of local or State importance No impacts are anticipated and impacts to mineral resources will not be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.11 Noise				
Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☒	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☒	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☒	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☒	☐	☐	☐

Discussion

a,b,c,d) It is currently not known if project-generated noise or vibration levels would exceed any established standards, expose persons to excessive temporary or permanent noise/vibration levels. These issues will be addressed in the EIR.

e,f) The proposed project is located within the vicinity of several local airports. Therefore, the issue will be addressed in the EIR.

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3.2.12 Population and Housing

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☒	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

Discussion

a,b,c) The proposed freight rail service would neither induce substantial population growth nor displace any housing units, and would not displace any people With the exception of the three rehabilitation projects at Bakers Creek, Foss Creek, and Black Point Bridge, the project is essentially the resumption of an existing railroad line and is not adding new infrastructure Therefore, it is not anticipated to stimulate population growth beyond what previous freight rail operations may already have incurred. No impacts on population or housing are anticipated as a result of the proposed project and this issue area will not be addressed in the EIR.

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3.2.13 Public Services

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☒	☐
Police protection?	☐	☐	☒	☐
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

Discussion

a) Implementation of the proposed freight rail service would not involve the alteration of government facilities, nor would it require new or additional public services. The proposed project would potentially increase demand for fire and police protection in the case of a derailment. However, the unlikelihood of a train derailment would not increase fire and police protection to a potentially significant level. In addition, the reduction in diesel trucks along US 101 would potentially create a net positive benefit for fire and police protection Freight rail safety will be addressed in the EIR. However, potentially adverse impacts associated with public services and governmental facilities are anticipated to be less than significant and public services will not be analyzed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

3.2.14 Recreation

Would the project

a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☐	☒

Discussion

a,b) The proposed project will not permanently encroach upon nor result in an increased use of existing neighborhood or regional parks, or other recreation facilities. The implementation of freight rail service does not include recreational facilities or contain elements that would require the expansion of recreational facilities. No impact is anticipated and recreation will not be analyzed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.15 Transportation / Traffic				
Would the project				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i e , result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☒	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☒	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☒	☐	☐
f) Result in inadequate parking capacity?	☐	☐	☐	☒
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☒	☐	☐

Discussion

a,b) Project construction and operation may result in an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system, and may result in exceeding a level-of-service standards. These issues will be addressed in the EIR.

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c) Project implementation will be limited to resuming freight rail operations and would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks No impact is anticipated and no further analysis is necessary.

d) The proposed project would repair the track to its previous safe condition at Bakers Creek and Foss Creek, would repair the bridge at Black Point, and resume operations of the existing line. These activities would not introduce new design features that could increase hazards Project designers will include measures that will correct potential hazards that may exist within the existing facility, which would result in safer conditions than currently present No impact is anticipated and no further analysis is required.

e) The proposed project could result in potentially inadequate emergency access due to traffic at rail crossings. These issues will be addressed in the EIR

g) The proposed project could potentially conflict with adopted policies, plans, or programs supporting alternative transportation and this issue will be addressed in the EIR.

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.16 Utilities and Service Systems				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable RWQCB?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☒	☐

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Discussion

a) The proposed project would not require wastewater treatment capabilities and therefore would not exceed the requirements of the RWQCB No impact is anticipated and this will not be addressed in the EIR

b,e) The proposed project would not require water supply or wastewater treatment capabilities and therefore would not result in the exceedence of system capacities or require the construction of new facilities. No impact is anticipated and this will not be addressed in the EIR

c) The proposed project would not require or result in the construction of new storm drainage facilities or require the expansion of existing facilities. No impact is anticipated and this will not be addressed in the EIR

d) The proposed project would not require a water supply and no new or expanded entitlements would be needed. No impact is anticipated and this will not be addressed in the EIR.

f,g) The proposed restoration of freight rail service would generate limited amounts of solid waste during construction and normal operations These materials, however, would not be of sufficient quantity to require a significant increase in need for landfill services, and would not exceed federal, State, and local statutes and regulations related to solid waste The hauling of solid waste will be in compliance with all federal, state and local regulations and these issues will be addressed in the transportation and hazards sections of the EIR

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
3.2.17 Mandatory Findings of Significance				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☒	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulative considerable? ("Cumulative considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☒	☐	☐
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☒	☐	☐	☐

Discussion

a,b,c) Aspects of the proposed project, whether they be associated with the operations of the railroad or the rehabilitation activities at Bakers Creek, Foss Creek and Black Point Bridge, would have potentially significant environmental impacts that MAY adversely affect plants, wildlife, and human beings. These potential impacts are identified in this Initial Study and are recommended for further analysis Potential impacts that have been determined to result in less than significant impact or no impact will not require further analysis. Human beings would primarily be affected by increased noise levels, air quality, traffic, and potential conflicts with local plans or policies. Plants and wildlife would be affected by certain rehabilitation activities and some aspects of railroad operations. To appropriately address

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these impacts, it is therefore recommended that an EIR be prepared for this project. This project may be cumulatively considerable including noise, traffic and air quality.

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4.0 REPORT PREPARATION

4.1 LEAD AGENCY

The North Coast Railroad Authority is the lead agency under CEQA for the preparation of the RRD Freight Rail Service Project.

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

Staff Contact: Dave Anderson
Phone (707) 463-3280

4.2 REPORT PREPARERS

4.2.1 CEQA Initial Study

Kleinfelder
5015 Shoreham Place
San Diego, California 92122

Project Staff: Maya Rohr (Project Manager)
Bradley Erskine
Robert Motschall
Sean Kinghorn
Jennifer Gomez
Richard Sykes
Kris Allen
Steven Siegel
Bill Mumbleau

4.2.2 Project engineering

Tim Cobb (Project Manager)
HNTB
1330 Broadway
Oakland, CA 94612

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5.0 REFERENCES

Federal Emergency Management Agency - U.S. Department of Homeland Security *Final Programmatic Environmental Assessment. South End Alternative.* North Coast Railroad Authority. FEMA-1203-DR-CA. March 2004.

Sonoma-Marin Area Rail Transit District; Parsons - Brinckerhoff - Quade & Douglas, Inc. *Sonoma-Marin Area Rail Transit Project Draft Environmental Impact Report.* SCH # 2002112033. November 2005

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($395,781.66) in the Unclaimed Property Fund in the account maintained in that fund for surplus from the estates of deceased persons, is hereby appropriated to the State School Fund to be expended for the purposes prescribed for expenditure of the State School Fund by the State Constitution and by state law.

CHAPTER 1109

An act to require the sale of certain lands now in the possession and control of the San Francisco Port Authority.

In effect September 18, 1959

[Approved by Governor June 19, 1959. Filed with Secretary of State June 19, 1959.]

The people of the State of California do enact as follows:

SECTION 1. The San Francisco Port Authority is authorized and directed to sell, on behalf of the State, to the Redevelopment Agency of the City and County of San Francisco all right, title, and interest of the State in the state lands described as follows:

(a) Beginning at the point of intersection of the southerly line of Broadway and the easterly line of Davis Street; running thence southerly along said line of Davis Street to the southerly line of Pacific Avenue; thence at a right angle easterly along said line of Pacific Avenue to the northeasterly line of Block "G" as said Block "G" is shown on map entitled "Monument Map of the Fifty Vara District of the City and County of San Francisco" filed in the office of the Recorder of the City and County of San Francisco, State of California, January 7, 1910, and recorded in Map Book "G" at page 151, said Block "G" being also known as Assessor's Block 170; thence northwesterly along the northeasterly line, extended northwesterly, of said Block "G," the northeasterly line, and its extension northwesterly, of Block "K" according to map hereinabove referred to, said Block "K" being also known as Assessor's Block 169, and the northeasterly line of Block "L" according to map hereinabove referred to, said Block "L" being also known as Assessor's Block 168, to the southerly line of Broadway; thence westerly along said line of Broadway to the point of commencement.

Being all of fractional blocks "K" and "L" as shown on map hereinabove referred to, also known as Assessor's Blocks 169 and 168, and portions of Pacific Avenue and Drumm Street.

(b) Pacific Avenue between the easterly line of Front Street and the westerly line of Davis Street, and that portion thereof lying east of the easterly line of Davis Street; Clark Street between the easterly line of Front Street and the westerly line of Davis Street, and that portion thereof lying east of the easterly line of Davis Street; that portion of Jackson Street lying east of the easterly line of Drumm Street, and a

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triangular parcel adjoining the same on the south lying between the southerly line of Jackson Street, the easterly line of 50 Vara Block "G" produced southerly, and the northeasterly line of 50 Vara Block "E"; those portions of Oregon Street lying between the easterly line of Battery Street and the westerly line of Drumm Street and east of the easterly line of Drumm Street; that portion of Merchant Street lying between the easterly line of Battery Street and the westerly line of Front Street; those portions of Commercial Street lying between the easterly line of Battery Street and the westerly line of Front Street, between the easterly line of Front Street and the westerly line of Davis Street, between the easterly line of Davis Street and the westerly line of Drumm Street, and that portion lying east of the easterly line of Drumm Street; that portion of Sacramento Street lying east of the easterly line of Drumm Street; that portion of Drumm Street lying north of the northerly line of Jackson Street; those portions of Front Street and Davis Street lying between the northerly line of Washington Street and the southerly line of Jackson Street; those portions of Front Street and Ceylon Street lying between the northerly line of Clay Street and the southerly line of Washington Street; that portion of Market Street lying northeast of the northeasterly line of Steuart Street, extended northwesterly.

SEC. 2. The Legislature hereby finds and declares that the lands described in Section 1 have ceased to be tide and submerged lands and are therefore free of the public trust for navigation, commerce, and fisheries.

SEC. 3. The lands described in Section 1 shall be conveyed to the Redevelopment Agency of the City and County of San Francisco free of any previously existing public trust for navigation, commerce, and fisheries or any other use, trust, condition or restriction which may have been imposed upon the lands.

SEC. 4. The lands described in Section 1 shall be sold at a price established by agreement after independent appraisals between the San Francisco Port Authority and the Redevelopment Agency of the City and County of San Francisco, with the approval of the State Director of Finance. The Port Authority may require as additional consideration that the City and County of San Francisco shall agree to provide such access streets to the waterfront as may be necessary. A deed or quitclaim deed executed by the San Francisco Port Authority shall be sufficient to convey title of said lands to the Redevelopment Agency of the City and County of San Francisco. The deed or quitclaim deed shall reserve to the State of California all oil, gas, oil shale, coal, phosphate, sodium, gold, silver, and all other mineral deposits contained in the land conveyed, and further reserve to the State of California and persons authorized by the State, the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine, and remove such deposits of other minerals from the land conveyed,

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subject to the provision that the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine, and remove such deposits of other minerals, shall be with the consent of the grantee and shall not disturb the surface, or the ground within 100 feet of the surface of the real property conveyed.

SEC. 5. The Redevelopment Agency of the City and County of San Francisco is authorized to bring or defend any action to establish its title to the lands described in Section 1. Any suit against the State, or against any agency of the State, to establish title in the Redevelopment Agency of the City and County of San Francisco is authorized, and consent to any such suit is given.

SEC. 6. Service of summons in any actions or suits pursuant to Section 4 or 5 shall be made upon the President of the San Francisco Port Authority and upon the Attorney General, and the Attorney General shall represent the State in any such actions or suits.

SEC. 7. Any money received from the sale of the lands described in Section 1 shall be paid into the State Treasury to the credit of the San Francisco Harbor Improvement Fund. Said money shall be used by the San Francisco Port Authority for the purpose of acquiring land of at least equal value which shall be subject to the public trust for navigation, commerce, and fisheries.

SEC. 8. No statute requiring a conditional transfer of state land, or a transfer subject to reversion upon breach of condition, shall apply to the transfer provided for by this act.

CHAPTER 1110

An act to amend Section 28158 of the Government Code, relating to compensation for public services in counties of the fifty-eighth class.

In effect September 18, 1959

[Approved by Governor June 23, 1959. Filed with Secretary of State June 23, 1959.]

The people of the State of California do enact as follows:

SECTION 1. Section 28158 of the Government Code is amended to read:

28158 In a county of the fifty-eighth class the following shall receive as compensation for the services required of them by law or by virtue of their offices the following sums:

(a) The auditor, two thousand dollars ($2,000) a year.

(b) The district attorney, three thousand nine hundred dollars ($3,900) a year.

(c) Each supervisor, one thousand two hundred dollars ($1,200) a year, and twenty cents ($0.20) a mile for traveling from his residence to the county seat, going only. Only one mileage shall be allowed for any regular session of the board.

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SERVICE DATE – FEBRUARY 1, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY—CHANGE IN OPERATORS EXEMPTION—NORTH COAST RAILROAD AUTHORITY, SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND NORTHWESTERN PACIFIC RAILWAY CO., LLC

Decided: January 31, 2008

In a petition filed on October 1, 2007, Friends of Eel River (FOER) seeks revocation of the notice of exemption served and published on August 24, 2007 (72 FR 48729), as corrected in a notice served and published on August 30, 2007 (72 FR 50161) (Notice), which authorized a change of operators from Northwestern Pacific Railway Co., LLC (NWPY), to Northwestern Pacific Railroad Company (NWPCO), on a line of railroad owned by North Coast Railroad Authority and Sonoma-Marin Area Rail Transit District. NWPCO filed a reply on October 19, 2007. The line, consisting of four distinct segments entirely within California, extends from NWP milepost 142.5 near Outlet Station to SP milepost 63.4 at Lombard Station, Napa County, a total distance of approximately 142.2 miles.[1] The petition for revocation will be denied.

BACKGROUND

In 1998, the Federal Railroad Administration (FRA) ordered the shut down of operations on the line because of its unsafe condition.[2] That order was in effect when NWPY acquired the common carrier obligation to transport freight on the line[3] and continues in effect. Consequently, NWPY did not conduct any operations on the line.

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[1] See Northwestern Pacific Railway Company—Change in Operators Exemption—North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC, STB Finance Docket No. 35703, slip op. at 1 (STB served Aug. 24, 2007), for a full description of these segments, including milepost designations.

[2] See FRA Emergency Order No. 21, Notice No. 1, published at 63 FR 67976 (Dec. 9, 1998). At the time, Northwestern Pacific Railroad owned the line. In 1999, FRA modified the emergency order to permit the trains of California Western Railroad, Inc. (CWR) to operate over a 1.5-mile segment of the line and in a rail yard at Willits, CA, to give CWR access to the national rail system. Id., Notice No. 2, published at 64 FR 30557-58 (June 8, 1999).

[3] See Northwestern Pacific Railway Co., LLC—Lease and Operation Exemption—North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge,

(continued . . .)

In the Notice, NWPCO invoked the Board's authority to acquire the common carrier obligation and, after repairs, to conduct rail operations on the line. NWPCO stated that its anticipated operations would be below the threshold requiring the Board's environmental review. See 49 CFR 1105.6(c)(2)(i); 1105.7(e)(5).

Mendocino Railway (Mendocino), a successor to CWR, sought a stay of the exemption, arguing that NWPCO made two misstatements that render the Notice void ab initio, and that environmental review was required prior to reinstituting rail service on the line. In a decision served on September 7, 2007 (Stay Decision), no material misstatements were found in the Notice and Mendocino's petition for stay was denied. Consequently, the exemption took effect on September 8, 2007.

FOER states that it is an organization dedicated to the protection of the Eel River in California and is concerned about environmental impacts associated with NWPCO's restart of operations on the line.

DISCUSSION AND CONCLUSIONS

A provision of the Interstate Commerce Act, as amended, at 49 U.S.C. 10502(a), favors exemptions from regulation whenever appropriate, and directs us to grant exemptions to the maximum extent consistent with that Act. Once an exemption has been granted, we may revoke it when we find that regulation is necessary to carry out the rail transportation policy (RTP). 49 U.S.C. 10502(d). Reconciling the RTP with the statutory admonition to be liberal in granting exemptions when regulation is not necessary to protect against abuse of market power, we have held that the extent of railroad market power is an essential issue in exemption-revocation proceedings. Rail Exemption Misc. Agricultural Commodities, 8 I.C.C.2d 674, 682 (1992).

Here, FOER does not allege or demonstrate that revocation of the exemption would carry out the RTP or that NWPCO has market power. Instead, FOER alleges harm and seeks revocation of the exemption because the Board did not conduct a review of the environmental effects of the resumption of train operations on the line. FOER argues that, because the line had no traffic in recent years, NWPCO's plans to reopen the line necessarily will result in an increase in train traffic in excess of the limits set in 49 CFR 1105.7(e)(5) (a claimed 100 percent increase because no traffic currently moves over the line)[4] and requires the Board to perform an

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(. . . continued)
Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001).

[4] FOER's reference to 49 CFR 1105.7(c)(5) apparently is a typographical error; the relevant threshold for environmental review is at 49 CFR 1105.7(e)(5).

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environmental assessment. FOER cites a public document indicating that NWPCO intends to operate three round-trip trains per week.[5]

However, as explained in Stay Decision, the 100 percent threshold does not apply where there recently have been no operations over a rail line. See Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33508, et al., slip op. at 7 (STB served Apr. 30, 1998), aff'd sub nom. Lee's Summit, Mo. v. STB, 231 F.3d 39 (D.C. Cir. 2000). Thus, the 100 percent threshold does not apply in this case, in which there have been no operations over the line in recent years (except for a 1.5-mile segment over which Mendocino has authority to operate). And, because only three round-trip trains will be operated per week, NWPCO's operations will not exceed the eight trains per day threshold for environmental review, which is the applicable threshold when there have been no operations over a rail line. 49 CFR 1105.7(e)(5)(i)(C).

FOER seeks revocation of the exemption on the additional ground that it contains an inaccurate statement: that NWPY "has been operating over [the line] . . . ." [6] As explained in Stay Decision, slip op. at 2, NWPCO concedes that it would have been more accurate to state in the Notice that NWPY "has the authority to operate over the line." We agree with the judgment in Stay Decision that, even if the original wording could be considered a misstatement, it was not material to the authorization sought by NWPCO to replace NWPY as the entity authorized to provide service over the line and therefore does not constitute false or misleading information within the meaning of 49 CFR 1150.34. Id.

Accordingly, for these reasons, the request to revoke the exemption will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition to revoke the exemption is denied.

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[5] See Petition at 3 and attached Exhibit B, "Initial Study North Coast Railroad Authority Russian River Division Freight Rail Project" at 2-9 – 2-10. The study indicates that, at some unspecified future time, the region's economy could possibly support two trains per day, 6 days a week.

[6] Notice of Exemption, Exhibit 4 at 1.

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2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

AR 08542

32.9 Feb 08

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

PROGRAM SUPPLEMENT/AMENDMENT
STATE FUNDED TRANSIT PROJECTS

PROGRAM SUPPLEMENT NO.:	01A0045-18	CTC PROJECT APPROVAL RESOLUTION NO.:	STIP	TCR TAA-07-47	Other
MASTER AGREEMENT NO.:	64A0045	ALLOCATION RESOLUTION NO.:		TFP-07-11	

PROVISION SECTION

This PROGRAM SUPPLEMENT hereby incorporates all of the provisions contained in MASTER AGREEMENT No. 64A0045, entered into between **STATE of California** and **NORTHCOAST RAILROAD AUTHORITY (RECIPIENT)** on February 21, 2001 and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is adopted in accordance with ARTICLE I of the aforementioned MASTER AGREEMENT under authority of Resolution 2001-02, approved by the **RECIPIENT** on April 18, 2001. The **RECIPIENT** further stipulates that, as a condition to the reimbursement of State funds obligated to this PROJECT, it accepts and will comply with the covenants, obligations, terms and conditions set forth in said MASTER AGREEMENT and on the following page(s) of this PROGRAM SUPPLEMENT.

FUND SOURCE	EFFECTIVE DATE	TERMINATION DATE	ALLOCATION AMOUNT	PROJECT PHASE
TCR	2/13/08	2/21/2010	$1,561,000	CON

PROJECT TITLE: **#32.9 – NCRA; Upgrade to FRA Class 2 and 3 and Long-term Stabilization**

PROJECT SUMMARY: **Upgrade the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. This is the final phase of the project to be completed and will result in an operable phase of the Russian River Division extending north from Lombard to Windsor.**

REQUIRED SIGNATURES

Recipient: North Coast Railroad Authority
By: Mitch Stogner
Title: MITCH STOGNER, Executive Director
Date: 3-12-08

State Dept.: STATE OF CALIFORNIA Department of Transportation
By: Cheryl Willis
CHERYL WILLIS
Title: Deputy District Director, Planning D1
Date: 4/1/08

DISTRIBUTION LIST

Caltrans Headquarters Accounting (2)
Caltrans District 1 (1)
Recipient (1)
Caltrans Mass Transportation (1)
Caltrans Headquarters Audits (1)

LIST OF ATTACHMENTS INCLUDED

- [X] Scope of Work/Project Application
- [X] CTC/TCRP Resolution
- [X] Certification of Funds
- [ ] 3rd Party Agreements
- [X] Special Conditions

ATTACHMENT I

Scope of Work

(*Scope of Work* includes the CTC-approved Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan for the total project.)

Ia. Project Description

This construction phase allocation is to be used for contracts to repair timber bridge structures (replacement in kind), rehabilitate movable bridges, and restore the NWP roadbed to permit operation of FRA Class 2 and 3 service from Lombard to Windsor. All of the proposed work can be characterized as repair or replacement. Several of the bridges in their present condition restrict the use of work trains, and will be rehabilitated to allow for the use of track equipment.

Structures

- The repair of 32 timber bridges. All these repairs consist of replacement of in-kind members like the replacement of cap beams, pile slicing, cross bracing, stringers, and walkway and railing planks. Nine of the timber bridges have been identified as requiring extensive structural work to allow for work trains.
- The rehabilitation of three movable bridges including structural, mechanical, and electrical repairs. Haystack Landing Bridge, Black Point Bridge, and Brazos Bridge are movable bridges on the Russian River Division owned by SMART. Black Point and Brazos will require electrical and mechanical maintenance and Haystack Landing will need structural repairs and mechanical and electrical systems rehabilitation and approach signals. Rail traffic can be resumed on these bridges under restrictive speed after the proposed repairs and maintenance are performed. Because these bridges are owned by SMART, their future replacement would be programmed in concert with their needs.

Roadbed Improvement

- General restoration of roadbed undermined by erosion.
- Surface drainage improvements.
- Replacement/repair of culverts and installation of culvert extensions along with placement of headwalls and debris racks and rock at the outlets for energy dissipation.
- Replacement of defective cross ties to achieve FRA Class 3 standards, and disposal of replaced ties.
- Surfacing of track along the entire 62 miles as required to achieve FRA Class 3 standards.
- Re-establishment of rail anchor pattern, joint bars, bolts, and other track repair items.
- Total reconstruction of track in areas of roadbed restoration as the result of washouts using existing rail with solid used or new ties and new ballast.
- Cleaning of flangeways and repair to grade crossing roadway surfaces.
- Repair or replacement of switches.
- Clearing of heavy, overgrown vegetation along the tracks, and disposal of vegetation from clearing operations.
- Replacement and repair of milepost signs, whistle posts, gates, and miscellaneous items.

Ib. Project Cost and Schedule ($ X 1,000)

Phase	*Scope*	*Start*	*End*	*Cost*
1	• Russian River Div. Reopening Environmental/Permitting/Preliminary Engineering (allocation in Nov-2006)	Dec 2006	August 2008	$2936
	• Canyon Preliminary Engineering	Dec 2006	June 2008	$840
	SUB-TOTAL PHASE I			**$3776**
2	• Russian River Division Ph.1 PS&E (allocation Nov-2006)	Dec 2006	Sep 2008	$1,437
	SUB-TOTAL PHASE II			**$1437**
3	Not Applicable			
4	• Russian River Division Reopening Ph.1 (multiple contracts: signals, early bridge work/ roadway/ structures) (allocation in Mar-2007, Apr-2007, Jul-2007, Feb-2007)	July 2007	Oct 2008	$30,632
	SUB-TOTAL PHASE IV			**$30,632**
			Total:	**$35,845**

Ic. Funding Plan for Total Project

For the Total Project ($ X 1,000)

Source	*Type*		*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*	*Total*
TCRP 32.9	State	Committed	$3,176	$1,437		$26,387	$31,000
TCRP 32.3	State	Committed	$600				$600
NCRA	Agency	Committed				$695	$695
Cities & Measure M	Local	Committed				$3,330	$3,330
Insurance Proceeds/ Private Crossings	Private Funds	Committed					
		Proposed				$220	$220
		Project Totals:	**$3,776**	**$1,437**		**$30,632**	**$35,845**

ATTACHMENT II

CTC Resolution

State of California
DEPARTMENT OF TRANSPORTATION
Memorandum

Business, Transportation and Housing Agency

To: CHAIR AND COMMISSIONERS

CTC Meeting: February 13-14, 2008

Reference No.: 2.6e.(2)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **FINANCIAL ALLOCATION FOR TCRP PROJECTS**
RESOLUTION TFP-07-

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve an allocation of $750,000 for Project #1 (TCRP #87.2), for a right of way hardship acquisition for a project currently under construction. Consideration of further allocations should be made in the context of overall TCRP funding strategies. Of the two Department projects, Project #2 (TCRP #92) would be the higher priority from the Department's perspective and would result in actual construction being underway by early Spring 2008, with intercity passengers receiving the benefit of the completed project by Spring 2009.

ISSUE:

The attached vote list describes four TCRP projects totaling $22,568,000. The Department and the North Coast Railroad Authority (NCRA) are requesting allocations at this time. The remaining TCRP allocation capacity for FY 2007-08 is currently only $13,000,000. If the Commission approves reimbursement of the Letter of No Prejudice, which is a prior commitment to the Alameda County Congestion Management Agency, under item 2.6e.(1), the available capacity would be $6,650,000. The Department is ready to proceed, as indicated in the recommendation above. NCRA has requested a nine-month contract award extension (under item 2.8b.(3)) for a related allocation of $7,399,000 approved by the Commission in July 2007.

FINANCIAL RESOLUTION:

Resolved That:
The project(s), as component phases or in their entirety, appear under Government Code Section 14556.40(a) and are entitled to participate in this allocation.

Reimbursement of eligible costs is subject to the policies, restrictions and assurances as set forth in the Commission's policy for allocating, monitoring, and auditing TCRP projects, and is governed by the terms and conditions of the Fund Transfer Agreement, Program Supplement or Cooperative Agreement, and subsequent amendments to the same if required, as executed between the Implementing Agency and the Department.

Attachment

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
2.6a.(2): Traffic Congestion Relief Program Allocation Amount(s)			Resolution TFP-07-11
1 $750,000 California Department of Transportation 11 – San Diego	Project #87.2 – Routes 94/125; build two new freeway connector ramps at Route 94/125 in Lemon Grove in San Diego County. This allocation provides $750,000 in new TCRP funding for Right of Way. Output/Outcome: Right of way acquisition of parcel for project construction. (Related item under 2.1a.(3).)	Chapter 91 of the Statutes of 2000 889-3007 20.10.710.870	$750,000
2 $10,000,000 California Department of Transportation 75 – Kings	Project #32 – San Joaquin Corridor; improve track and signals along San Joaquin intercity rail line near Hanford in Kings County. This allocation provides $10,000,000 in new TCRP funding for Construction. Output/Outcome: Improved on-time performance and enhanced ride quality. (Related item under 2.1a.(4).) DEFERRED UNTIL FUNDING BECOMES AVAILABLE.	Chapter 91 of the Statutes of 2000 889-3007 30.20.710.010	$10,000,000
3 ~~$10,257,000~~ California Department of Transportation 10 – VAR	Project #39.2 – San Joaquin Corridor; improve track and signals along San Joaquin intercity rail line in seven counties. This allocation provides $10,257,000 in new TCRP funding for Construction. Output/Outcome: Improved on-time performance and enhanced ride quality. (Related item under 2.1a.(4).) DEFERRED UNTIL FUNDING BECOMES AVAILABLE.	Chapter 91 of the Statutes of 2000 889-3007 30.20.710.010	$10,257,000
4 $1,561,000 North Coast Railroad Authority 01 – Various	Project #32.9 – North Coast Railroad; long term stabilization. This allocation provides $1,561,000 in new TCRP funding for Plans, Specification and Estimates ($40,000) and Construction ($1,521,000). Output/Outcome: Operable segment within the Russian River Division. (Related item under 2.1a.(5), 2.6e.(3), and 2.6b.(3).	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.050	$1,561,000

Project # Allocation Amount Implementing Agency District-County	BREF # and Project Description Description of Allocation	Item # Program Code	Total Allocation Amount
2.6a.(2): Traffic Congestion Relief Program Allocation Amount(s)			Resolution TFP-07-12
1 $0 North Coast Railroad Authority 01 – Regional Resolution TFP-07-12, Amending Resolution TFP-06-25	Project #32.9 – North Coast Railroad; long term stabilization. This allocation amendment is to redistribute $2,253,000 in previously allocated TCRP funds from Environmental (PA&ED) to Construction. Output/Outcome: Operable segment within the Russian River Division. (Related item under 2.1a.(5), 2.6e.(2), and 2.6b.(3).	Chapter 91 of the Statutes of 2000 889-3007 30.10.710.050	$0

Note: This document was prepared following the California Transportation Commission (CTC) meeting and is a reflection of the Department's interpretation of changes made to the Agenda Vote List.

MEETING SUMMARY/ACTION TAKEN REPORT
FEBRUARY 13-14, 2008 - Burlingame, California

Tab #	Ref. #	Item Description	STATUS	CT Follow-up Required
43	2.6e.(2)	Financial Allocation *(2.6e.(2))*: ~~Four~~ Two TCRP Projects for ~~$22,588,000~~ $2,311,000. *(Related items under 38, 39, 41, and 42)* Resolution TFP-07-11	Projects #1 & #4 approved. Project #2 (TCRP #92, $10,000,000, San Joaquin Corridor) and Project #3 (TCRP #99.2, $10,257,000, San Joaquin Corridor) deferred until funding becomes available.	
44	2.8b.(3)	Request to Extend the Period of Contract Award for TCRP Project #32.9 – North Coast Railroad; long-term stabilization, per Resolution G-06-08. *(Related items under 41, 42 and 43)* Waiver-08-06	Approved.	
45	4.8	Approval of Amendment to 2008 Aeronautics Program Resolution G-08-03, Amending Resolution G-06-05	Approved.	

Thursday, February 14, 2008

Tab #	Ref. #	Item Description	STATUS	CT Follow-up Required
46	1.13	Presentation on US 101 Prunedale	Information only.	
47	4.2	Adoption of Proposition 1B Highway-Railroad Crossing Safety Account Guidelines ~~Resolution-SS1B-G-0708-01~~	Deferred until March 2008 meeting.	
48	4.4	Adoption of Proposition 1B Traffic Light Synchronization Program Guidelines Resolution TLSP-G-0708-01	Approved.	
49	4.9	Approval of Proposition 1B Intercity Rail Project List Resolution ICR1B-P-0708-01	Approved.	✓
50	4.5	Adoption of Section 5310 Elderly and Disabled Transit Program Qualitative Scoring Criteria and Project Rating Form Resolution G-08-02	Approved.	
51	4.10	Advice and Consent on Transportation Development Act Regulations	Information only.	
52	2.5c.(5)	Financial Allocation Adjustment *(2.5c.(5))*: One STIP Sutter/Yuba 70 Corridor Project near Rio Oso, per AB 608. ~~Resolution FA-07-08, Amending Resolution FP-06-116~~	Deferred until March 2008 meeting.	
53	4.1	State and Federal Legislative Matters	Information only. Bills discussed included: AB 353 (Carter); AB 660 (Galgiani); AB 1675 (Nunez); ACA 10 (Feuer); AB 1845 (Duvall); and SB 1118 (Negrete-McCloud).	

Note: This document was prepared following the California Transportation Commission (CTC) meeting and is a reflection of the Department's interpretation of actions taken by the Commission.

ATTACHMENT III

Certification of Funds

TRAFFIC CONGESTION RELIEF PROGRAM

Name of Recipient:	North Coast Railroad Authority
Name of Project:	**#32.9 – Upgrade to FRA Class 2 and 3 and Long-term Stabilization**
CTC Resolution Number:	TFP-07-11
Date of Resolution:	February 13, 2008
Allocation Amount:	$1,561,000
Fund Source:	TCR
Date of Third Party Contract Award:	n/a
Period of Availability:	2/13/08 through 2/21/2010

SOURCE DIST-UNIT	CHARGE DIST-UNIT	EXP AUTH NO.	OBJECT	ALLOCATION AMOUNT	LED	FY	ENCUMBRANCE DOCUMENT NO.	PROJECT #
01-804	01-804	R9497E	7049	$1,561,000	2/21/10	01	TRR9497E	32.9

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure Stated above.

Signature of Accounting Officer: John A Kimmel

Date: 3/18/08

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2660-689-3007	91	2000	200/2001

ATTACHMENT IV

Special Conditions

RECIPIENT agrees to exercise best efforts toward meeting the one remaining condition (of five) imposed by the Department of Transportation (Caltrans) on RECIPIENT for the release of State or federal funds. The five conditions were identified in the July 17, 1998 letter from the Director of Caltrans to the Executive Director of the North Coast Railroad Authority. The remaining condition is to "resolve audit deficiencies".

RECIPIENT continues to be designated as a "high risk grantee" by Caltrans Audits and Investigations (Caltrans Audits) based on CFR 49, Part 18.12 and is subject to enhanced monitoring and compliance conditions set forth in this section. RECIPIENT shall be reimbursed solely for subcontracted third party costs until such time that RECIPIENT demonstrates to the satisfaction of Caltrans Audits that recipient has the ability to accumulate and segregate reasonable, allocable and allowable in-house costs (in-house direct costs or any indirect costs). If RECIPIENT intends to seek reimbursement for in-house direct and indirect costs, the RECIPIENT is to enter three complete months of such costs into their accounting system and then request Caltrans Audits to perform a follow-up audit to determine the adequacy of the recipient's accounting system and internal management controls. RECIPIENT also agrees to request verification and approval of indirect and fringe benefit rates by Audits before billing these costs to any project. If it is determined, after the above follow-up audit is performed, that the RECIPIENT has an adequate financial management system and an approved indirect cost allocation plan, a formal written amendment will be required prior to reimbursement of in-house direct and indirect costs.

Actual costs reimbursed shall not exceed the estimated line items set forth in the financial plan. The maximum amount payable under this program supplement shall not exceed $1,561,000.

For the purposes of Cash Flow, RECIPIENT shall submit Progress Payment Requests. The process and timeline are defined below:

- After RECIPIENT has paid the contractor, RECIPIENT may seek reimbursement by submitting an invoice and supporting documentation to District 1.
- District 1 must receive from RECIPIENT all cancelled checks for all expenses claimed concurrent with each invoice packet submitted for reimbursement.
- The District will have 15 calendar days from the date that said invoice is received to process the request, verify supporting documentation, and forward it to HQ Accounting.
- HQ Accounting will have 15 calendar days to process the invoice and forward it to the State Controller's Office (SCO).
- SCO will have 15 calendar days to process the invoice and issue payment to RECIPIENT.

In the event that RECIPIENT does not comply with the process as described above, this agreement becomes null and void and RECIPIENT will be required to submit cancelled checks concurrent with any future requests for reimbursement.

Approved as to form and procedure

BY: _____ 3/21/08
CALTRANS ATTORNEY *DATE*

32.9 7c608

Traffic Congestion Relief Program

Section I. Application Information

A. Specify the paragraph number, authorized dollar amount, and project description pursuant to Government Code section 14556.40 (a) (AB 2928, Chapter 91 of the Statues of 2000) authorizing this project:

Paragraph Number: 32.9 Amount: $ 31.0 million

Description: *North Coast Railroad: Sub-paragraph (i) to fund long-term stabilization.*

B. Applicant Agency: North Coast Railroad Authority
Address: 419 Talmage Road, Suite M
Ukiah, CA 95482

Contact Person: Mitch Stogner, Executive Director

Phone #: (707) 463-3280 FAX #: (707) 463-3282
Email: ncra.mstogner@sbcglobal.net

C. Implementing Agency: Same as above
Address: _____

Contact Person: _____

Phone #: _____ FAX #: _____
Email: _____

D. Caltrans District: 01, Eureka
Address: P.O. Box 3700
Eureka, CA 95502-3700

Project Manager/Coordinator: Cheryl Willis, Deputy Director – Planning

Phone #: (707) 445-6413 FAX #: (707) 441-5869
Email: cheryl_willis@dot.ca.gov

E. Application Type:

____Study Only *(Complete Sections II, IV, VI, & VIII)*

__x__Non-Capital Phase(s)
(Complete All Sections except VII. Detail for requested phase(s), estimate otherwise)
__x__ Studies, environmental review, and permits
__x__ Preparation of project plans and specifications

__x__Capital Phase(s) – **Must attach required environmental documents**
(Complete All Sections except VII. Detail for requested phase(s), estimate otherwise)
____ Right of Way Acquisition
__x__ Construction or Procurement

____Complete Project *(Complete All Sections except VII)*

____Alternative Project *(Complete All Sections)*

Section II. General Project Information

A. Project Name: ~~Upgrade~~ **Restore Russian River Division** to FRA Class 2 and 3; ~~and Stabilization~~ **Geotechnical Study and Mapping of Canyon Section**

B. Project Purpose: ~~Upgrade~~ **Restore** the NWP rail line to class 2 and 3 standards and stabilize landslides using various funding sources. The ~~first phase of the~~ project ~~to be completed~~ will result in an operable phase of the Russian River Division extending north from Lombard to Windsor and ~~an EIR/EIS in~~ **a geotechnical study with mapping of** the Canyon.

To **restore** ~~bring the entire~~ **the Russian River Division from Lombard to Windsor** track ~~up~~ to Class 2 and 3 standards will require **local funds,** ~~investment of Federal funds (\$8.6 million has been earmarked in ISTEA),~~ private funds, ~~bond funds,~~ and other TCRP funds.

C. Project Location *(attach a map if applicable)*: **Rehabilitation projects to the Northwestern Pacific Railroad extend from Lombard to Windsor, the Geotechnical Study and Mapping extend from Willits to South Fork.** ~~Exhibit A shows a map of the NWP line~~.

D. Project Description: Replace ties, repair roadbed, repair structures, **restore** ~~improve~~ drainage, and ~~improve~~ **restore** crossing protection to permit operation of FRA Class 2 and where possible Class 3 service and provide landslide stabilization where required. The funds available through TCRP Project 32.9 will primarily cover ~~the first phase of~~ reopening the Russian River Division from Lombard to Windsor and ~~an EIR/EIS~~ **Geotechnical Study and Mapping** in the Canyon. ~~The remaining 32.9 funds and funds from additional funding sources will be used to reopen the balance of the line.~~

The Russian River Division ~~Phase 1~~ Reopening project would allow NCRA's operator to serve those shippers as far north as Windsor that have expressed interest in using rail service including an economical out-haul rail alternative for Sonoma County solid waste. The items listed below summarize the major work elements required for the Russian River Division Phase I reopening. These items are further described in the 2005 Capital Assessment Report and the Russian River Rehabilitation Plans:

- The replacement or repair of ~~53~~ railroad grade crossing warning systems. This work is specifically required to address FRA's Emergency Order 21.
- The repair of ~~32 timber bridges, 4 steel bridges, and 2 concrete~~ bridges. All these repairs consist of replacement of in-kind members like the replacement of cap beams, stringers, and walkway and railing planks.
- The rehabilitation of three movable bridges including structural, mechanical, and electrical repairs.
- The replacement of ~~approximately 50,000~~ ties to ~~upgrade~~ **restore** the line to Class 3.
- The placement ~~of approximately 62,000 tons~~ of ballast.
- The repair and surfacing ~~of 62 miles~~ of track.

All of the proposed work **is** ~~can be characterized as~~ repair or replacement **work** and will be completed within the railroad's right-of-way. In the case of the signal work, part of the cost ~~associated with this upgrade~~ would be offset by using signal equipment that NCRA has purchased using FEMA Alternate Project funds, **insurance money received for signals damaged by auto accidents, funds from private crossing property owners, and funds resulting from Memorandums of Understanding with the City of Petaluma and the City of Santa Rosa**.

It is currently proposed that the Russian River Division ~~Phase 1~~ Reopening be completed through the letting of ~~three~~ **several** separate construction contracts. ~~The first would be to complete all a portion of the signal work from Lombard to Ignatio. The second would be to complete construction of critical structures. This would provide for the safe use of track equipment and possible work trains to complete all subsequent track and bridge repairs. Several of the bridges in their present condition would restrict the use of work trains and these would be repaired at the beginning of the second construction contract. This would allow for an efficient use of track equipment for the third contract which will include the remaining track work, signals and structures.~~

Appropriate CEQA documentation ~~will be~~ **has been** prepared, and ~~it is anticipated that~~ the following agencies ~~will be~~ **have been** contacted for permits:

- Bay Conservation and Development Commission (BCDC)
- US Army Corp of Engineers
- California Department of Fish and Game
- Regional Water Quality Control Board
- Local Cities and Counties

This work is consistent with NCRA's overall strategic plan to ~~upgrade~~ **determine whether it is feasible to eventually restore** the entire railroad to allow rail operation at FRA Class 2 and 3 standards.

E. Project Scope: In general, the project will require the following tasks: 1) project management activities, 2) preliminary **and final** engineering, 3) CEQA compliance ~~a variety of environmental studies, reviews, assessments and preparation of reports to support the CEQA/NEPA review process, 4) approval of various CEQA/NEPA documents,~~ ~~5~~**4**) securing of applicable permits from State and Federal resource agencies, and ~~6~~**5**) construction **and construction management**.

This application describes **the following projects:** ~~an overall reopening project, the *NWP Reopening*, and provides an in depth description of two near-term projects:~~

1. *Russian River Division Reopening* ~~Phase 1~~ *(Lombard to Windsor)*
2. *Canyon* ***Geotechnical Study and Mapping*** ~~*EIR/EIS*~~

NWP REOPENING

The feasibility of reopening the Canyon section is speculative at this time. NCRA has adopted a policy **of investigating the cost and engineering feasibility** of reopening the entire Northwestern Pacific Railroad Line from Lombard to Arcata/Samoa. Reopening the entire line is currently estimated to cost **well in excess of** $150.6 million. **These funds are not currently allocated, and their future availability is uncertain.**

~~The first phase of construction has been identified as~~ **At present, NCRA is going forward with its project to restore** the Russian River Division ~~Phase 1~~ from Lombard to Windsor**,** based on the market demand for rail service, the existing condition of the line, the ability to team with SMART, and the ability to work within ~~NCRA's~~ **railroad** right-of-way to restore a prior-existing service.

Whether future ~~construction phasing~~ **projects** will be **initiated will be** based on several factors**,** including market demand for rail, **project feasibility,** environmental clearance, and availability of funding. However, once the Russian River Division ~~Phase 1~~**, Lombard to Windsor** is completed, the current plan is to move forward ~~with the~~ **to complete construction within the** Russian River Division ~~Phase 2~~ **from Windsor to Willits**~~, then the Canyon, and finally the North End~~.

RUSSIAN RIVER DIVISION ~~PHASE 1~~ (LOMBARD TO WINDSOR) REOPENING

Specific tasks for the Russian River Division ~~Phase 1~~ **Lombard to Windsor** Reopening are ~~outlined in NCRA's 2002 Capital Assessment Report, and the subsequent 2005 Updated Capital Assessment~~ **contained in the environmental documents and PS&E prepared in this last year** and ~~will~~ include:

ENVIRONMENTAL:

- ~~Finalize the project description and timing of activities to be undertaken. It is expected that the project description for environmental purposes will include the entire Russian River Division from Lombard to Willits (both Phase 1 – Lombard to Windsor and Phase 2 – Windsor to Willits).~~
- ~~Perform the additional field surveys and related research for use in the preparation of an environmental document under CEQA to address cumulative effects of operations.~~
- ~~Prepare and process an environmental document under CEQA to address cumulative effects of operations.~~ **CEQA Environmental Clearance of Operations and Certain Facilities within the Russian River Division: The Notice of Preparation was filed in July 2007, and the Draft EIR incorporating scoping comments is currently being prepared.**
- ~~Process a c~~ **Maintenance Exemptions: C**ategorical exemptions for repairs **were filed in August 2006, February 2007, June 2007, and October 2007.**
- ~~Proceed with~~ **Permits: As construction plans are finalized, various agencies have been contacted, and permits have been, and are in the process of being** prepar**ed**~~ation~~ and process**ed**~~ing of the required permits.~~

GEOTECHNICAL:

- Surface drainage improvements
- Repair of scour at bridges
- General restoration of roadbed foundation elements undermined by erosion by dumping or machine-placing rock fill, or other revetment to protect and/or deflect water from further undermining foundation elements
- Depending on the severity of the scour, methods of restoring structural support to foundation elements may also need to be considered
- Installation of culvert extensions along with placement of headwalls and debris racks and rock at the outlets for energy dissipation.
- Additional geotechnical reconnaissance and mapping required for individual site designs.

TUNNELS:

- There are no tunnels ~~in Phase 1~~ **between Lombard and Windsor.**~~of the Russian River Division~~

STRUCTURES:

- Repairs to the existing bridges that bring the bridges to their original design service level, providing the railroad the ability to operate at historic 263,000 pound maximum gross car loads.

- Timber trestles make up the majority of the bridge inventory on the Russian River Division and several require repairs to primary structural members including: piles, caps, and stringers.
- Haystack Landing Bridge, Black Point Bridge, and Brazos Bridge are moveable bridges on the Russian River Division owned by SMART. Black Point and Brazos will require electrical and mechanical maintenance and Haystack Landing will need structural repairs and mechanical and electrical systems rehabilitation. Rail traffic can be resumed on these bridges under restrictive speed after the proposed repairs and maintenance are performed. Because these bridges are owned by SMART, their future replacement would be programmed in concert with their needs.

ROADWAY:

- Replacement of defective cross ties to achieve FRA **up to** Class 3 standards, and disposal of replaced ties
- Surfacing of track along the entire 62 miles as required to achieve FRA **up to** Class 3 standards
- Re-establishment of rail anchor pattern, joint bars, bolts, and other track repair items
- Total reconstruction of track in areas of roadbed restoration, as the result of washouts, using existing rail, with solid used or new ties, and new ballast
- Cleaning of flangeways and repair to grade crossing roadway surfaces
- Repair or replacement of switches
- Clearing of heavy, overgrown vegetation along the tracks (environmental clearance for vegetation clearing, disposal and spraying part of programmed work for TCRP Project 32.4)
- Disposal of vegetation from clearing operations
- Systemwide spraying of herbicide and pre-emergent to control regrowth of vegetation
- Replacement and repair of milepost signs, whistle posts, gates, and miscellaneous items

RAILROAD/DRAWBRIDGE SIGNALS AND GRADE CROSSING WARNING SYSTEMS:

The program required to re-open the Russian River Division is based on what has been determined to be the ~~minimum~~ improvements necessary for testing, replacing obsolete equipment, replacing non-reusable equipment, and enhancing safety due to geographical and urban growth that has occurred since this line was taken out of service.

- ~~Eleven crossings will require b~~Basic rehabilitation**/replacement** work to get the crossing warning systems back into compliance with the FRA and the PUC.
- ~~Twenty-one crossings will require basic rehabilitation work as well as additional work related to control circuitry replacement.~~
- ~~Twelve crossings will require basic rehabilitation and control circuitry replacement plus replacement of obsolete gate and cantilever equipment and crossing shelters.~~
- ~~Nine crossings require replacement of the entire existing crossing system.~~
- New solid state vital controllers for all three drawbridges. In addition the following work is required to bring each of the bridges into FRA compliance: updated circuit plans for each of the bridges, updated plans for the home and distance signals, verification of operation of signal and drawbridge systems, replacement of all bridge lock limit switches and all rail seating spring return switch circuit controllers, and FRA mandated tests.

CANYON ~~EIR/EIS~~ GEOTECHNICAL STUDY AND MAPPING

This application requests **a change of scope within Phase 1.** ~~programming and allocation of Phase 1 tasks~~ to complete **a Geotechnical Study and Mapping to assess general cost and engineering feasibility** ~~an EIR/EIS~~ for the Canyon ~~along with funds from TCRP Project 32.3. A detailed scope is included in the 32.3 application that was filed in November 2006.~~

1. **Prepare aerial survey and photogrammetric base mapping services from Willits to South Fork and aerial photography and imaging from South Fork to Fairhaven.**
2. **Complete a geotechnical engineering investigation study.**

F. Total Estimated Cost of Project: ~~$150.624~~ **$ 40.074** million

G. Project Start Date: December 1, 2006

H. Construction Start Date: ~~February~~ **July** 2007 ~~(signals only)~~

I. Project End Date: ~~December 2011~~ **July 2008**

J. Purpose of Amendment: **Costs have escalated due to significant increases in material costs and accelerated deterioration of the railroad infrastructure. Previously programmed costs were based on inspections performed in the fall of 2005. Since that time, design inspections found substantial additional repair work would be required as a result of major storms and vandalism. As a result, this application requests a change to the project scope to the more focused project of restoring an operable segment within the Russian River Division. In addition, the application requests a change to the Phase 1 scope related to the Canyon from preparing an EIR/EIS to preparing a**

Geotechnical Study with Mapping. Specifically, the application requests the following:

- **Transfer programmed funds from Phase 1 and Phase 2 to Phase 4.**
- **Transfer allocated funds from Phase 1 to Phase 2 and Phase 4.**
- **Programming and allocation of the remaining $1.561 million to Project 32.9 Phase 4.**

~~The application for Project 32.9 programmed two projects to reopen the entire line 1) to reopen the line from Lombard to Windsor and 2) complete an EIR/EIS for the Canyon, and. The purpose of this amendment is to move the Federal funding from the rehabilitation program for the Russian River Division Phase 2 (Windsor to Willits). The ISTEA funding will be designated in the future after discussions with FHWA and District 1 are underway.~~

Section III. Project Phase Information (in $1,000s)

~~For clarification on the short-term and long-term schedule, see Exhibit B which includes a schedule of the work to be completed by reopening phase.~~

		Schedule (month/year)		
Phase of work	Scope	Start	End	Cost
1. Studies, environmental review, and permits	Russian River Division Reopening ~~Ph 1~~ Environmental/Permitting/Preliminary Engineering (allocation request Nov-2006)	Dec – 06	~~Jun – 07~~ **Aug-08**	~~$ 1,460~~ **$ 2,936**
	~~Russian River Division Ph 2 Environmental/ Permitting/Preliminary Engineering (Windsor to Willits) (allocation request Nov-2006)~~	Dec – 06	Jun – 07	~~$ 979~~
	Canyon ~~EIR/EIS Preparation and~~ Preliminary Engineering (allocation request Nov-2006 **Amended Application Jan-2008**)	Dec – 06	Jun – 08	~~$ 4,000~~ **$ 840**
	~~Canyon Permitting~~	~~Feb – 08~~	~~Sep – 08~~	~~$ 928~~
	~~North End Environmental/Permitting/Prel Eng'g~~	~~Jun – 08~~	~~Nov – 09~~	~~$ 2,799~~
	SUBTOTAL PHASE 1			~~$ 10,166~~ **$ 3,776**
2. Project plans and specifications	Russian River Division Reopening Ph 1 PS&E (allocation request Nov-2006)	Dec – 06	~~Jun – 07~~ **Sep-08**	~~$ 1,557~~ **$ 1,437**
	~~Russian River Division Phase 2 PS&E~~	~~Jul – 07~~	~~Feb – 08~~	~~$ 1,084~~
	~~Canyon PS&E~~	~~Jan – 08~~	~~Sep – 09~~	~~$ 4,346~~
	~~North End PS&E~~	~~Oct – 08~~	~~Nov – 09~~	~~$ 3,159~~
	SUBTOTAL PHASE 2			~~$ 10,146~~ **$ 1,437**
3. Right of Way	Not applicable			$ 0
4. Construction or procurement	Russian River Division Reopening Ph 1 (multiple contracts: ~~one for~~ signals, ~~second for~~ early bridge work/~~remainder of~~ roadway/ structures) **(allocation requests: Mar-07, Apr-07, Jul-07, Feb-08)**	~~Mar – 07~~ **Jul-07**	~~Mar – 08~~ **Oct-08**	~~$ 22,613~~ **$ 30,632**
	~~Russian River Division Phase 2 (two contracts similar to Phase 1)~~	~~Sep – 07~~	~~Oct – 08~~	~~$ 15,515~~

AR 08586

		Schedule (month/year)		
Phase of work	Scope	Start	End	Cost
	~~Canyon (two 18 month contracts)~~ ~~North End (one 2 year contract)~~ SUBTOTAL PHASE 4	~~Sep 08~~ ~~Dec 09~~	~~Mar 11~~ ~~Dec 11~~	~~$ 47,832~~ ~~$ 44,352~~ ~~$130,312~~
			Total:	~~$150,624~~ **$ 35,845**

Section IV. Project Phases and TCRP Funds covered by this Application (in $1,000s)

Planned: (from Application)	Phase 1	Phase 2	Phase 3	Phase 4	Total
TCRP Funds	**- $2,253**	**$40**		**$3,774**	**$1,561**
Estimated Allocation Date (month/year)	**Feb 08**	**Feb 08**		**Feb 08**	
History: (list all previously approved allocations)					
TCRP Funds	**$5,429**	**$1,397**		**$1,530** **$7,495** **$13,588**	**$29,439**
Allocation Date (month/year)	**Nov-06**	**Nov-06**		**Mar-07** **Apr-07** **Jul-07**	
Requested: Differences, if any, should be explained	**Changed scope, excess funds transferred to Ph 2 and Ph 4**	**Increased deterioration required add'l signal design**		**Increased deterioration & cost escalation**	

A. The Implementing Agency requests TCRP **allocate** ~~$13,588~~ **$1,561 million to Phase 4** concurrent with this Application**, and reallocate $2,253 million from Phase 1 to Phase 2 ($0.40 million) and Phase 4 ($2.213 million)**.

B. The Implementing Agency requests **no** ~~an~~ advance payment ~~of $600,000~~. Please explain and justify: ~~NCRA estimates that the pre-construction phases of this project will take 6 months to complete, with the following cash flow requirement over the first six months:~~

	~~Dec-06~~	~~Jan-07~~	~~Feb-07~~	~~Mar-07~~	~~Apr-07~~	~~May-07~~	~~Total~~
~~Billing~~	~~450~~	~~560~~	~~560~~	~~600~~	~~600~~	~~600~~	~~3,370~~
~~NCRA Invoice Payment~~	~~0~~	~~450~~	~~560~~	~~560~~	~~600~~	~~600~~	~~2,770~~
~~Program Reimbursement~~	~~0~~	~~0~~	~~450~~	~~560~~	~~560~~	~~600~~	~~2,170~~
~~*NCRA Cash Requirement*~~	~~*0*~~	~~*450*~~	~~*560*~~	~~*560*~~	~~*600*~~	~~*600*~~	~~*600*~~

~~NCRA receives operational cash flow from real estate easement payments, rail car leases and $20,000 per month from the Operator. This cash flow is adequate to cover daily operations, but is insufficient to pre-fund a multi-million dollar project. The advance funding would allow NCRA to pay contractor invoices, and then submit the invoices for reimbursement processing. The advance would be used to make the final payment to contractors once the reimbursement review is complete, and the reimbursement amount is approved.~~

C. The Implementing Agency requests the following rate of reimbursement be considered in association with the requested allocation:

_x_ Proportionally spread across all funding sources.
___ Other, please explain and justify:

Section V. Funding Information for the Total Project (in $1,000s)

Source	Type		Phase 1	Phase 2	Phase 3	Phase 4	Total
TCRP 32.9	State	Committed	~~$ 5,429~~ **$ 3,176**	~~$ 2,433~~ **$ 1,437**	$ 0	~~$ 23,138~~ **$ 26,387**	$ 31,000
		Proposed					
TCRP 32.3	State	Committed	$ 600	$ 0			$ 600
		Proposed					
~~TCRP 32.4~~	~~State~~	~~Committed~~	~~$ 390~~	~~$ 261~~		~~$ 4,249~~	~~$ 4,900~~
		~~Proposed~~					
~~TCRP 32.7~~	~~State~~	~~Committed~~				~~$ 1,800~~	~~$ 1,800~~
		~~Proposed~~					
~~Demonstration Funds~~	~~Federal~~	~~Committed~~				~~$ 8,600~~	~~$ 8,600~~
		~~Proposed~~					
NCRA ~~FEMA 1203 DR CA~~[1]	~~Federal~~ **Agency**	Committed				$ 695	$ 695
		Proposed					
Cities & Measure M[2]	Local	Committed				~~$ 3,000~~ **$ 3,330**	~~$ 3,000~~ **$ 3,330**
		Proposed					
Insurance Proceeds/Private Crossings ~~Operator~~[3]	~~Private~~	~~Committed~~	~~$ 100~~				~~$ 100~~
		~~Proposed~~	~~$ 928~~	~~$ 4,346~~		~~$ 44,832~~ **$ 220**	~~$ 50,106~~ **$ 220**
~~Other~~[4]	~~Future Funding Sources~~	~~Committed~~					
		~~Proposed~~	~~$ 2,719~~	~~$ 3,106~~		~~$ 43,998~~	~~$ 49,823~~
Project Totals:			~~$10,166~~ **$ 3,776**	~~$10,146~~ **$ 1,437**	$ 0	~~$130,312~~ **$ 30,632**	~~$150,624~~ **$ 35,845**

[1] **NCRA is contributing signal equipment previously obtained using f**Funds from the FEMA Alternate Project ~~were used to purchase signal equipment to be used in the Russian River Division Phase 1 and Phase 2 construction~~.

[2] **Includes funding for specific signals through MOU's with the Cities of Petaluma and Santa Rosa.** Funds from Sonoma County Transportation Authority Measure M. Measure M authorized a 1/4 cent sales tax for transportation in Sonoma County in November 2004. A percentage of the proceeds have been committed to SMART by SCTA. SMART and SCTA are currently negotiating an agreement to allow the funds to be used for signal **crossing** improvements along the Russian River Division.

[3] **Insurance proceeds for damaged signals and contribution from private property owners at private crossings.** ~~The Operator has committed to contributing $100,000 toward the Canyon EIR/EIS, and will pursue other financing alternatives as appropriate.~~

[4] ~~Future sources include Railroad Rehabilitation and Improvement Funding through the FRA, future grant opportunities for Goods Movement projects, and the Governor's proposed infrastructure bond.~~

Section VI. Additional Information

A. Will this project utilize Regional or Inter-Regional Transportation Improvement Program funding?

____Yes (application must be co-signed by regional planning agency or Caltrans, whichever is applicable.)
_x_ No

B. For Projects with a Right of Way or Construction/Procurement Phase, the Lead Agency must demonstrate that it is part of, or in conformity with, the appropriate Regional Transportation Plan. Attach a copy of the relevant section(s) of the Regional Transportation Plan.

~~C.~~ If this project will utilize other fund sources (i.e. STIP, local measure tax, demo funds, etc.), have they been programmed or committed? Please provide a narrative describing how they have been committed or a strategy that the Agency will undertake to commit necessary funds:

The project costs for the Russian River Division **Lombard to Windsor** ~~Phase 1~~ reopening would be funded from TCRP funds, ~~and~~ SCTA Measure M funds, **the cities of Petaluma and Santa Rosa, and private funds from insurance and private property owners who request private signal improvements.**

The cities have requested the signal repairs, and construction will not begin until an agreement is in place. The insurance proceeds are being coordinated with SMART, and are for specific signal replacements as a result of auto accidents. Private crossing rehabilitation is not required for the Russian River Division reopening, but will be provided if the related property owner requests and pays for rehabilitation.

Measure M authorized a 1/4 cent sales tax for transportation in Sonoma County in November 2004. A percentage of the proceeds have been committed to SMART by SCTA. SMART and SCTA are currently negotiating an agreement to allow the funds to be used for signal improvements along the Russian River Division.

A proposed project list has been prepared and submitted to the SCTA. The improvements to be funded are for crossing surfaces, and no construction funds will be spent on these improvements if the Measure M money is not secured. The improvements are not required for the Russian River Division reopening. ~~As of March 2006, SMART and NCRA have verbally agreed to have NCRA perform the signal work. SMART plans to compensate NCRA with $3 million of Measure M funds for the Phase 1 signal improvements.~~

~~The project costs for the Canyon EIR/EIS would include a $100,000 contribution from the Operator. The fund request for the Russian River Division Phase 2 reopening would be a combination of TCRP and future funding sources that are not yet committed.~~

~~The project costs for reopening the Canyon and the North would primarily be funded through future funding sources that are not yet committed. Currently, NCRA is planning to use ISTEA funds earmarked for rail improvements to the North end, and is working with District 1 to commit these funds. As these future phases of the reopening are further refined, the funding programs associated with those future phases will also be refined.~~

Section VII. Justification for Alternative Project Application (N/A)

Section VIII. Signatures of Applicant Agencies

By affixing the signature(s) below, the agency certifies it has provided complete and accurate information necessary for the California Transportation Commission to review and process this Project Application; that the agency will in good faith pursue this work for the public's benefit in a timely and diligent manner and comply with all existing and future Commission policies and rulings; and that the Regional Planning Agency or Caltrans has reviewed and approved this project.

Mitch Stogner, Executive Director – NCRA

1/11/08
Date

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FILED
NOV 0 3 2008
KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: M. Murphy, Deputy
COPY

JEFFREY A. WALTER, CBN 63626
VERONICA A. F. NEBB, CBN 140001
Walter & Pistole
670 W. Napa Street
Suite F
Sonoma, CA 95476

Attorneys for Petitioner,
City of Novato

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

CITY OF NOVATO,

Petitioner,

v.

NORTH COAST RAILROAD AUTHORITY,

Respondent.

CALIFORNIA DEPARTMENT OF TRANSPORTATION, CALIFORNIA TRANSPORTATION COMMISSION, CALIFORNIA DEPARTMENT OF FISH AND GAME, KERNEN CONSTRUCTION, MASS. ELECTRIC CONSTRUCTION CO., NORTHWESTERN PACIFIC RAILROAD COMPANY, AND DOES 1 to 10,

Real Parties in Interest.

Case No. CV 074645

CONSENT DECREE [redacted]

Petitioner, City of Novato ("Novato"), Respondent, the North Coast Railroad Authority ("NCRA") and Real Party in Interest, the Northwestern Pacific Railroad Company ("NWPCo"), a California corporation, hereby stipulate and agree to the terms and conditions of this Consent Decree [redacted] ("Consent Decree") and its execution and entry as such by the

EXHIBIT A

Marin County Superior Court as follows:

I. BACKGROUND

A. Novato filed a Petition for a Writ of Mandamus and Complaint for Declaratory Relief ("Petition") in this matter on September 28, 2007 against NCRA and the California Department of Transportation ("CalTrans"), the California Transportation Commission ("CTC"), the California Department of Fish & Game ("CDFG"), Kernen Construction ("Kernen"), Mass. Electric Construction Company ("Mass") and Northwestern Pacific Railroad Company ("NWPCo"), as Real Parties in Interest, alleging, among other things, violations of the California Environmental Quality Act ("CEQA") in the undertaking of certain activities by the NCRA to lease, repair, rehabilitate, restore and/or upgrade rail improvements in and along the Northwestern Pacific Railroad Line ("NWP Line").

B. In its Petition, Novato prays for, among other things, that: (1) the Court issue a Peremptory Writ of Mandamus ordering NCRA to set aside and void (i) contracts for the Track Improvements (defined below) to the NWP Line and (ii) funding agreements and to refrain from consideration or approval of any other contract or to take any other action to approve any project related to the Track Improvements until full compliance with CEQA; (2) the Court issue a Peremptory Writ of Mandamus ordering NCRA to set aside and void the Lease (defined below) until full compliance with CEQA; (3) the Court issue a Peremptory Writ of Mandamus ordering CalTrans and CTC to set aside and void all approvals relative to the NCRA's applications for transportation funds until full compliance with CEQA; (4) that the Court issue a Preliminary Injunction enjoining the NCRA, Ghilotti (defined below), Mass, Kernen, and CDFG from taking any further steps or actions to perform under the agreements they entered with NCRA during the pendency of the action; (5) the Court issue a Preliminary Injunction enjoining CalTrans and CTC from paying to or reimbursing NCRA any transportation funds during the pendency of the action; (6) that the Court issue a Peremptory Writ of Mandamus ordering NCRA to set aside the Bridge

Financing and Security Agreement with NWP Co. and approved by NCRA on or about August 15, 2007 and/or September 12, 2007; (7) for Petitioner's costs and attorneys' fees pursuant to C.C.P. Section 1021.5; and (8) for such other relief as the Court may deem proper.

C. Preliminary injunctions were issued on January 22, 2008, and February 6, 2008 generally prohibiting work on the NWP Line pursuant to any contracts that had not been awarded as of January 7, 2008 and for contracts awarded as of January 7, 2008, but under which no construction work had commenced as of January 7, 2008.

D. The Parties (defined below) recognize, and the Court by entering this consent Decree finds, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties and Real Parties in Interest, may result in some mitigation of some of the potential environmental impacts associated with the operation of freight trains on the NWP Line which may not otherwise be mitigated and that this Consent Decree is fair, reasonable, and in the public interest.

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the Parties and Real Parties in Interest under Cal. Public Resources Code Section 21168.5 and Cal. Code of Civil Procedure Section 1085. Additionally, this Court has independent, subject matter jurisdiction to enter and enforce this Consent Decree. Solely for the purposes of the instant action, the Consent Decree and the ongoing enforcement and implementation thereof, the Parties hereto waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in the County of Marin. The Parties shall not challenge and hereby waive the right to challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. NCRA's and/or NWPCo's activities and/or obligations described in Sections V, VI, VII, IX, X, XI, XIII, XVI, XIX, XXII and XXIV, and the compliance with CEQA as to

any projects described in Sections V, VI, VII, VIII and X of the Consent Decree are voluntarily entered into with the recognition that those activities and/or obligations as defined in the foregoing provisions do not constitute an unreasonable burden on interstate commerce.

III. PARTIES BOUND

A. This Consent Decree applies to and is binding upon Novato and upon NCRA and NWPCo and their respective officers, officials, agents, contractors, members, successors and assigns and any person or entity claiming under or through the NCRA and/or NWPCo. Any change in ownership or status of the NCRA or NWPCo, including, but not limited to, any transfer of their assets or real or personal property shall in no way alter NCRA's and/or NWPCo's responsibilities under this Consent Decree.

B. NCRA shall provide a copy of this Consent Decree to the Real Parties in Interest to this action and to each contractor hired to perform any part of the Work (as defined below) required by the Consent Decree and shall expressly condition all contracts entered to perform any or all of the Work to comply with the terms of this Consent Decree. NCRA or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work described in this Consent Decree. NCRA shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

C. Within thirty (30) days of this Consent Decree's Effective Date, NCRA shall provide a copy of this Consent Decree to the Sonoma Marin Area Rail Transit District ("SMART").

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Decree which are

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defined in CEQA or in the CEQA Guidelines shall have the meaning assigned to them in CEQA or said CEQA Guidelines. Whenever the terms listed below are used in this Consent Decree or in the Exhibits attached hereto, the following definitions shall apply:

1. "CalTrans" shall mean the California Department of Transportation, a California state public agency

2. "CDFG" shall mean the California Department of Fish and Game, a California state public agency.

3. "CEQA" shall mean the California Environmental Quality Act, California Public Resources Code Section 21000 et seq.

4. "CEQA Guidelines" shall mean the CEQA Guidelines promulgated by the Office of Planning and Research pursuant to CEQA section 21083, specifically, 14 California Code of Regulations Section 15000 et seq.

5. "CFR" shall mean the Code of Federal Regulations.

6. "CTC" shall mean the California Transportation Commission.

7. "Consent Decree" shall mean this Decree and all Exhibits attached hereto. In the event of a conflict between this Decree and any Exhibit, this Decree shall control.

8. "Cooper" shall mean Cooper Crane & Rigging Inc., a California Corporation.

9. "County" shall mean Marin County, California.

10. "Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working day" or "business day" shall mean a day other than a Saturday, Sunday or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until 5:00 p.m. of the next working day.

11. "EIR" shall mean Environmental Impact Report pursuant to CEQA.

12. "ERD" shall mean the Eel River Division which is that portion of the NWP Line north of mile post 142.5 at Willits, California.

13. "Emergency" shall mean a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services.

14. "FHWA" shall mean the Federal Highway Administration of the U.S. Department of Transportation.

15. "Ghilotti" shall mean Ghilotti Bros., Inc. a California Corporation.

16. "Freight train", "freight engine", "commercial freight train" and "commercial freight engine" shall mean any locomotive train engine (genset, diesel or otherwise) or train other than a Work Engine (defined below).

17. "ISTEA" shall mean the Intermodal Surface Transportation Efficiency Act of 1991, as amended from time to time.

18. "Kernan" shall mean Kernen Construction, a partnership organized under the laws of the state of California.

19. "Lease" shall mean that certain AGREEMENT FOR THE RESURRECTION OF OPERATIONS UPON THE NORTHWESTERN PACIFIC RAILROAD LINE AND LEASE, between the NWPCo and NCRA, dated September 2006.

20. "Mass" shall mean Mass. Electric Construction Company, a corporation incorporated under the laws of the state of Delaware.

21. "NCRA" shall mean the North Coast Railroad Authority, a public agency created by California Government Code Section 93000 et seq.

22. "CPUC" shall mean the California Public Utilities Commission.

23. "Novato" or "City" shall mean the City of Novato, a general law city in Marin County, established and existing as such under the laws of the State of California.

24. "NWPCo" shall mean the Northwestern Pacific Railroad Company.

25. "NWP Line" shall mean that portion of the rail right of way and improvements located therein from Samoa in Humboldt County, California, to Ignacio in Marin County, California, and then eastward to Lombard in Napa County, California.

26. "Operations EIR" shall mean the EIR that NCRA is currently preparing for the operation of freight service on the NWP Line in the RRD for which a Notice of Preparation dated July 10, 2007, was issued by NCRA and which is to be certified by the NCRA prior to commencing such operations.

27. "Parties" shall mean Novato, NWPCo and the NCRA.

28. "Quiet Zone" shall mean segment(s) of the NWP Line within which is situated one or a number of rail crossings at which locomotive horns are not routinely sounded as established in accordance with 49 CFR Section 222.39 (a).

29. "RRD" shall mean the Russian River Division which is that portion of the NWP Line south of mile post 142.5 at Willits, California.

30. Intentionally left blank.

31. "Real Parties In Interest" shall mean collectively CalTrans, CTC, CDFG, Kernan, NWPCo, Mass, Cooper and Ghilotti.

32-35. Intentionally left blank.

36. "TCRP" shall mean the funding program established under the California Transportation Congestion Relief Act, Cal. Gov't Code §14556 et seq.

37. "Track Crossings" shall mean the at grade rail right of way crossings located at the intersections of the NWP Line and the following streets, roads and pedestrian pathways or trails within the City of Novato, as depicted and numbered on Exhibit A, attached hereto and incorporated herein by reference:

a. #1. Rush Creek Place
b. #2. Golden Gate Place
c. #3. Olive Avenue
d. #4. Grant Avenue
e. #5. Pedestrian/Bike Crossing (Manuel Drive)
f. #6. Novato Creek (Private)
g. #7 Wetlands Access (Private)

h. #8 Hanna Ranch Road

i. #9. Private Crossing (Highway 37)

j. #10. Renaissance Road.

k. #11. Private Crossing (Harbor Drive Business Park)

l. #12. Grandview Avenue

m. #13. Private Driveway (Hunter's Club Drive);

as well as the trail crossing immediately to the east of the Petaluma River and all other intersections of the NWP Line with pedestrian trails or vehicular rights of way as may be required or recommended by the regulatory agencies in order to establish Quiet Zones covering all NWP Line crossings in Novato.

38. "Track Improvements" shall mean any and all repair, rehabilitation, construction, improvement, restoration and/or upgrading of the NWP Line.

39. "Work" shall mean all of NCRA's and/or NWPCo's activities and/or obligations described in Sections V, VI, VII, VIII, IX and X of this Consent Decree.

40. "Work Engine" shall mean a train engine that is used exclusively for non-commercial purposes.

V. GENERAL PROVISIONS

A. Commitments of NCRA.

1. NCRA and NWPCo, as the case may be, shall fully, satisfactorily and timely perform and complete the Work in accordance with this Consent Decree at its sole cost and expense; (i) provided, however, that should NCRA and/or NWPCo, as the case may be, fail to or decide not to so perform and complete any or all of the Work NCRA and NWPCo shall be prohibited from

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operating any commercial freight engines and/or freight trains in or on the Low Emission Engine Division (defined below) until all of the Work is so performed and completed; (ii) provided, further, that notwithstanding the foregoing proviso, during any period of time during which any or all of said Work is not so performed and completed, NCRA and NWPCo may run on or in the Low Emission Engine Division no more than a cumulative total of six, one-way commercial freight train trips per week (Monday through the following Sunday) each with no more than eighteen (18) cars, but between the hours of 7:00 p.m. and 8:00 a.m. NCRA and NWPCo shall not operate any trains or locomotive engines of any kind except for Work Engines which may be operated between said hours only in the event necessary to and only for such time and to the extent required to address an Emergency; and (iii) provided, further, that notwithstanding the foregoing provisos, in the event any or all of said Work is not so performed and completed by December 31, 2011, thereafter NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind in or on the Low Emission Engine Division until all of the Work is so performed and completed. Said Work shall include but not be limited to, all required design, design engineering, engineering, permitting, equipment, materials, construction work and all other work, actions and activities necessary for the completion, installation and/or effectuation of (i) the improvements that are required for the establishment of Quiet Zones applicable to each of the Track Crossings, (ii) the rail welding described in Section VII, below, (iii) the acquisition and use of environmentally friendly engines described in Section VIII, below, (iv) the installation of the landscaping improvements described in Section IX, below, and (v) the installation of the fencing improvements described in Section X, below. Subject to Sections XIII and XV, below, and except as is otherwise expressly provided hereinbelow, NCRA shall not be required to reimburse Novato for costs incurred by Novato relating to said Work, including, but not necessarily limited to, Novato's complying with the procedural requirements applicable to the establishment of Quiet Zones, review of plans and specifications, staff time, engineering peer review, and permit processing and inspection.

2. In the event that either or both NCRA and/or NWPCo declare insolvency, file for or are

involuntarily placed in bankruptcy or are otherwise relieved of their debts pursuant to Federal or State Law or legislative action, NCRA and/or NWPCo, as the case may be, shall notify Novato within three (3) days of any and all such actions or events.

B. Compliance with Law.

All Work shall be performed in accordance with all standards, specifications, requirements and schedules set forth in this Consent Decree; (i) provided, however, that should NCRA and/or NWPCo, as the case may be, fail to or decide not to so perform and complete any or all of the Work, NCRA and NWPCo shall be prohibited from operating any commercial freight engines and/or freight trains in or on the Low Emission Engine Division (defined below) until all of the Work is so performed and completed; (ii) provided, further, that notwithstanding the foregoing proviso, during any period of time during which any or all of said Work is not so performed and completed, NCRA and NWPCo may run on or in the Low Emission Engine Division no more than a cumulative total of six, one-way commercial freight train trips per week (Monday through the following Sunday) each with no more than eighteen (18) cars, but between the hours of 7:00 p.m. and 8:00 a.m. NCRA and NWPCo shall not operate any trains or locomotive engines of any kind except for Work Engines which may be operated between said hours only in the event necessary to and only for such time and to the extent required to address an Emergency; and (iii) provided, further, that notwithstanding the foregoing provisos, in the event any or all of said Work is not so performed and completed by December 31, 2011, thereafter NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind in or on the Low Emission Engine Division until all of the Work is so performed and completed. Unless the provisions of this Consent Decree specifically state otherwise, all Work shall be performed by NCRA in accordance with all applicable laws, rules, and regulations.

C. Permit Requirements.

1. NCRA shall, at its sole cost and expense, obtain and keep in effect all necessary permits and licenses for the construction, implementation and/or installation of the Work, and give all necessary notices and pay all fees required by law. NCRA shall not commit any violations of said permits and licenses. All Work within vehicular and/or pedestrian rights of way located in Novato shall require the issuance of all required permits, including but not limited to encroachment permits. As long as NCRA complies with all (i) requirements of the City of Novato which Novato is legally permitted to impose, (ii) applicable environmental and other laws and regulations and (iii) the other provisions specified in this Consent Decree relating to such permits, including but not limited to standard specifications and insurance, and which are applicable to the Work performed herein by the NCRA and/or by any contractor or subcontractor performing said Work, the City shall issue the relevant permit to the appropriate party. Notwithstanding anything to the contrary stated herein, NCRA shall not be liable for Novato's standard permit fees nor shall it be required to post any performance bonds with Novato pertinent to the Work NCRA performs to establish Quiet Zones pursuant to Section VI, below. Notwithstanding anything to the contrary stated herein, this Consent Decree is not, and shall not be construed to be, a permit or entitlement of any kind issued pursuant to any Federal, State or local law, statute, rule, regulation or ordinance. Novato reserves all discretionary authority lawfully vested in it in acting upon any application that NCRA and/or its contractors must submit to the City pursuant to this Consent Decree.

2. Prior and as a condition to the issuance of any grading, encroachment or other permit by Novato for said Work, if any, NCRA shall have obtained and shall provide to Novato evidence that the NCRA has obtained all necessary consents, approvals, permits, and/or waivers required for said Work from any and all agencies with jurisdiction over all or any portion of the Work, including, but not necessarily limited to, the CPUC, CDFG, CalTrans, NWPCo, U.S. Army Corps of Engineers, the Regional Water Quality Control Board, the Marin County Flood Control District.

3. NCRA shall, at its sole cost and expense, act as and perform the duties imposed upon a lead agency for purposes of performing and preparing the necessary environmental review and documentation in connection with the approval and implementation of each component of the Work. The approval and implementation of the Work shall be subject to applicable environmental review, findings and approvals. Insofar as the Work is concerned, this Consent Decree shall be subject to CEQA and/or the National Environmental Policy Act ("NEPA"). In deciding whether to approve and undertake the performance of any and all components of the Work, NCRA shall comply with CEQA and/or NEPA, and NCRA reserves the right to exercise its full discretionary authority with respect thereto. If in the exercise of its discretion NCRA decides not to approve or implement any or all of the components of the Work, it shall retain the right to lawfully do so; (i) provided, however, that until the NCRA and/or the NWPCo, as the case may be, performs and completes all of the Work in accordance with this Consent Decree, NCRA and NWPCo may run on or in the Low Emission Engine Division no more than a cumulative total of six, one-way commercial freight train trips per week (Monday through the following Sunday) each with no more than eighteen (18) cars, but between the hours of 7:00 p.m. and 8:00 a.m. NCRA and NWPCo shall not operate any trains or locomotive engines of any kind except for Work Engines which may be operated between said hours only in the event necessary and only for such time and to the extent required to address an Emergency; and (ii) provided, further, that notwithstanding the foregoing proviso, in the event any or all of said Work is not so performed and completed by December 31, 2011, thereafter NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind in or on the Low Emission Engine Division until all of the Work is so performed and completed.

D. Priority Use of Funds.

1. In the event the NCRA approves implementation, construction and completion of the Work described in Sections VI, VII, IX and X of this Consent Decree, and except as to capital

improvement funds already allocated and programed for use in paying for the costs of (i) the bridge construction contract (Contract T-3) entered between NCRA and Cooper and Ghilotti and (ii) performing the track work (replacing ties, placing ballast and repairing and surfacing the track) between Lombard and Windsor, California, required to upgrade the NWP Line between Lombard and Windsor, California to FRA Class 3 standards (also known as the Trackway Contract), all of NCRA's funds available or usable for capital improvement projects, irrespective of the source of those funds, shall be appropriated, allocated, re-allocated and/or re-programed by NCRA, as the case may be, to the maximum extent possible, such that they will first be used to pay for the said Work and all other obligations which are NCRA's to discharge pursuant to this Consent Decree. Copies of any unprivileged documents evidencing NCRA's compliance with this Section shall be delivered to the City promptly after their preparation.

2. The Parties acknowledge and agree that the FHWA has appropriated up to $8.6 million in ISTEA funds for NCRA's utilization, but has yet to approve any NCRA projects for which said funds may be spent. Pursuant to Section VI(A), below, NCRA shall apply to the FHWA and Cal Trans to obtain approval to use said ISTEA funds to pay for all the Work except that described in Section VIII. Said application may include requests for allocations of ISTEA funds to pay for projects in addition to the said Work. In the event and to the extent that FHWA and Cal Trans authorize said ISTEA funds to be used by NCRA to pay for the said Work, the Work for which said ISTEA funds are approved shall be performed and completed in accordance herewith before any other projects and activities funded with said ISTEA funds are commenced. Copies of any unprivileged documents evidencing NCRA's compliance with this Section shall be delivered to the City promptly after their preparation.

VI. PERFORMANCE OF THE QUIET ZONE WORK

A. Funding for Installation of Quiet Zone Improvements at the Track Crossings

NCRA shall, no later than ten (10) days after the Effective Date, commence negotiations

with CalTrans, FHWA and/or CTC to determine if ISTEA or TCRP funding is or will be available to NCRA for completion of the Work described in Sections VI, VII, IX and X, below, including the establishment of Quiet Zones encompassing all of the area included within each of the Track Crossings. The Parties acknowledge that NCRA has already commenced such negotiations. NCRA shall act in good faith in immediately advocating to CalTrans, FHWA and CTC that such funding is and/or should be made available to NCRA for said purpose, and immediately upon learning of said agencies' decisions with respect thereto, advise Novato, in writing, of each said decision. With respect to funding that is available to the NCRA for the installation of improvements required to establish Quiet Zones encompassing all of the Track Crossings ("Quiet Zone Improvements"), the NWPCo warrants and guarantees that, upon written demand by the NCRA, NWPCo shall pay to NCRA up to one million two hundred fifty thousand dollars ($1,250,000.00) to pay for the installation and completion of the Quiet Zone Improvements. NCRA warrants and guarantees that it will timely deliver said demand to NWPCo if necessary to permit NCRA to comply with this Consent Decree. NCRA guarantees and warrants that any and all sums received by NCRA from NWPCo as a result of said demand shall be expended on the environmental review of, permitting and installing Quiet Zone Improvements and establishing Quiet Zones covering all of the Track Crossings in accordance with this Consent Decree.

B. City's Obligations Pertinent to Establishing Quiet Zones

1. Novato shall exercise good faith and reasonable dispatch in discharging its duties described herein in determining whether to establish and establishing Quiet Zones applicable to the Track Crossings. Novato shall discharge said duties at its sole cost and expense.

2. Within a reasonable period of time (not to exceed 120 days) after Novato approves the designs and construction specifications (collectively "Plans") for the Quiet Zone Improvements pursuant to Section VI(C), below, and after complying with CEQA, should Novato desire to establish Quiet Zones for any or all of the Track Crossings, Novato shall

provide written notice of intent to establish the Quiet Zone(s) it desires to establish pursuant to 49 CFR §222.43; provided that in doing so Novato does not violate any applicable law. In the event that Novato receives comments in response to said notice or otherwise which, in Novato's reasonable judgment, require revisions to the Plans, NCRA shall effect said revisions at NCRA's sole cost. Any dispute which arises between the Parties with respect to the necessity and/or nature of said revisions which cannot be resolved by the Parties through informal negotiations shall be resolved in accordance with the provisions for conflict resolution as set forth in Section XV of this Consent Decree.

3. In the event that the Parties agree as to the final Plans required to establish Quiet Zones for the Track Crossings (or, in the event that disputes pertinent to the content of the final Plans are resolved by an arbitration decision pursuant to Section XV, with which the City agrees), the Parties shall cooperate in determining when, whether, how and under what circumstances proposals to construct the Quiet Zone Improvements reflected in said final Plans are to be solicited, awarded and constructed by NCRA. In addition to complying with CEQA and/or NEPA, NCRA shall, at its sole cost, (i) prepare the necessary Plans and construction contract documents, (ii) prepare the construction contract, (iii) solicit bids for the Quiet Zone Improvements, (iv) award the construction contract, and (v) inspect, monitor performance, administer and make payments under the construction contract(s) for the Quiet Zone Improvements. In determining whether the construction and implementation of the Quiet Zone Improvements are satisfactory and consistent with the final Plans approved by Novato, and thus, are acceptable to Novato as final and complete, NCRA shall consult with Novato. With respect to any Quiet Zone Improvements constructed or installed on or in City right of way or City property, the City shall have final approval authority, which said authority may not be exercised unreasonably.

4. After consultation with NCRA and NWPCo and provided that the construction of the Quiet Zone Improvements for the Track Crossings has been completed to the reasonable satisfaction of the City or is assured of being completed to the City's reasonable satisfaction (with sufficient security and under terms and conditions reasonably satisfactory to the City), the

City shall consider providing written notice of establishment of the Quiet Zones pursuant to 49 CFR §222.43. The City shall retain the sole right to determine whether and when said notice shall be provided; provided that in the exercise of such discretion the City shall act reasonably. Under any and all circumstances, the City shall not provide said notice if to do so would violate any applicable law.

5. In the event that, to the extent that and after written notice from the City that the City declines to establish one or more Quiet Zones in the City of Novato due to no fault of NCRA and/or NWPCo, NCRA and NWPCo shall be relieved of any duty specified in this Consent Decree to take any further action with respect to the Quiet Zone Improvements pertinent to and/or the establishment of the Quiet Zone(s) which the City decides not to establish. In the event that the City makes such a decision, it shall not be liable for any expense, cost or liability incurred by NCRA and/or NWPCo in connection with improving the Track Crossings or in establishing the Quiet Zone(s) in question.

C. Design and Approval of the Quict Zone Improvements for the Track Crossings

Regardless of the availability of funding and NCRA's obligation to pay for the installation of the Quiet Zone Improvements at the Track Crossings as is set forth in Section VI(A) above, within one hundred twenty (120) days of the Effective Date, NCRA shall submit Plans for the Quiet Zone Improvements to Novato. Said Plans shall be of sufficient detail, completeness and specificity to adequately inform a qualified constructor as to how said Quiet Zone Improvements shall be constructed and/or installed. Said Plans shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Quiet Zone Improvements. Said Plans shall be subject to the review and reasonable approval of Novato. Within a reasonable period of time after receipt of said Plans by Novato, Novato shall notify NCRA in writing of Novato's approval or disapproval of said Plans. In the event that Novato disapproves of said Plans, NCRA shall modify said Plans and resubmit same to Novato. As to the first resubmittal and all other resubmittals by NCRA to Novato, within a reasonable period of

time after receipt of said Plans by Novato, Novato shall notify NCRA in writing of Novato's approval or disapproval of said Plans. In the event that the Parties cannot reach agreement on the Plans, the matter shall be resolved in accordance with the provisions for conflict resolution as set forth in Section XV of this Consent Decree. Notwithstanding the provisions of Section XV to the contrary, in the event that the arbitrators' decision made pursuant to Section XV is unacceptable to Novato, Novato reserves the right to abandon Quiet Zone proceedings as to one or all Quiet Zones intended to be established.

D. Installation by NCRA of Quiet Zone Improvements at Track Crossings and Establishment of Quiet Zones

Subject to Section V, and in the event NCRA decides to approve and construct the Quiet Zones Improvements, NCRA shall, at its sole cost and expense and by December 31, 2011, complete the Quiet Zone Improvements at each of the Track Crossings included in said Quiet Zones in a good and workmanlike manner and in accordance with the approved Plans and all required permits, consents and accepted construction practices and take all further action as is necessary to construct and install all Quiet Zone Improvements necessary to establish the Quiet Zones designated by Novato which encompass all of the Track Crossings included in those Quiet Zones.

E. Maintenance of Quiet Zone Improvements at the Track Crossings.

From and after the earlier of the date of completion or Novato's final acceptance of the installation of the Quiet Zone Improvements at the Track Crossings, NCRA shall be solely responsible for the maintenance, repair and replacement of all Quiet Zone Improvements (and any Subsequent Quiet Zone Modifications) at each of the Track Crossings. In this regard, NCRA shall defend, indemnify and hold harmless Novato from any and all costs, claims, injuries, damages and liabilities of any sort associated with the maintenance, repair or

replacement of the Quiet Zone Improvements and/or the Subsequent Quiet Zone Modifications at the Track Crossings.

F. Subsequent Quiet Zone Modifications

In the event that changes or modifications must be made to any or all Quiet Zone Improvements after they have been originally installed in order to retain or continue inclusion of one or more Track Crossings in their cognate Quiet Zone ("Subsequent Quiet Zone Modifications"), the City shall notify NCRA and NWPCo of that development and the nature, if then known, of the modifications that are necessary. Within thirty (30) days after the City's delivery of said notices, the Parties shall meet and confer in good faith to determine how said modifications can be effected, the procedures that must be followed to do so, the party(ies) responsible for effecting the modifications and the party(ies) responsible for paying for such modifications. If no agreement as to any or all of said issues is reached as a result of said meeting and the City wishes to retain the Quiet Zone designations as to the Track Crossings in question or, if as a result of said meetings the City agrees to undertake the primary responsibility of effecting the necessary Subsequent Quiet Zone Modifications, the City shall undertake the primary responsibility of effecting same, and, without cost to the City, NCRA and NWPCo shall fully cooperate with and assist the City in that endeavor, including but not limited to, permitting the City and/or its contractors and agents access to and use of NCRA's rights of way, trains, vehicles, equipment and property to install such modifications.

G. Night-time Freight Operations Prohibited Prior to the Installation of Quiet Zone Improvements and establishment of Quiet Zones

Without limiting the generality of Section V, NCRA acknowledges, agrees and warrants that unless Novato abandons, in writing, the establishment of Quiet Zones covering all of the Track Crossings, prior to the establishment of Quiet Zone(s) encompassing all of the Track

Crossings, NCRA shall not operate, and shall not permit NWPCo or any other person or entity to operate, any trains or engines of any kind whatsoever on or in the Low Emission Engine Division between the hours of 7:00 p.m. and 8:00 a.m.; provided, however, that the NCRA shall be permitted to operate Work Engines or maintenance vehicles in the Low Emission Engine Division during the hours of 7:00 p.m. to 8:00 a.m. only in the event necessary and only for such time and to the extent required to address an Emergency; and provided, further, that notwithstanding the foregoing, in the event any or all of the Work is not performed and completed in accordance with this Consent Decree by December 31, 2011, thereafter NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind and at any time in or on the Low Emission Engine Division until all of the Work is so performed and completed..

VII. PERFORMANCE OF THE TRACK WELDING WORK

A. Except as to Work Engines (such as switchers) and maintenance vehicles, prior to the operation or running of any locomotive engines or freight trains whatsoever on or in the Low Emission Engine Division, NCRA shall decide whether or not to improve the tracks on the NWP line from mile marker 35.5 (Mile marker that is 5 miles north of the northernmost point of Novato's city limits) to mile marker 18.7 (Mile marker that is 5 miles east of crossing #13 as indicated on Exhibit A) ("Novato Area"), excluding the track rails comprising the spurs located in the Novato Area, by welding the ends of consecutive sections of track rails to each other ("Track Welding Work"). Notwithstanding Section V's time frames to the contrary, NCRA acknowledges, agrees and warrants that prior to the completion of the Track Welding Work to the reasonable satisfaction of Novato, and except for Work Engines and maintenance vehicles, NCRA shall not operate, and shall not permit NWPCo or any other person or entity to operate, any freight trains or locomotive engines of any kind whatsoever on or in the Low Emission Engine Division.

B. Except as to Work Engines (such as switchers) and maintenance vehicles, prior to the commencement of any freight service or operation of any locomotive engine whatsoever on or in the Low Emission Engine Division , NCRA shall submit written verification to Novato that the Track Welding Work has been completed. Said verification shall be prepared and signed by qualified professionals and contain sufficient explanatory materials and documentation to establish the verity of the matters verified. If, in the exercise of its reasonable judgment, Novato determines that said information is inadequate to demonstrate completion, and, after notice, NCRA has failed to supply to Novato (within a reasonable period of time) reasonably described, supplemental information evidencing satisfactory completion, Novato shall have the right to inspect the track located within the Novato Area to ensure that all of the Track Welding Work has been satisfactorily completed. The number, advance notice and timing of said inspections must be reasonable. Said inspection may be completed using Novato's own forces or an expert hired by Novato to complete said inspection work, all at the sole cost and expense of NCRA, and NCRA shall grant access to Novato to NCRA's track and facilitate Novato's inspection thereof by transporting Novato's representatives on and along said track for such inspection purposes if Novato requests such transportation. NCRA shall pay for or reimburse Novato for the costs and expenses Novato incurs in connection said inspection within thirty (30) days after NCRA receives an invoice from Novato therefor. Any dispute concerning the reasonableness and/or necessity of said inspections and/or the costs thereof shall be resolved through invocation of the remedial provisions of Section XVI(A).

C. NCRA shall maintain all its tracks in the Novato Area which are welded pursuant to Section VII(A) in a welded condition in perpetuity.

VIII. UTILIZATION OF ENVIRONMENTALLY FRIENDLY ENGINES ONLY

A. NCRA and NWPCo represent and warrant that they are committed to using the most environmentally friendly, state-of-the-art engines available in the operation of freight and other

train engines on the NWP Line. NWPCo shall immediately take those steps necessary to order and acquire (by purchase, lease or any other manner that grants to NWPCo the right to own, possess, operate and/or use; collectively "acquire") at the earliest possible date (with a targeted acquisition date of no later than January 2010) locomotive engines to be operated on and in Low Emission Engine Division which meet the following criteria: (1) the engine, if not a genset, has been certified as meeting the United States Environmental Protection Agency's ("EPA") Tier 3 emission standards applicable to non-road, locomotive train engines or any other emission standard applicable to non-road, locomotive engines, whichever is more stringent; or (2) the engine, if a genset, has been verified by the California Air Resources Board as (i) "Ultra Low Emitting Locomotive"or (ii) meeting any other emission standard applicable to gensets, whichever is more stringent (collectively, the "Engine Emission Criteria"). As respects all its operations in the RRD from mile post 35.5 (approximately 5 miles north of the City's northern-most boundary) to mile post 18.7 (approximately 5 miles east of the City's eastern-most boundary) (the "Low Emission Engine Division"), NWPCo shall acquire and use only locomotive engines meeting one of said Engine Emission Criteria, provided such locomotive engines are available to be acquired. If NWPCo does not acquire such an engine by January 2010, it shall submit to the City a statement, executed by its president under penalty of perjury, explaining all the reasons why it did not acquire same, and shall further state what steps it intends to take (and when) to so acquire same. Said statement shall be delivered to the City no later than January 31, 2010. If NWPCo fails to acquire such a locomotive engine on or before January 1, 2010, it will forthwith continue to take those steps necessary to acquire such a locomotive engine in an expeditious, prompt and diligent manner until such a locomotive engine is acquired. The NWPCo shall continue acquiring locomotive engines meeting the applicable Engine Emission Criteria in order to replace non-road engines which do not meet said Engine Emission Criteria until by no later than December 31, 2011, all of the non-road engines it uses in the Low Emission Engine Division meet the applicable Engine Emission Criteria. The obligations imposed upon NWPCo in this Section VIII (A) shall be equally applicable to and binding upon NCRA.

B. Notwithstanding the foregoing, from and after the date (i) the EPA first certifies any locomotive engine (genset or non-genset) as meeting EPA's Tier 4 (or any other comparable or successor) emission standards or (ii) the EPA's Tier 4 (or any other comparable or successor) emission standards for locomotive engines become effective, whichever is earlier (the "Tier 4 Trigger Date"), NCRA agrees, represents and warrants that it will not, nor will it permit NWPCo or any person or entity operating any type of engine on or in the Low Emission Engine Division to acquire or purchase a locomotive engine (genset or non-genset) to be operated on or in the Low Emission Engine Division that does not meet EPA's Tier 4 emission standards. NCRA and NWPCo. shall make every reasonable effort to use engines meeting said EPA's Tier 4 emission standards in the Low Emission Engine Division as soon after the Tier 4 Trigger Date as is possible, and any new and/or replacement engines acquired after the Tier 4 Trigger Date and used in the Low Emission Engine Division shall comply with EPA's Tier 4 emission standards; and under all circumstances, if and when NCRA and/or NWPCo use engines meeting EPA's Tier 4 emission standards in any other part of the RRD, they must also be exclusively used in the Low Emission Engine Division.

C. The Parties agree that the ordering, acquiring and/or using of engines meeting the Low Emission Criteria or EPA's Tier 4 emission standards described in Section VIII(B), above, may or may not constitute a "project" within the meaning of CEQA and/or NEPA. Notwithstanding Sections VIII(A) and (B) to the contrary, prior to ordering, acquiring and using said engines, NCRA, in the exercise of its sole discretion, shall determine whether such activities are CEQA or NEPA projects or activities otherwise subject to CEQA and/or NEPA. If NCRA makes the determination that ordering, acquiring and/or using such engines as contemplated above are subject to CEQA and/or NEPA, then it shall comply with CEQA and/or NEPA before undertaking the activity which is subject to CEQA and/or NEPA. And, if based upon its CEQA and/or NEPA review the NCRA determines that such engines may not be used in the Low Emission Engine Division and, as a result thereof or for any other reason, if by December 31, 2011, all of the non-road engines used in the Low Emission Engine Division do not meet one of

the Engine Emission Criteria, then as of midnight on December 31, 2011, NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind and at any time in or on the Low Emission Engine Division until all of the non-road engines used in the Low Emission Engine Division meet the Engine Emission Criteria and all of the other Work is performed and completed.

D. Commencing January 1, 2010, NWPCo and/or NCRA shall submit annual written verification to Novato as to whether the engines being operated on the Low Emission Engine Division by NCRA or NWPCo or any other person or entity operating locomotive engines on the Low Emission Engine Division are in conformance with the requirements of Section VIII of this Consent Decree. Said verification shall identify, by appropriate number, model, type, name of owner and manufacturer, all non-road engines (genset or non-genset) used on the Low Emission Engine Division for the previous twelve month period. Said verification shall be prepared and signed by qualified professionals and contain sufficient explanatory materials and documentation to establish the verity of the matters verified. If, in the exercise of its reasonable judgment, Novato determines that said information is inadequate to demonstrate compliance with this Consent Decree, and, after notice, NCRA has failed to supply to Novato (within a reasonable period of time) reasonably described, supplemental information evidencing satisfactory compliance, upon reasonable notice to NCRA, Novato shall have the right to cause said engines to be inspected in order to verify that the engines being used on the Low Emission Engine Division are in conformance with the requirements of this Consent Decree, and NCRA shall grant to Novato and its representatives access to said engines for said purpose, all at the sole cost and expense of NCRA. The number, advance notice and timing of said inspections must be reasonable. NCRA shall pay for or reimburse Novato for the costs and expenses Novato incurs in connection said inspections within thirty (30) days after NCRA receives an invoice from Novato therefor. Any dispute concerning the reasonableness and/or necessity of said inspections and/or the costs thereof shall be resolved through invocation of the remedial provisions of Section XVI (A).

E. NCRA shall submit advance written notice to Novato whenever NCRA or NWPCo or any other person or entity operating freight trains on the Low Emission Engine Division intends to acquire one or more locomotive engines (genset or non-genset). Said notice shall include: the number of engines to be purchased, the manufacturer of said engines, the make, model and size of the engine, the date of delivery of same, the date the engine is slated to commence operating on the Low Emission Engine Division, whether said engines have been certified by the EPA or verified by the California Air Resources Board ("CARB") and, if so, the EPA or CARB emission standard certified or verified, respectively, and the purpose for which said engine(s) will be used on the Low Emission Engine Division. In addition, during the first three years of NWPCo's freight operations on the Low Emission Engine Division, NCRA shall provide advance, written notice to the City of any significant changes in the operations of NCRA and/or NWPCo occurring in the Low Emission Engine Division. Said notice shall be delivered to the City reasonably in advance of the initiation of such changes and provide a reasonably detailed explanation of the change, its anticipated commencement and its anticipated termination, if any. Thirty (30) days in advance of the commencement of operations of any freight train or engine in the Low Emission Engine Division, NCRA shall provide written notice to the City of said commencement of operations.

IX. INSTALLATION OF LANDSCAPING IMPROVEMENTS IN THE NOVATO AREA

A. Design and Approval of the Landscaping Improvements Along the NWP Line in the Novato Area

1. Within one hundred twenty (120) days of the Effective Date, NCRA shall provide to the City the opportunity to identify the location, number, type and size of the plants and trees which the City desires to be planted by the NCRA in order to mitigate the impacts of the direct glare on residences and businesses from the lights of trains traveling through Novato. At times and on

dates mutually acceptable to the Parties, NCRA shall simulate a typical freight train engine traveling through Novato at night in order for the City to be able to ascertain the most efficacious locations of such landscaping. Once the City has identified the location, number, type and size of the plants and trees which it desires planted by the NCRA, the NCRA shall prepare a design for the installation of said landscaping and necessary related irrigation along the NWP Line and within the NWP right of way in the Novato Area. Submittal of said designs to Novato shall be a condition precedent to commencement of freight or any other commercial operations on or in the Low Emission Engine Division. Said landscaping and necessary related irrigation shall be designed, planted, installed and maintained by the NCRA in such a manner as to cause said landscaping to grow and thrive such that it will shield residences and businesses from the direct glare of the lights from trains operating on the NWP Line in the Novato Area within two (2) years of planting ("Landscaping Improvements"). The design for said Landscaping Improvements shall be subject to the review and reasonable approval of Novato. Within a reasonable period of time after receipt of said design by Novato, Novato shall notify NCRA of its approval or disapproval of said design. In the event that Novato disapproves of said design, NCRA shall modify said design and resubmit same in accordance herewith. As to the first resubmittal and all other resubmittals by NCRA to Novato, within a reasonable period of time after receipt of said design(s) by Novato, Novato shall notify NCRA in writing of Novato's approval or disapproval of said design(s). In the event that the Parties can not reach agreement on design, the matter shall be resolved in accordance with the provisions for conflict resolution as set forth in Section XV of this Consent Decree. The City and NCRA shall consult with SMART concerning the design and installation of the Landscaping Improvements.

2. Prior to the commencement of work on the Landscaping Improvements, NCRA shall comply with Section V of this Consent Decree.

B. Installation by NCRA of the Landscaping Improvements Along the NWP Line in the Novato Area

After the City approves, in writing, the designs for the Landscaping Improvements, after NCRA has complied with CEQA, and irrespective of the source or availability of funding to NCRA, NCRA shall determine whether to install the Landscaping Improvements. If NCRA chooses to install the Landscaping Improvements, it shall do so by December 31, 2011, at its sole cost, and submit written verification to Novato that the Landscaping Improvements have been installed and completed. Said verification shall be prepared and signed by qualified professionals and contain sufficient explanatory materials and documentation to establish the verity of the matters verified. If, in the exercise of its reasonable judgment, Novato determines that said information is inadequate to demonstrate completion, and, after notice, NCRA has failed to supply to Novato (within a reasonable period of time) reasonably described, supplemental information evidencing satisfactory completion, Novato shall have the right to inspect the NWP Line within the Novato Area (and the private property described in Section IX(D) if consented to by the affected private property owners) to ensure that all of the Landscaping Improvements have been installed in accordance with the approved design and all applicable permits therefor. The number, advance notice and timing of said inspections must be reasonable. NCRA shall provide transportation along the NWP Line to Novato's representatives in order to permit said inspection to take place. Said inspection may be completed using Novato's own forces or an expert hired by Novato to complete said inspection work, all at the sole cost and expense of NCRA. NCRA shall pay for or reimburse Novato for the costs and expenses Novato incurs in connection said inspection within thirty (30) days after NCRA receives an invoice from Novato therefor. Any dispute concerning the reasonableness and/or necessity of said inspections and/or the costs thereof shall be resolved through invocation of the remedial provisions of Section XVI(A).

C. Maintenance of Landscaping Improvements.

Except as may be provided in Section IX(D), from and after the date of final completion

of the Landscaping Improvements, NCRA shall, at its sole cost and expense, be responsible for the maintenance, repair and replacement of all Landscaping Improvements. Said Landscaping Improvements shall be maintained in a good, viable and thriving condition at all times. Such maintenance shall include, but not be limited to planting, pruning, fertilization, irrigation and irrigation maintenance, pest control, and replacement of said Landscaping Improvements. In this regard, NCRA shall defend, indemnify and hold harmless Novato form any and all costs associated with the installation, maintenance, repair or replacement of the Landscaping Improvements.

D. Installation of Landscaping Improvements Outside the NWP Line Right of Way.

In the event that the NWP Line right of way is insufficient (in, e.g., width, size or location) to accommodate the Landscaping Improvements in any area such that the Landscaping Improvements must be installed on private property, NCRA shall solicit the consent of the owners of said property to install the necessary Landscaping Improvements on their private property. If consented to (in writing) by adjoining private property owners, NCRA shall design and after complying with CEQA, determine whether to install the landscaping improvements which can not be installed within the NWP Line right of way upon the private property of the consenting property owners (the "Private Landscape Improvements"). If the NCRA decides to install Private Landscaping Improvements, NCRA shall enter into a landscape maintenance agreement with the affected private property owners, guaranteeing the health of said Private Landscape Improvements for five (5) years from the date of installation thereof. Unless otherwise specified in said maintenance agreements for said Private Landscape Improvements, upon the expiration of said five (5) year period, NCRA shall no longer be responsible for irrigation, maintenance, repair and replacement of the Private Landscape Improvements.

X. INSTALLATION OF FENCING IMPROVEMENTS IN THE NOVATO AREA

A. Design and Approval of the Fencing Improvements Along the NWP Line in the Novato Area

1. Within one hundred twenty (120) days of the Effective Date , NCRA shall provide the City opportunities to travel along the NWP Line in the Novato Area to identify the location, scope, height, nature and length of fencing to be installed along both sides of the NWP Line from mile post 29.5 (north of the Rush Creek Place crossing) to mile post 25.9 (south of Hanna Ranch Road crossing) ("Fencing Area"). Within a reasonable time after the City has identified the location, scope, height, nature and length of fencing to be installed along both sides of the NWP Line in the Fencing Area, NCRA shall prepare a design for the installation of fencing consistent with the City's identification. The City shall consult with SMART and NCRA in designating the location, scope, height, nature and length of fencing to be installed along both sides of the NWP Line in the Fencing Area. Said fencing shall be designed in such a manner as to prevent access to the tracks by persons and animals except at lawful crossings ("Fencing Improvements") and shall be similar to the design of the Los Angeles Metro Rail Fencing, in terms of quality, strength, height and visual appearance. The design for said Fencing Improvements shall be subject to the review and reasonable approval of Novato. Within a reasonable period of time after Novato's receipt of said design, Novato shall notify NCRA of Novato's approval or disapproval of said design. In the event that Novato disapproves of said design, NCRA shall modify said design and resubmit same in accordance herewith. As to the first resubmittal and all other resubmittals by NCRA to Novato, within a reasonable period of time after the receipt of said design(s) by Novato, Novato shall notify NCRA in writing of Novato's approval or disapproval of said design(s). In the event that the Parties can not reach agreement on design, the matter shall be resolved in accordance with the provisions for conflict resolution as set forth in Section XV of this Consent Decree.

2. Prior to the commencement of work on the Fencing Improvements, NCRA shall comply with Section V of this Consent Decree.

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B. Installation by NCRA of the Fencing Improvements Along the NWP Line in the Fencing Area

After the City approves, in writing, the designs for the Fencing Improvements, after NCRA has complied with CEQA, and irrespective of the source or availability of funding to NCRA, NCRA shall determine whether to install and construct the Fencing Improvements. If NCRA chooses to construct and install the Fencing Improvements, its shall do so by December 31, 2011, at its sole cost, and submit written verification to Novato that the Fencing Improvements have been completed. Said verification shall be prepared and signed by qualified professionals and contain sufficient explanatory materials and documentation to establish the verity of the matters verified. If, in the exercise of its reasonable judgment, Novato determines that said information is inadequate to demonstrate completion, and, after notice, NCRA has failed to supply to Novato (within a reasonable period of time) reasonably described, supplemental information evidencing satisfactory completion, Novato shall have the right to inspect NWP Line within the Fencing Area to ensure that all of the Fencing Improvements have been installed in accordance with the approved design and all applicable permits therefor. The number, advance notice and timing of said inspections must be reasonable. NCRA shall provide transportation along the NWP Line to Novato's representatives in order to permit said inspection to take place. Said inspection may be completed using Novato's own forces or an expert hired by Novato to complete said inspection work, all at the sole cost and expense of NCRA. NCRA shall pay for or reimburse Novato for the costs and expenses Novato incurs in connection said inspection within thirty (30) days after NCRA receives an invoice from Novato therefor. Any dispute concerning the reasonableness and/or necessity of said inspections and/or the costs thereof shall be resolved through invocation of the remedial provisions of Section XVI(A).

C. Maintenance of Fencing Improvements

From and after the date of final completion of the Fencing Improvements NCRA shall, at it sole cost and expense, be responsible for the maintenance, repair and replacement of all Fencing Improvements. Said Fencing Improvements shall be maintained in a good condition at all times. Such maintenance shall include, but not be limited to inspection, repair of missing or broken parts, repair of all holes and replacement of the Fencing Improvements. In this regard, NCRA shall defend, indemnify and hold harmless Novato from any and all costs associated with the installation, maintenance, repair or replacement of the Fencing Improvements.

XI. FUND FOR IMPLEMENTATION OF AMELIORATIVE MEASURES

Along with the thirty (30) day notice of commencement of operations specified in Section VIII(E) and as a condition precedent to the commencement of said operations, NCRA shall pay to Novato the sum of One Hundred Thousand Dollars ($100,000.00) to fund measures or improvements which assist in ameliorating the effects of the activities of NCRA and/or NWPCo in the Novato Area, including but not limited to the installation of sound attenuation improvements such as dual pane windows and insulation within private and public structures affected by train noise. Novato may administer this fund in any manner it sees fit, in its sole and absolute discretion.

XII. INDEMNIFICATION AND INSURANCE

A. Indemnification

Novato shall not be responsible for any of the Work, or for NCRA's and/or NWPCo's performance or nonperformance of any part thereof. To the fullest extent permitted by law, NCRA hereby agrees to, and shall defend Novato with counsel reasonably acceptable to Novato, indemnify and hold Novato, its elective and appointive boards, commissions, officers, agents, and employees harmless from and against any and all allegations, claims, damages, disabilities, or expenses, including attorneys' fees, experts' fees, and witness costs that may be asserted or

incurred, as the case may be, by any person or entity, including liability for damages or claims for damage for personal injury, or death, as well as from claims for real or personal property damage arising out of or in connection with (i) the activities of NCRA and/or NWPCo in performing all or any portion of the Work addressed in this Consent Decree, (ii) NCRA's and/or NWPCo's performance or non-performance under this Consent Decree, (iii) NCRA's and NWPCo's violation or breach of this Consent Decree, (iv) Novato's approval of this Consent Decree (except for any claims NCRA may have against Novato for Novato's breach of this Consent Decree) or of any of the permits contemplated herein (v) Novato's compliance or non-compliance with the California Environmental Quality Act or any other law applicable to the approval, processing and implementation of the Work or any portion thereof, (vi) any soils subsidence, land slides or soil movement arising out of NCRA's and/or NWPCo's activities hereunder; (vii) NCRA's and/or NWPCo's handling, releasing, disposing, transporting or arranging for the handling, releasing, disposing or transporting of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction; (viii) the design, installation, operation and existence of the Work or any portion thereof; (ix) the maintenance of the Work or any portion thereof; and/or (x) NCRA's and/or NWPCo's violation of any law, ordinance or regulation, whether or not there is concurrent, passive negligence on the part of Novato, its elective and appointive boards, commissions, officers, agents, and employees, and regardless of the Novato's approval of any of the plans or specifications for the Work or any portion thereof or Novato's inspection, approval or acceptance of the Work or any part thereof and notwithstanding any limitation on the amount or type of damages or compensation payable by or for NCRA under Workers' Compensation, Disability, or other employee benefit acts, the acceptance of insurance required as a result of the issuance of any permits hereunder, or the terms, applicability, or limitations of any insurance held by NCRA. This indemnification clause also shall apply to any case where all or any portion of the Work performed is done under a contract entered into by Novato as agent of NCRA and such work is the proximate cause of any claim against Novato, and to any cause of action against Novato arising from the negligent provision of designs for, or the negligent construction,

performance, testing, planning, observation or supervision of, any work required by this Consent Decree. NCRA also indemnifies the Novato for any liability, cost, expense, including attorney's fees, incurred by the City in enforcing this Section. This Section shall survive termination of this Consent Decree for any reason. Except (a) as is provided in Section VI(E), (b) as to Novato's decision to establish Quiet Zones and its approval of the permits required to construct or effect Quiet Zone Improvements or Subsequent Quiet Zone Modifications and (c) as to Novato's compliance or non-compliance with the California Environmental Quality Act or any other law applicable to said decision and/or approvals, and notwithstanding anything to the contrary stated in the second through fourth sentences above, NCRA's indemnification obligation shall not extend to or include any claims, damages, injuries, costs, expenses and liability of any sort arising out of the establishment of Quiet Zones and/or the permitting, approval, planning, engineering, contracting, construction, installation, modification, operation, and/or functioning of the Quiet Zone Improvements or Subsequent Quiet Zone Modifications.

B. Insurance

Without limiting NCRA's indemnification provided hereinabove, NCRA shall take out and maintain at all times during the performance of the Work or any portion thereof, pursuant to this Consent Decree the following policies of insurance with insurers with a Best rating of no less than A:XI:

1. Workers' Compensation Insurance to cover its employees, and the NCRA shall require all contractors and subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to Novato.

In case any class of employees engaged in hazardous work pursuant to this Consent Decree is not protected under Workers' Compensation statutes, the NCRA shall provide, and shall cause its contractors and subcontractors to provide adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy shall provide that it will not be canceled or altered without first giving thirty (30) days prior notice to Novato.

Said Worker's Compensation policy shall have the following endorsement:

> "All rights of subrogation are hereby waived against the City of Novato, its officers and employees when acting within the scope of their appointment or employment".

2. Commercial General Liability Insurance including personal injury and property damage insurance for all activities of the NCRA and its contractors and subcontractors arising out of or in connection with this the performance of the Work or any portion thereof, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, products liability and completed operations, X,C,U hazards, vehicle coverage and non- owned auto liability coverage in an amount no less than $2 million dollars combined single limit personal injury and property damage for each occurrence.

Each such policy shall be endorsed with the following specific language:

> (a) The City of Novato is named as additional insured for all liability arising out of the work by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any

respect, directly, or indirectly, in the performance of the work.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(c) The insurance provided is primary and no insurance held or owned by the City of Novato shall be called upon to contribute to a loss.

(d) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the City of Novato.

3. Prior and as a condition precedent to commencing any part of the Work, NCRA shall notify the City of said commencement and submit to Novato documentation evidencing NCRA's required insurance including Certificates of Insurance and properly executed endorsements for the additional coverages required hereunder. Any deductible or self-insured retentions must be declared to and approved by Novato. At the option of Novato, insurer shall reduce or eliminate such deductible or self-insured retention as respects Novato, it officers and employees or NCRA shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

XIII. ATTORNEY'S FEES AND COSTS

NCRA agrees to pay to Novato three hundred twenty-five thousand dollars ($325,000.00) for the attorneys' fees and costs incurred by Novato in the litigation of the following cases: *City of Novato v. North Coast Railroad Authority, et al.*, Marin County Civil Case No. CV 074645; and *North Coast Railroad Authority v. Daniel Keen, et al.* Marin County Civil Case No. CV 080269, including the attorneys' fees and costs incurred in the investigation, negotiation and drafting of

this Consent Decree up through the Effective Date. NCRA shall pay to Novato one hundred thousand dollars ($100,000.00) of said fees and costs on the Effective Date. Within thirty (30) days after the Effective Date, NCRA shall deposit the balance of said fees and costs ("The Fee Balance"), in trust, with a neutral trustee mutually acceptable to the Parties. On the earlier of (i) the date that the NCRA issues its notice to proceed or otherwise authorizes commencement of any work under or described in the Trackway Contract (which said issuance or authorization the NCRA shall, in writing and by email, immediately notify the City and trustee of) or (ii) one hundred five (105) days after October 22, 2008 (the "Fee Balance Due Date"), the trustee shall release and pay over to the City The Fee Balance; provided, however, that in the event that prior to the Fee Balance Due Date (aa) litigation is initiated challenging this Consent Decree and (bb) in that litigation an injunction or stay order is issued restraining commencement of or further work under the Trackway Contract, then upon issuance and service of said injunction or restraining order the trustee shall release and pay over to NCRA The Fee Balance. Notwithstanding anything to the contrary stated above, under no circumstances may any work described in the Trackway Contract commence or be performed or conducted by any person or entity prior to The Fee Balance (and accrued interest) being paid to the City. In the event that The Fee Balance is not paid to the City on or before the Fee Balance Due Date, then The Fee Balance shall accrue interest at the rate of 5% per annum or the change in the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose area from the Fee Balance Due Date, whichever is greater, until fully paid. The costs of the trustee shall be paid by NCRA and the trustee shall be governed by instructions mutually acceptable to the Parties, provided that said instructions shall be consistent herewith, and in this connection, the trustee shall deliver The Fee Balance by cashier's check or money order to the City immediately upon receipt of NCRA's notice that NCRA has authorized work under the Trackway Contract to proceed or automatically and without notice upon the 105th day after October 22, 2008, to wit, February 4, 2009, whichever occurs first. Further, NCRA agrees to pay all attorneys fees and costs incurred in monitoring and enforcing this Consent Decree. For purposes of this Section XIII only, "work" shall mean those acts performed at, on or in the RRD of the NWP Line that physically alter,

move, improve, or change any portion of the tracks, rails, bridges, ties, facilities, railbed or other improvements of or located on the RRD of the NWP Line. Additional attorneys' fees and costs incurred by Novato after the Effective Date shall be invoiced to NCRA on a monthly basis. and shall be due and payable within thirty (30) days after NCRA's receipt thereof. NWPCo guarantees NCRA's performance of NCRA's obligations under this Section XIII.

XIV. SUBMITTAL OF CONSENT DECREE TO COURT AND DISMISSAL

A. Upon receipt of: (a) written agreements (in a form and with content subject to the reasonable approval of Novato) from all parties to the instant litigation agreeing to bear their own costs and attorneys' fees incurred in defending said litigation; (b) as to Cooper, Ghilotti, NCRA and NWPCo only, a written agreement releasing Novato from and waiving any claims against Novato for any damages or injuries sustained or claimed to have been sustained by said parties as a result of the filing and prosecution of the instant litigation and the injunctions issued by the Court herein, dismiss the instant litigation without prejudice.; (c) corporate and agency resolutions approving this Consent Decree and authorizing its execution by the Parties; and (d) assurances that the $100,000 fee and cost payment described in Section XIII shall be paid to the City on the Effective Date, the City shall submit this Consent Decree to the Court for execution and entry.

B. Upon entry of this Consent Decree [redacted] the underlying action shall be dismissed without prejudice only as to real parties in interest Cooper, Ghilotti, Cal Trans, CTC and CDFG; and as to NCRA and NWPCo., the underlying action shall be dismissed without prejudice as to the causes of action alleged in the Second Amended Petition for Writ of Mandamus and Complaint for Declaratory Relief and Third Amendment to Petition for Writ of Mandamus and Complaint for Declaratory Relief pertaining to NCRA's Manual, the Lease and the Bridge Financing and Security Agreement between NCRA and NWPCo dated September 12, 2007; provided, however, that irrespective of the parties and causes of action dismissed hereby,

the Court shall retain jurisdiction over the Parties to enforce this Consent Decree.

XV. DISPUTE RESOLUTION

A. Binding Arbitration

Any dispute between the Parties arising under this Consent Decree the resolution of which is expressly subjected to the dispute resolution provisions of this Section XV, shall be settled by binding arbitration in Marin County, California, or such other place as the Parties agree upon, in accordance with the procedures set forth below and the rules of the American Arbitration Association (or the rules of some other arbitration provider agreed upon by the Parties), to the extent said rules are not inconsistent with the procedures set forth below; provided, however, with respect to any dispute arising from events which, in either party's reasonable judgment, create an Emergency condition or other condition which if not immediately resolved will substantially and adversely affect the rights and/or interests of one party or the other and, as such, requires immediate and decisive action by one or both of the Parties for its resolution, then either Novato or NCRA may take such action, including filing court actions, as either of them deems reasonably necessary to preserve such party's rights under this Consent Decree, without first subjecting such dispute to arbitration under this Section. During the pendency of any arbitration proceeding under this Section XV, the time for (a) performance of any obligation, (b) exercise of any right, and (c) cure of any default, arising under or by virtue of this Consent Decree, which is the subject of or directly relates to the matter being arbitrated in such proceeding, shall be tolled, and extended for a period equal to the amount of time consumed by the arbitration process, and ending ten (10) business days after the rendering of the written final decision in the arbitration proceeding as to such matter.

B. Triggering of Arbitration Procedure; Appointment of Arbitrators.

With respect to any dispute subject to arbitration under this Section, before commencing the arbitration procedure described herein, each party shall be obligated to meet in person with the other party within five (5) days after notice of the dispute from the other party and negotiate in good faith in an effort to resolve such dispute without arbitration. If within the later to occur of (a) five (5) days after such meeting or (b) ten (10) days after the initial notice of dispute (if the Parties have been unwilling or unable to meet in person to discuss the matter), the dispute remains unresolved, either party ("Initiating Party") may give notice of such party's demand for arbitration of such dispute to the other party ("Other Party"), stating in such notice the Initiating Party's appointment of an arbitrator to serve in such arbitration proceeding. The Other Party shall appoint a second arbitrator and notify the Initiating Party of such appointment within fourteen (14) days after receipt of the Other Party's notice of demand and appointment. Within ten (10) days after the Initiating Party's receipt of the Other Party's notice of appointment, the two (2) arbitrators so selected shall appoint a third arbitrator from a list of persons supplied by the American Arbitration Association (or alternative arbitration provider agreed upon by the Parties). Any fee to initiate the arbitration shall be paid by the Initiating Party, provided that the arbitration costs and fees, including any initiation fee, ultimately shall be borne as determined by the arbitrator.

C. Awards; Time for Decisions.

The three (3) arbitrators appointed and selected as described above shall render their decision and make an award as to the matter in dispute within sixty (60) days after the date of selection of the third arbitrator, and any such decision and award shall be made according to the Consent Decree of any two (2) of the three (3) arbitrators.

D. Limited Discovery.

In any arbitration proceeding conducted under this Section, each party shall have the right to

the following limited discovery from any other party to the proceeding: (a) one (1) deposition, (b) thirty-five (35) interrogatories, whether "specially prepared" or in "official form" as such terms are used in California Code of Civil Procedure ("CCP"), and (c) the right to obtain and review any documents relevant to the subject matter of the arbitration proceeding possessed by or under the control of any other party which are not subject to a claim of attorney-client or attorney work-product privilege. The Parties' other rights and obligations with respect to the discovery process shall be governed by CCP Sections 2016 and 2036, as from time to time amended, provided, that nothing in such sections shall apply to expand or increase any party's limited rights of discovery as set forth in this Section.

E. Arbitrators' Powers.

The arbitrators appointed and selected pursuant to this Section shall have the rights and powers set forth below and in CCP sections 1283.05(b) and (c), and CCP section 1283.05(d) shall be applicable to any disputes arbitrated pursuant to this Consent Decree:

(i) the arbitrators may require one or more pre-heating conferences;

(ii) the arbitrators shall apply the rules of law, including the rules of evidence, unless expressly waived in writing by both Parties;

(iii) the arbitrators' statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(iv) the arbitrators shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the arbitration, provided that the arbitrators shall not have the authority to award punitive damages; and

(v) the arbitrators may award costs and/or attorneys' fees to the party that the arbitrators determine was the prevailing party.

F. Conclusiveness.

Any award shall be a conclusive determination of the matter and shall be binding upon Novato and NCRA and, except as is provided in CCP §§ 1286.2 and 1286.6, shall not be contested by either of them. Upon receipt of an award in writing by the arbitrators the Parties shall comply with any injunctive order or order compelling specific performance, in accordance with the terms of the order, and the losing party shall make payment in the amount, if any, set forth in such award to the prevailing party. The arbitrators' award may be enforced in any court of competent jurisdiction.

XVI. REMEDIES AND ENFORCEMENT

A. Except as expressly otherwise provided herein, the Parties shall have all rights to enforce this Consent Decree by injunction, contempt, specific performance, declaratory relief, damages and/or any other remedy in equity and at law available to enforce an agreement and/or order of this Court.

B. Except for the dispute resolution procedures specified in Section XV and the specific disputes the resolution of which is expressly required to be effected pursuant to Section XV , no remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

C. NCRA shall be liable to Novato for any costs, claims, damages, liability or expenses of whatever nature or kind, direct or indirect, including interest at the maximum rate allowed by law from the date of notification of such cost and expense until paid, and reasonable attorneys' fees,

which are directly or indirectly incurred by reason of the enforcement of this Consent Decree.

XVII. EFFECTIVE DATE

The "Effective Date" of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XVIII. RETENTION OF JURISDICTION AND REPORTING

A. Pursuant to Cal. Code of Civ. Proc. §664.6, this Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Parties for the purpose of enforcing the terms of this Consent Decree. Until this Consent Decree is fully performed by the Parties, all applicable statutes, rules or court orders affecting timely prosecution of this action, including the 5-year dismissal statute , are tolled.

B. Commencing on March 31, 2009, and continuing every six months thereafter until NCRA has fully complied with this Consent Decree, NCRA shall submit, in writing, a report to [redacted] Novato that: (i) describes the actions which have been taken toward achieving compliance with this Consent Decree during the previous six (6) months; (ii) includes a summary of all results of tests and all other data received or generated by NCRA and/or NWPCo in the previous six (6) months relative to NCRA's compliance herewith; (iii) identifies all work plans, plans and other deliverables required by this Consent Decree and completed and submitted during the previous six (6) months; (iv) describes all actions which are scheduled for the next six (6) months and provide other information relating to the progress of implementing and/or installing the Work ; (v) includes information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work ; and (vi) includes any modifications to this Consent Decree which the Parties and NWPCo have approved.

XIX. SEVERABILITY

Any provision of this Consent Decree which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect; provided, however, that should any of this Consent Decree's provisions imposing limitations upon the operations of the NWP Line, including but not limited to the provisions restricting use of the Low Emission Engine Division to six, one-way freight train trips per week, the provisions precluding any freight operations if all the Work is not completed by December 31, 2011, and the provisions prohibiting trains and engines from operating on or in the Low Emission Engine Division from 7:00 p.m. to 8:00 a.m., be set aside or invalidated, then, until the Parties agree otherwise, except for Work Engines and maintenance vehicles, no trains or engines may operate on or in the Low Emission Engine Division, and between the hours of 7:00 p.m. to 8:00 a.m., only Work Engines may operate and, then, only in the event necessary and only for such time and to the extent required to address an Emergency.

XX. PUBLIC COMMENT

The parties hereto agree that Novato may make any oral or written statement to the public or press that Novato believes in the exercise of its sole and absolute judgment is warranted or desired with respect to this Consent Decree, the instant action, and/or NCRA's and NWPCo's conduct and actions.

XXI. MODIFICATION

A. Schedules for completion of the Work or any part thereof specified in this Consent Decree or of any payments required to be made herein may be modified by agreement of the Parties. All such modifications shall be made in writing.

B. No modifications shall be made to the provisions of this Consent Decree without written notification to and written approval of the Court.

C. Nothing in this Section shall be deemed to alter the Court's power to enforce, supervise or modify this Consent Decree.

XXII CERTIFICATION OF COMPLETION

A. Unless and until the City certifies in writing that NCRA and/or NWPCo have fully and satisfactorily performed all the Work, NCRA and NWPCo:

(i) shall not operate in or on the Low Emission Engine Division any freight train or freight engine except that they may run no more than a cumulative total of six, one-way freight train trips per week (Monday through Sunday) each with no more than eighteen (18) cars; and

(ii) shall not operate in or on the Low Emission Engine Division any locomotive engine or train of any type between the hours of 7:00 p.m. and 8:00 a.m., except for Work Engines which may be operated between said hours only in the event necessary and only for such time and to the extent required to address an Emergency; and should NCRA fail to complete all the Work and fail to have same certified as complete pursuant to this Section by December 31, 2011, thereafter NCRA and NWPCo shall be prohibited from operating, and they shall not operate, any freight trains or freight engines of any kind and at any time in or on the Low Emission Engine Division until all of the Work is so performed, completed and certified; provided, however, that notwithstanding anything to the contrary stated herein, should NCRA and/or NWPCo fail to complete all the Work and fail to have same certified as complete pursuant to this Section by December 31, 2011, then, at City's option:

1) the Parties shall mediate the appropriate remedy for such failures under procedures that are mutually acceptable to the Parties; or

2) NCRA and NWPCo shall pay to the City, within sixty (60) days after receipt of a demand therefor, an amount equal to the reasonable estimate

of the costs of completing the Work which remains uncompleted as of December 31, 2011, including engineers', professionals' and City staff costs reasonably necessary and incident thereto, which said amount the City shall use to effect said uncompleted Work; and NCRA and NWPCo shall cooperate fully with the City, including allowing the City to go upon NCRA property and rights of way in the Low Emission Engine Division and using NCRA and NWPCo personal property, to effect said uncompleted Work; or

3) NCRA and NWPCo shall cease freight operations in the Low Emission Engine Division and take all steps necessary to immediately terminate said freight operations consistent herewith; provided, however, that should NCRA and/or NWPCo be prevented, by legal process, from terminating freight operations, then, NCRA and/or NWPCo shall pay to the City the amount pursuant to and specified in Section XXII(A)(ii)(2), above, which amount the City shall utilize in accordance with said Section XXII(A)(ii)(2).

B. Within thirty (30) days after NCRA concludes that all phases and parts of the Work have been fully performed, NCRA shall so certify to Novato by submitting a written report by a registered professional engineer or other qualified and licensed professional certifying that the Work has been completed and/or performed in full satisfaction of the requirements of this Consent Decree. If, after review of the report, Novato reasonably determines that any portion of the Work has not been completed in accordance with this Consent Decree, Novato will notify the NCRA in writing of the activities that must be undertaken to complete the Work, including a schedule for performance of such activities consistent with this Consent Decree. NCRA shall perform all activities described in Novato's notice in accordance with the specifications and schedules established therein.

C. Upon the City's determination that the Work has been fully and satisfactorily performed, it shall issue its notice to NWPCo and NCRA certifying the same.

D. Any dispute arising out of the City's declination to certify that the Work has been fully and satisfactorily performed shall be resolved by invocation of the remedies specified in Section XVI(A).

E. Any dispute arising out of the City's determination of the amount that may be owed to the City under Section XXII (A)(ii)(2) or (3) shall be resolved by invocation of the remedies specified in Section XVI(A).

XXIII. GENERAL PROVISIONS

A. Commencing upon the date of filing this Consent Decree, and to the extent the real or personal property is owned or access to the property is controlled by NCRA and/or NWPCo, NCRA and NWPCo agree that Novato and its representatives, shall have access at all times (upon reasonable notice) to the NWP Line, the engines and all other such property to which access is required for the implementation of this Consent Decree, for the purpose of conducting activity related to this Consent Decree, including but not limited to:

1. monitoring the Work;
2. verifying any data or information submitted to Novato; and
3. conducting investigations and inspections relating to the Work.

B. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

C. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to

the individuals specified below at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties hereto in writing. Notice shall be given either personally, by depositing same in the United States Mail, by first class mail, registered or certified, postage prepaid or emailed along with depositing same in the United States Mail by first class, postage prepaid. Notice shall be deemed delivered on the date it is personally delivered, three days after it is delivered by U.S.Mail or on the date it is emailed, respectively, as long as the posting requirements specified immediately above are complied with.

To the City of Novato:

City Manager
City of Novato
75 Rowland Way #200
Novato, CA 94945
pthompson@ci.novato.ca.us

And:

Jeffrey A. Walter
Walter & Pistole
670 W. Napa St., Suite F
Sonoma, CA 95476
jwalter@walterpistole.com

To the North Coast Railroad Authority:

Mitch Stogner
Executive Director
419 Talmage Road
Suite M
Ukiah, CA 95482
mitch.stogner@northcoastrailroad.org

And:

Christopher J. Neary
110 South Main St., Suite C
Willits, CA 95490
cjneary@pacific.net

To Northwestern Pacific Railroad Company:

Douglas H. Bosco
37 Old Courthouse Square, Suite 200
Santa Rosa, CA 95404
dbosco@boscolaw.com

D. Except as expressly provided herein, nothing in this Consent Decree is intended or shall

be construed to limit or preclude Novato from exercising its authority under any law, statue or regulation. Furthermore, nothing in this Consent Decree is intended or shall be construed to limit or preclude any other government agency, department, board or entity from exercising its authority under any law, statute or regulation. Nothing in this Consent Decree is intended or shall be construed to limit or preclude any person from exercising any of his/her rights under any law, statute or regulation.

E. This Consent Decree constitutes the entire agreement between the parties hereto and may not be amended, supplemented or modified except as provided for in this Consent Decree.

F. The undersigned representatives of NCRA, NWPCo and Novato certify that they are each fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this Consent Decree, and corporate or public agency resolutions, as the case may be, evidencing said authorizations shall be delivered to each Party by the other Parties prior to this Consent Decree being submitted to the Court for approval and entering.

G. NCRA, NWPCo and Novato hereby agree not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree.

H. This Consent Decree may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

I. Time is of the essence in this Consent Decree and every provision contained herein.

XXIV. FORCE MAJEURE

In the event that NCRA and/or NWPCo are delayed in or prevented from completing and having the City certify as complete each and every part of the Work on or before December 31,

2011 by reason of: (1) the issuance of an injunction or other order by a court of competent jurisdiction which prevents the commencement or completion of the work contemplated to be performed under Contract T-3, the Trackway Contract and/or Sections VI, VII, VIII, IX, and/or X of this Consent Decree, or (2) delay in excess of 120 days occasioned by (i) arbitration contemplated by this Consent Decree or (ii) court proceedings invoked pursuant to Section XXII(D), for so long as such delay is not caused by any act or omission by NCRA and/or NWPCo, said December 31, 2011, date shall be extended by a period of time equal to the period of such delay or prevention.

XXV. CROSS GUARANTEES

NWPCo guarantees NCRA's performance of each and every obligation that is NCRA's to perform under this Consent Decree pertinent to (a) the Quiet Zone Improvements and establishing Quiet Zones covering the Tmok Crossings, (b) the payment of the City's attorneys' fees and costs set forth in Section XIII, and (c) the payment of one hundred thousand dollars ($100,000.00) pursuant to Section XI. NCRA guarantees NWPCo's performance of each and every obligation that is NWPCo's to perform under this Consent Decree.

IT IS SO STIPULATED.

Dated: 10-30-06

NORTH COAST RAILROAD AUTHORITY

By: _____

Allan Hemphill, Chairman

Dated: _____

NORTHWESTERN PACIFIC RAILROAD COMPANY

By: _____

John H. Williams, President

2011 by reason of: (1) the issuance of an injunction or other order by a court of competent jurisdiction which prevents the commencement or completion of the work contemplated to be performed under Contract T-3, the Trackway Contract and/or Sections VI, VII, VIII, IX, and/or X of this Consent Decree, or (2) delay in excess of 120 days occasioned by (i) arbitration contemplated by this Consent Decree or (ii) court proceedings invoked pursuant to Section XXII(D), for so long as such delay is not caused by any act or omission by NCRA and/or NWPCo, said December 31, 2011, date shall be extended by a period of time equal to the period of such delay or prevention.

XXV. CROSS GUARANTEES

NWPCo guarantees NCRA's performance of each and every obligation that is NCRA's to perform under this Consent Decree pertinent to (a) the Quiet Zone Improvements and establishing Quiet Zones covering the Track Crossings, (b) the payment of the City's attorneys' fees and costs set forth in Section XIII, and (c) the payment of one hundred thousand dollars ($100,000.00) pursuant to Section XI. NCRA guarantees NWPCo's performance of each and every obligation that is NWPCo's to perform under this Consent Decree.

IT IS SO STIPULATED.

Dated:_____

NORTH COAST RAILROAD AUTHORITY

By:_____

Allan Hemphill, Chairman

Dated: October 30, 2008

NORTHWESTERN PACIFIC RAILROAD COMPANY

By: John H. Williams

John H. Williams, President

10-30-8 By: _____
Douglas H. Bosco, General Counsel

Dated: _____ CITY OF NOVATO

By: _____
Pat Eklund, Mayor

IT IS SO ORDERED [redacted] and upon entry of this Consent Decree [redacted] the preliminary injunction issued by this Court by orders dated January 22, 2008 and February 6, 2008, shall be dissolved.

Dated: _____ _____
James R. Ritchie, Judge, Superior Court

By: _____
Douglas H. Bosco, General Counsel

Dated: 10 - 30 - 08

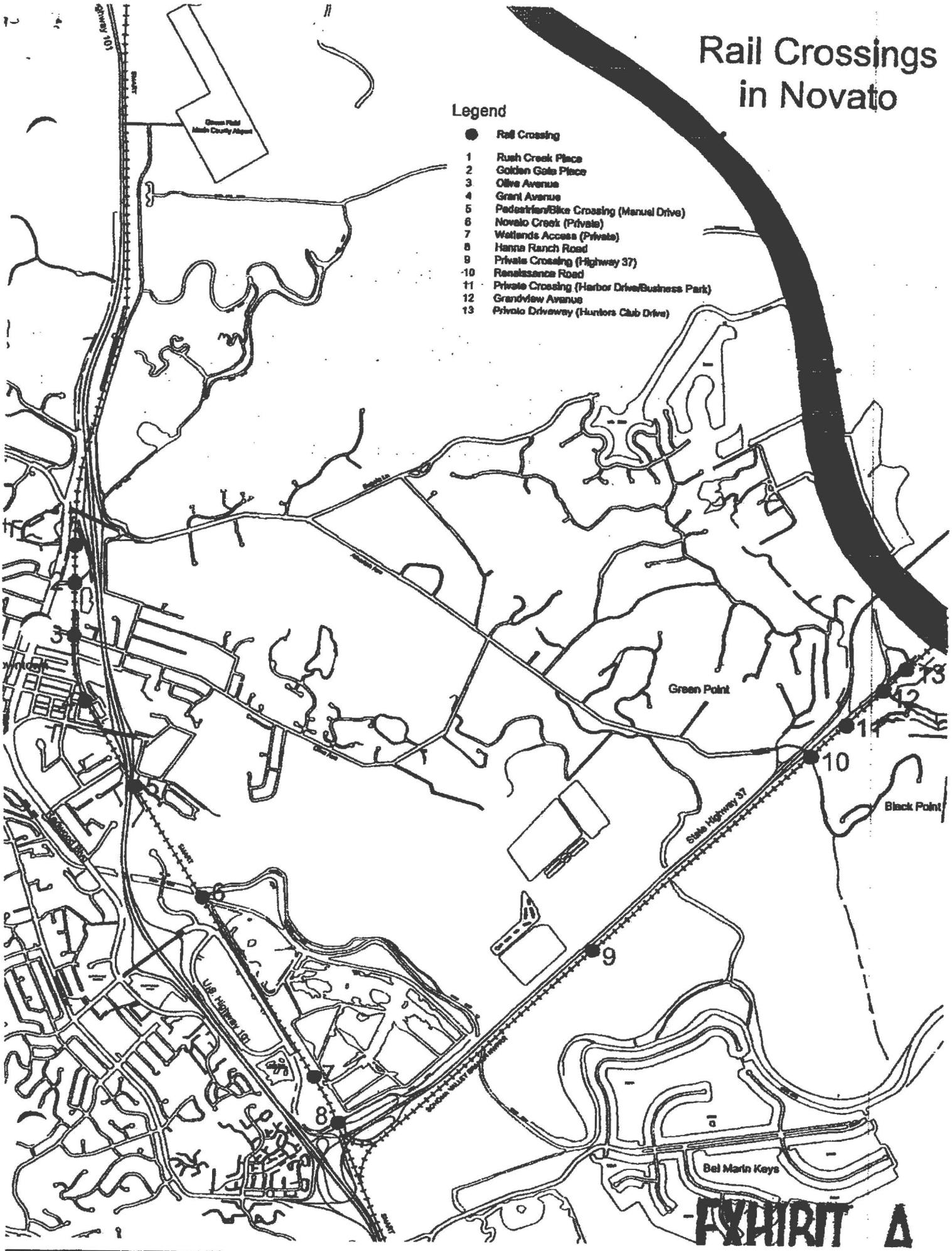
CITY OF NOVATO

By: _____
Pat Eklund, Mayor

IT IS SO ORDERED, ADJUDGED AND DECREED and upon entry of this Consent Decree and Stipulated Judgment, the preliminary injunction issued by this Court by orders dated January 22, 2008 and February 6, 2008, shall be dissolved.

Dated: 11/3/08

JAMES R. RITCHIE
James R. Ritchie, Judge, Superior Court


Rail Crossings in Novato
Legend
Rail Crossing
1 Rush Creek Place
2 Golden Gate Place
3 Olive Avenue
4 Grant Avenue
5 Pedestrian/Bike Crossing (Manuel Drive)
6 Novato Creek (Private)
7 Wetlands Access (Private)
8 Hanna Ranch Road
9 Private Crossing (Highway 37)
10 Renaissance Road
11 Private Crossing (Harbor Drive/Business Park)
12 Grandview Avenue
13 Private Driveway (Hunters Club Drive)
Green Point
Black Point
State Highway 37
U.S. Highway 101
Bel Marin Keys
EXHIBIT A

North Coast Railroad Authority

Administration and Contracting Policy Manual

February 2010

North Coast Railroad Authority
419 Talmage Road, Suite M,
Ukiah, CA 95482
(707) 463-3280

Forward

The North Coast Railroad Authority (NCRA) Administration and Contracting Policy Manual sets forth the policies to be used in conducting NCRA fiscal and business management efforts. The guidance for all policies contained in this manual is documented in NCRA Resolution No. 2001-05, included as Appendix A to this manual, found at the end of Chapter 0100. Many aspects of NCRA employees' work require that each individual exercise a certain level of discretion, judgment and initiative. This manual can provide guidance toward approach and solution development for the items that are beyond the scope of the fixed routines that are outlined herein.

The NCRA Administration and Contracting Policy Manual is designed to:

- Orient employees to the existing procedures and policies relevant to their position and responsibilities.
- Provide a reference source for handling fixed routines anticipated for NCRA employees.
- Specify sources and resources that can assist employees in performing tasks and more complex assignments.

The NCRA Administration and Contracting Policy Manual (ACPM) will be reviewed in the third quarter of each fiscal year, and updates will be presented to the Board of Directors by the end of the fiscal year. Suggestions for improvement, clarification and organization are welcomed, and should be directed to Mrs. Heather Lindsteadt at (707) 463-3280, 419 Talmage Road, Suite M, Ukiah, CA 95482, or ncra.heather@sbcglobal.net.

/s/
Mitch Stogner, Executive Director
North Coast Railroad Authority

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UPDATES

This manual dated February 2010 updates the September 2009 and November 2007 manual approved by the North Coast Railroad Authority Board of Directors on April 28, 2005. Following are the updated sections.

Location	Description	Change
Cover	Date of Manual	February 2010
0302.4	Job Description	Executive Assistant Job Description Added
2400	Minutes and Audio Recording of Meetings	New section added

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UPDATES

This manual dated September 2009 updates the November 2007 manual approved by the North Coast Railroad Authority Board of Directors on April 28, 2005. Following are the updated sections.

Location	Description	Change
Cover	Date of Manual	September 2009
0907	Trail Guidelines	New Trail Guidelines Policy

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UPDATES

This manual dated November 2007 updates the March 2006 manual approved by the North Coast Railroad Authority Board of Directors on April 28, 2005. Following are the updated sections.

Location	Description	Change
Cover	Date of Manual	October 2007
0505.5	CAL-Card Users Manual	New CAL-Card User Policy. Section 0505.5
2300	Governmental Operations	New Conduct of Closed Session – Sections 2300-2306(C)

AR 10626

Updates

This manual dated July 2006 updates the March 2006 manual approved by the North Coast Railroad Authority Board of Directors on April 28, 2005. Following are the updated sections.

Location	Description	Change
Cover	Date of Manual	September 2006
0506	Timekeeping	A Board Director signs the Executive Director's timecard.
0210.1	Vacation	Each employee may request and receive payment at the base hourly rate for up to eighty (80) hours of accrued vacation in a twelve month period to be approved by the Executive Director, or if the employee is the Executive Director, to be approved by the Board of Directors.
0801.6	Fee Schedule	The applicant shall be responsible to reimburse the NCRA for the Authority's actual costs and expenses of processing the application, preparing the encroachment agreement, and other related documents and overseeing the placement or construction of improvements to the property. The following minimal fee schedule for Fiscal Year 2006-07 has been adjusted from the prior December 2002 rates based on the Consumer Price Index – All Consumers for San Francisco, Oakland, San Jose, CA. The following fees will be used, and all contracts will be written with an escalation provision based on an annual increase to take effect every July based on the CPI change from the current year April as compared to the prior year April. The following fees will be accompanied by a $324 application fee. Long term agreements may have higher fees depending on usage, and will include the escalation factor described above. 1. Temporary rights-of-entry permits: $541 2. Private Roadway Crossings: $324 per year 3. Utility Crossings: $324 per year 4. Commercial Crossings: $3,244 per year 5. Special Event Permits: $108 per day 6. All other Encroachments: Market Value as determined by the Executive Director, Property Management Committee, or Board of Directors 7. Unauthorized Encroachments: Twice the applicable fee applied retroactively 8. Late fees for delinquent annual encroachment payments.

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Updates

Location	Description	Change
		This fee schedule is subject to periodic revision from time to time by the NCRA Board of Directors.

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1400 Implementation of California Environmental Quality Act

1401 Scope of Policy and General Provisions

Legal Requirement: As a public agency, North Coast Railroad Authority ("NCRA") is required to comply with the California Environmental Quality Act ("CEQA"). The Act requires public agencies to adopt a policy that serves to implement the CEQA for activities within the jurisdiction of the agency.

1402 Adoption of Guidelines

North Coast Railroad Authority ("NCRA") adopts the Guidelines for the Implementation of the California Environmental Quality Act; California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387 and Appendices A-K ("CEQA Guidelines") in its entirety as found at http://ceres.ca.gov/topic/env_law/ceqa/guidelines/.

1403 Environmental Officer

The Environmental Officer which shall be appointed from time-to-time by the Board of Directors shall be responsible for Preliminary Review, as defined in CEQA Guidelines Section 15060, of applications for permits or other entitlements for use. The Executive Director of NCRA shall serve as the Environmental Officer until such other designation is made. In addition to review of the application for completeness, the Preliminary Review shall include a review for exemption from CEQA.

1404 Possible Exemptions

1. The activity is not a project as defined in CEQA Guidelines Section 15378
2. The project has been granted an exemption by statute (per CEQA Guidelines Article 18, commencing with Section 15260) or by categorical exemption (per CEQA Guidelines Article 19, commencing with Section 15300)
3. Activities for which it can be seen with certainty that there is no possibility for a significant effect on the environment
4. Projects commenced prior to the adoption of CEQA.

1405 Preliminary Review

1405.1 Public Resources Code 21080(b)(10)

In conducting the Preliminary Review, the Environmental Officer shall also consider Public Resources Code 21080(b)(10), which provides exception for projects instituting or increasing passenger commuter services on rail or highway rights-of-way.

1405.2 No Authority

Following is a listing of projects or permits over which the NCRA has only ministerial authority:

1. Approval of Operator maintenance activities
2. Approval of environmental remediation activities by Union Pacific Railroad pursuant to that certain Environmental Remediation Agreement dated April 30, 1996.

1405.3 Unusual Circumstances

The Environmental Officer shall take into consideration CEQA Guidelines Section 15300.2 when conducting the Preliminary Review for categorical exemption from CEQA. The Environmental Officer shall consider whether any of the activities are in a particularly sensitive location or whether there is a reasonable possibility that unusual circumstances occur. Unusual circumstances may include:

1. Potential significant direct, indirect, and cumulative impacts, including but not limited to potential impacts on properties protected by Section 4(f) of the U.S. Department of Transportation Act or Section 106 of the National Historic Preservation Act; potential impacts on federally listed species or species that are proposed to be listed; potential impacts on federally designated critical habitat or habitat that is proposed to be designated; potential impacts on federally designated essential fish habitat; and potential impacts on state listed species, candidates for state listing, or their suitable habitat.
2. Substantial controversy on environmental grounds
3. Inconsistency with any federal, state, or local law or requirement or administrative determination relating to environmental aspects of the activity
4. Acquisition of more than minor amounts of right-of-way, such minor acquisitions not requiring any commercial or residential displacements
5. Activities in "waters of the United States" requiring pre-construction notification to the Army Corps of Engineers for authorization under a Department of the Army nationwide permit, or requiring authorization under a Department of the Army individual permit

1405.4 Technical Studies and Analyses

Also prior to determining that a project is categorically exempt from CEQA, the Environmental Officer shall consider such technical studies and analyses as the Environmental Officer deems necessary to assess the possibility that unusual circumstances occur. Examples of technical studies and analyses that may be needed include, but are not limited to:

1. Cultural resources studies
2. Biological resources studies
3. Determination-level evaluation of the presence or absence of waters of the United States
4. Delineation-level evaluation of the locations and area/extent of waters of the United States
5. Floodplain report

1405.5 Best Management Practices

No project shall be categorically exempt from CEQA unless it is implemented in accordance with any applicable practicable best management practices (BMP's) promulgated by the

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Department of Fish and Game, North Coast Regional Water Quality Control Board, Department of Toxic Substance Control, and California Department of Transportation, and in Department of the Army nationwide permit conditions, for application to similar activities. Prior to determining that a project is categorically exempt from CEQA, the Environmental Officer shall identify practicable BMP's, and shall require that projects deemed to be categorically exempt from CEQA be implemented in accordance with such BMP's.

1405.6 Typical Exempt Activities

Specific activities anticipated to be commonly undertaken by the NCRA which fall into the exempt classes given in CEQA Guidelines Sections 15301 through 15332 include (note that certain resource agency permits may be required depending on the location, prior adoption of best management practices, or time of year):

1. Removal of non-functioning rail ties utilizing hand tools or small mechanized equipment, requiring only minor excavation, placement of fill or spoils, or disturbance of existing structures; and transport of non-functioning rail ties to off-site locations for storage, recycling, disposal, or other fate, in accordance with applicable local, state, and federal regulations. (Class 30 categorical exemption)
2. Removal of non-functioning, inert debris (e.g., abandoned equipment, machinery, sheet metal, fasteners, woody debris, etc.) utilizing hand tools or small mechanized equipment, requiring only minor excavation, placement of fill or spoils, or disturbance of existing structures; and transport of non-functioning, inert debris to off-site locations for storage, recycling, disposal, or other fate, in accordance with applicable local, state, and federal regulations. (Class 1 categorical exemption)
3. Weed removal and minor land clearing activities using hand tools or small mechanized equipment that are required for the operation, repair, maintenance, or minor alteration of existing structures, facilities, or mechanical equipment, and are limited to areas historically and routinely subjected to such management. (Class 4 categorical exemption)
4. Pest management activities consisting of the application of herbicides, insecticides, rodenticides, fungicides, etc., using hand tools or small mechanized equipment, that are required for the operation, repair, or maintenance of existing structures, facilities, or mechanical equipment, that are conducted in accordance with applicable local, state, and federal regulations, and are limited to areas historically and routinely subjected to such management (Class 4 categorical exemption)
5. Removal of empty drums, canisters, buckets, above-ground storage tanks, and other containers formerly holding petroleum products, hazardous waste, or other toxic substances that have been stabilized and containerized and are designated for a lawfully permitted designation, utilizing hand tools or small mechanized equipment, and requiring only minor excavation, placement of fill or spoils, or disturbance of existing structures; and transport of empty drums, canisters, buckets, above-ground storage tanks, and other containers formerly holding petroleum products, hazardous waste, or other toxic substances that have been stabilized and containerized to off-site locations for storage, recycling, disposal or other fate, in accordance with applicable local, state, and federal regulations. (Class 30 categorical exemption)

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6. Removal of obstructions from existing culverts and replacement of blocked culverts, using hand tools or small mechanized equipment, and requiring only minor excavation, placement of fill or spoils, or disturbance of existing structures, and only following consultation with the Department of Fish and Game and other agencies as deemed appropriate by the Environmental Officer. (Class 1 categorical exemption)
7. Sampling, onsite testing, and laboratory analyses to characterize the release or threat of release of a hazardous waste or substance, utilizing hand tools or small-mechanized equipment including but not limited to drilling equipment. (Class 6 categorical exemption)
8. Pumping of contaminated water from sumps and other depressions into enclosed containers for onsite testing, onsite treatment, or transport to offsite locations for storage, recycling, disposal or other fate, in accordance with applicable local, state, and federal regulations. (Class 30 categorical exemption)
9. Excavation of contaminated soil and sludges using hand tools, backhoes, front-end loaders, and other small mechanized equipment, and transport to other onsite or offsite locations for treatment, storage, or disposal in accordance with applicable local, state, and federal regulations. (Class 30 categorical exemption)
10. Construction of storm water detention basins, sediment control basins, and other activities needed to control surface water run-on and run-off, that are part of a Storm Water Pollution Prevention Plan (SWPPP), utilizing hand tools, backhoes, front-end loaders, and other small mechanized equipment. (Class 30 categorical exemption)
11. Repair and maintenance of existing facilities.

1405.7 Notice of Exemption

Upon the finding that a project is exempt from CEQA, the Environmental Officer shall issue a notice of exemption and in addition to the notice required by the CEQA Guidelines, provide notice to the Department of Fish and Game, the Department of Toxic Substance Control, the North Coast Regional Water Quality Control Board and other local, state, and federal agencies, as deemed relevant by the Environmental Officer.

1406 Initial Study

1406.1 Initial Study Required if Not Exempt

If the Environmental Officer determines that the project is not exempt, the Environmental Officer shall prepare the Initial Study.

1406.2 Negative Declaration

After completion of the Initial Study, no negative declaration shall be issued except upon not less than thirty (30) days public notice and opportunity for public review and comment. In addition, and until the Consent Decree cited above is lifted, no negative declaration shall be issued except upon not less than thirty (30) days notice and opportunity to comment being given to the Department of Fish and Game, the Department of Toxic Substance Control, the North Coast Regional Water Quality Control Board, and other public agencies identified in the Initial Study, including federal agencies. Following the lifting of the Consent Decree, the notice and

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opportunity for public review and comment shall be provided consistent with the then applicable requirements contained in the CEQA and its Guidelines.

1407 Miscellaneous Procedures

1407.1 Notice Requirements

All public notices shall be delivered by the Environmental Officer for posting in the main branch, public libraries for the counties of Trinity, Humboldt, Mendocino, Sonoma, Marin and Napa, irrespective of the location of the project being considered being in any specific location.

1407.2 Public Comment Response

The Environmental Officer shall be responsible for evaluating and responding to all public comments. The Environmental Officer shall be responsible for determining the adequacy of environmental documents and certifying the documents to the Board of Directors of NCRA.

1407.3 Document Review

The Environmental Officer or his or her designee shall be present at all times environmental documents are reviewed and considered by the Board of Directors of NCRA.

1407.4 Filing

The Environmental Officer shall be responsible for filing all environmental documents with agencies entitled to notice.

1407.5 Delegation of Authority

The Environmental Officer, upon written notice to the Board of Directors, may delegate authority delegated hereunder to the Environmental Officer or to a staff member or to a consultant hired specifically for the purpose of compliance with CEQA.

1407.6 Schedule

The Environmental Officer shall perform all activities in compliance with CEQA Guidelines, except where longer time frames are provided in this implementation policy.

1407.7 Documenting Compliance

In addition to the above-described duties, the Environmental Officer shall be responsible for documenting compliance with other environmental regulations as may apply to the activities of the NCRA, including but not limited to the National Environmental Policy Act, the federal Endangered Species Act, the federal Clean Water Act, the federal Clean Air Act, and the California Endangered Species Act, etc.

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1500 Inadvertent Archeological Discovery

1501 Introduction

The North Coast Railroad Authority (NCRA) is a public entity established by the State of California to manage that portion f the former Northwestern Pacific Railroad (NWP) right-of-way extending from Lombard in Napa County, west to Ignacio in Marin County, and north through Marin, Sonoma, Mendocino and Trinity counties to Samoa in Humboldt County, a total length of approximately 317 miles (see figure 1).

NCRA is developing and implementing comprehensive approaches to: (1) compliance with all aspects of the Consent Decree and Stipulated Judgment for Mendocino County Superior Court Case No. CV80240 (CD); and (2) a Capital Project Program that addresses immediate and long term needs for the restoration of the former NWP. While distinctly separate and independent, these two activities are related and overlapping. In addition, the Protocol is to be used for all NCRA activities and operations.

Each goal involves field tasks during both planning and implementation phases that have the potential to inadvertently discover potentially significant archaeological finds. Such discoveries may involve Native American burials or skeletal remains, ash-stained midden soils containing a variety of artifacts and constituents reflecting past Native American diet, technologies and subsistence practices (e.g., shellfish, faunal bone, flaked-stone, etc.), architectural features such as prehistoric housepit floors or historic building foundations, caches of tools or other materials, and the like.

Compliance with various State and Federal environmental and historic preservation laws, policies and regulations is required to minimize or avoid impacts to significant cultural resources, including inadvertently discovered archaeological deposits. NCRA is the lead agency responsible for compliance with CaliforniaState laws. The agency responsible for compliance with Federal laws is determined to be on the basis of funding sources and permitting requirements. The possible lead and/or participating federal agencies include, but may not be limited to: the Federal Highways Administration (FHWA) in cooperation with the California Department of Transportation (Caltrans); the Federal Emergency Management Agency (FEMA); and the U.S. Army Corps of Engineers (USACOE), which oversees compliance with permits issued subject to Section 404 of the Clean Water Act. Each of these Federal Agencies has established counterpart regulations, policies and procedures designed to streamline or programmatically comply with Federal Historic preservation laws.

1502 Applicable Laws

A number of applicable State and Federal historic preservation laws, regulations and policies address the need to manage potentially significant and/or sensitive (e.g., human remains) archaeological resources discovered inadvertently on lands like those administered by NCRA. Several of these laws impose serious penalties for violations, for example, involving unauthorized excavation and illicit collecting of artifacts, knowingly damaging or destroying significant resources discovered inadvertently, or possession of or trafficking in Native American remains.

1. National Historic Preservation Act (NHPA)
2. National Environmental Policy Act (NEPA)
3. California Environmental Quality Act (CEQA) revised regulations concerning properties eligible for inclusion in the California Register of Historical Resources;
4. Section 7050.5 of the California Health and safety Code and Section 5097.98 of the Public Resources Code (PRC) requirements for handling inadvertent discoveries of Native American skeletal remains and associated grave goods found on private or state lands, and PRC 5097.99 (as amended by SB 447) penalties for possessing or obtaining Native American remains or associated grave goods;
5. California Native American Historic Resource Protection Act of 2002 (SB 1816, adding Chapter 1.76 to Division 5 of the PRC), which imposes civil penalties including imprisonment and fines of up to $50,000 per violation, for persons who unlawfully and maliciously excavates upon, removes, destroys, injures, of defaces a Native American historic, cultural, or sacred site that is listed or may be listed in the California Register of Historic Resources.

1503 Standard Operating Procedures

The following standard operating procedures (SOPs) for handling inadvertent Archeological discoveries shall be adopted for all phases and aspects of work carried out by or for NCRA. Once formally adopted and until such time as it is terminated by NCRA written instructions, these SOPs shall apply to NCRA's employees, officers and agents, including contractors whose activities may potentially expose and impact significant or sensitive resources. The intent is to avoid or minimize direct or indirect impacts to significant archeological discoveries that may qualify for inclusion in the California Register of Historical Resources and the National Register of Historic Places.

General: NCRA shall designate a representative who shall act as NCRA's Point of Contact (POC) and who shall be notified immediately upon the inadvertent discovery of an archeological find or the inadvertent discovery of Native American remains and/or grave goods. The designated representative may be NCRA's Project Manager or a designated Archeologist or Native American representative. Should NCRA's POC be NCRA's Project Manager, NCRA shall make arrangements for the services of a qualified archeologist and as applicable, a Native American Representative who shall assist NCRA's POC in making a rapid assessment of the potential significance of a find, assist in the consultation with other appropriate parties, and assist in the development and implementation of a Treatment Plan.

1503.1 SOP for Inadvertent Archaeological Discovery (General)

1. Ground-disturbing activities shall be immediately stopped if potentially significant historic or archeological materials are discovered. Examples include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits.

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Ground-disturbing project activities may continue in other areas that are outside the discovery locale.

2. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated the SOP, of if on-site at the time of the discovery, by the Monitoring Archeologist.
3. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by NCRA if considered prudent to avoid further disturbances.
4. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for its treatment and disposition:
   - NCRA's authorized Point-of-Contact (POC) and NCRA's Executive Director;
   - The Contractor's authorized POC;
   - Authorized POC of applicable agencies;

And in cases where a known or suspected Native American burial or skeletal remains are uncovered, the SOPs under paragraph B shall also be followed and the following contacts shall be notified:

1. The Coroner of the county where the discovery is made; and
2. The Native American Heritage Commission (NAHC) in Sacramento (916-653-4082).
3. Ground-disturbing project work at the find locality shall be suspended temporarily while NCRA, its Lead Archeologist, State Office of Historic Preservation (OHP) staff, and other applicable parties consult about appropriate treatment and disposition of the find. Ideally, a Treatment Plan may be decided within three working days of discovery notification., Where the project can be modified to avoid disturbing the find (e.g., through project redesign), this may be the preferred option. Should Native American remains be encountered, the provision of State laws shall apply (see blow). The treatment Plan shall reference appropriate laws and include provisions for analyses,. Reporting, and final disposition of data recovery documentation and any collected artifacts or other archeological constituents. Ideally, the field phase of the Treatment Plan may be accomplished within 5 working days after its approval, however, circumstances may require longer period for data recovery.
4. NCRA officers, employees and agents, including Contractors, shall be obligated to protect significant cultural resource discoveries and may be subject to prosecution of applicable State of Federal laws are violated. In no event shall unauthorized persons collect artifacts.
5. Any and all inadvertent discoveries shall be considered strictly confidential, with information about their location and nature being disclosed only to those with a need to know, NCRA's authorized representative shall be responsible for coordination with any requests by or contacts to the media about a discovery.
6. SOPs shall be communicated to NCRA's field work force including its Contractors, employees, officers or agents and such communications may be made through weekly tailgate safety briefings.

7. Ground-disturbing work at a discovery locale may not be resumed until authorized by NCRA's POC.

1503.2 SOP for Inadvertent Discovery of Native American Remains and Grave Goods

The following policies and procedures for treatment and disposition of inadvertently discovered Native American remains shall apply.

1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern of affiliated Native Americans. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
2. Violators of Section 7050.5 of the California Health and Safety Code may be subject to prosecution to the full extent of applicable law (felony offense).
3. In the event that known or suspected Native American remains are encountered, the above procedures of SOP paragraph A for Inadvertent Archeological Discovery (General) shall be followed (including notifications to those identified in A 4 (a-e)), in addition to the provisions of California law (Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the California Public Resources Code), as follows.
4. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
5. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) of the deceased Native American. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD).
6. Within 24 hours of their notification by the NAHC, the MLD will be granted permission by NCRA to inspect the discovery site it they so choose.
7. Within 24 hours of their notification by the NAHC, the MLD may recommend to the NCRA's POC means for treating and disposing, with the appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal of and non-destructive or destructive analysis of human remains and items associated with Native American burial. Only those osteological analyses (if any) recommended by the NLD may be considered and carried out.
8. Whenever NAHC is unable to identify a MLD, or the MLD identified fails to make a recommendation, or NCRA's POC rejects the recommendation of the MLD and mediation between the partied by NAHC fails to provide measures acceptable to NCRA, NCRA shall cause the re-burial of the human remains and associated grave offerings with appropriate dignity on the property in a location not subject to further subsurface disturbance.

1503.3 SOP for Documenting Inadvertent Archeological Discoveries

1. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall make written notes available to NCRA describing: the

circumstances, date, time, location and nature of the discovery; date and time each POC was informed about the discovery; and when and how security measures were implemented.

2. NCRA's POC shall prepare or authorize the preparation of a summary report which shall include: the time and mature of the discovery; who and when parties were notified; outcome of consultations with appropriate agencies and Native American representatives; how, when and by whom the approved Treatment Plan was carried out; and final disposition of any collected archaeological specimens.
3. The Contractor Foreman or authorized representative shall record how the discovery downtime affected the immediate and near-term contracted work schedule, for purposes of negotiating contract changes where applicable.
4. Monitoring Archaeologists and Native American Representatives shall maintain daily field notes.
5. Treatment Plans and corresponding Data Recovery Reports shall be authored by professionals who meet the Federal criteria for Principal Investigator Archeologist and reference the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-44737).
6. Final disposition of all collected archaeological materials shall be documented in the final Data Recovery Report. Long-term storage of collections may be housed at the facility nearest to the discovery locale that conforms to Federal guidelines for curation of archaeological collections (36 CFR 79).
7. Final Data Recovery Reports along with updated standard California site record forms (DPR 523 series) shall be filed at the appropriate InformationCenter of the California Historical Resources Information System (CHRIS).
8. Confidential information concerning the discovery location, treatment and final disposition of Native American remains shall be forwarded to the Sacred Sited Inventory maintained by the NAHC.

1504 List of Acronyms

Caltrans	California Department of Transportation
CD	Consent Decree
CFR	Code of Federal Regulations
CEQA	California Environmental Quality Act
CHRIS	California Historic Resources Information System
FEMA	Federal Emergency Management Agency
FHWA	Federal Highways Administration
FR	Federal Register
MLD	Most Likely Descendent
NAHC	Native American Heritage Commission
NCRA	NorthCoast Railroad Authority
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NWP	Northwestern Pacific Railroad
OHP	Office of Historic Preservation (State of California)
POC	Point of Contact
PRC	Public Resources Code (State of California)

AR 10642

SB	Senate Bill (State of California)
SOP	Standard Operating Procedure
USACOE	U.S. Army Corps of Engineers

AR 10643

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on May 4, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–11281 Filed 5–9–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 4]

Northwestern Pacific Railroad Co.; Notice of Partial Relief from Emergency Order No. 21

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of partial relief.

SUMMARY: In response to a November 11, 2010, petition, this notice provides partial relief for the Northwestern Pacific Railroad Co. (NWP Co.) from the limitations of FRA Emergency Order No. 21. The relief allows the NWP Co. to re-open to rail traffic approximately 61.1 miles of trackage owned by Sonoma Marin Area Rail Transit (SMART) [1] extending between (1) a point designated as Brazos Junction, milepost (MP) B49.8 and the Ignacio Wye, MP 5–25.8 and (2) a point designated as MP 62.9 near Windsor, California. Emergency Order No. 21 remains in effect between MP 62.9 near Windsor, California and MP 295.5 at Arcata, California, except for the partial relief from Emergency Order No. 21 that FRA granted in Emergency Order No. 21, Notice 2, for approximately 1.5 miles of track and certain yard track in Willits, California.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Administrator of FRA. *See* 49 U.S.C. 103; 49 CFR 1.49. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death, personal injury or significant harm to the environment. * * *" 49 U.S.C. 20104(a). These orders may impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." *Id.* Likewise, FRA is authorized to grant relief from an emergency order when the agency deems that the unsafe condition or practice that gave rise to the emergency order no longer exists.

Background on Emergency Order No. 21

On November 25, 1998, FRA issued Emergency Order No. 21, Notice No. 1 addressed to "the Northwestern Pacific Railroad," requiring it to—

> discontinue operation by anyone of trains on [that railroad's] rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the [railroad] inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

63 FR 67976 (Dec. 9, 1998). The only exception to the prohibition on train operations over that rail line was for "the operation of work trains for the specific and sole purpose of effecting repairs on the railroad." 63 FR 67978.

On May 28, 1999, FRA granted the petition of the Northwestern Pacific Railway Company, LLC (NWPY) [2] for partial relief from Emergency Order No. 21 for approximately 1.5 miles of track owned by the North Coast Railroad Authority (NCRA) [3] near Willits, California, including trackage between the junction of the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard. Emergency Order No. 21, Notice No. 2, 64 FR 30557 (June 8, 1999).

On February 1, 2001, FRA granted NWPY's petition for partial relief from Emergency Order No. 21 for approximately 40.8 miles of track, owned by Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and NCRA, between MP 49.8S (formerly designated as MP 63.4, near Lombard, California) and MP 43.0, near Petaluma, California. Emergency Order No. 21, Notice No. 3, 66 FR 9625 (Feb. 8, 2001).[4] NWPY ceased operations in September 2001.

Standard for Obtaining Full Relief From Emergency Order No. 21

In order to gain full relief from Emergency Order No. 21, NWP Co. must take the following actions, which were specified in that order:

(1) Properly repair and inspect all grade crossing signals and certify to the FRA Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. * * *

(3) Update, correct and/or redraw circuit plans for each the grade crossing signal system to meet compliance with 49 CFR 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans shall be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to Class 1 track standards as detailed in 49 CFR part 213. [**Note:** Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37.

(7) Furnish FRA with a 12-month track maintenance plan.* * *

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. * * *

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections that will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain written approval from the FRA Administrator that all of the requirements of this Emergency Order have been met and properly performed. * * *

63 FR 67978–67979.

Emergency Order No. 21, Notice No. 1, allows for partial relief for designated portions of the trackage subject to the Emergency Order. The railroad is first required to meet all of the system-wide requirements, as listed in Items 2, 4, 7, 8, and 9, above. The railroad may then obtain from

[1] On January 1, 2003, SMART was formed as an entity that was formally comprised of the Golden Gate Bridge, Highway and Transportation District, Marin County, and the Northwestern Railroad Authority.

[2] In Emergency Order 21, Notices No. 1–3, Northwestern Pacific Railway Company, LLC was referred to as "Northwestern Pacific Railroad" and "NWP"; however, the correct name of the railroad was "Northwestern Pacific Railway Company, LLC," and was more commonly referred to as "NWPY" in the railroad industry.

[3] The North Coast Railroad Authority is "a California public agency formed pursuant to California Government Code Section 93000 *et seq.*," that "owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata." 64 FR 30557.

[4] The November 11, 2010, request by NWP Co. and the NCRA for partial relief includes the track for which relief was granted on February 1, 2001.

FRA partial relief for any portion of the line for which all of the requirements of the Emergency Order are met. 63 FR 67979.

November 11, 2010, Request for Partial Relief From Emergency Order No. 21

By letter dated November 11, 2010, in accordance with the terms of Emergency Order No. 21, Notice No. 1, NWP Co. and the NCRA [5] formally requested that FRA grant partial relief from the Emergency Order for the SMART-owned rail line between (1) a point designated as Brazos Junction, milepost MP B49.8 and the Ignacio Wye, MP 5–25.8 and (2) a point designated as MP 62.9 near Windsor, California.

In this letter, NWP Co and NCRA, represented to FRA that it has met all of the system-wide requirements of Emergency Order No. 21, namely—

- NWP Co. has adopted a set of grade crossing signal standards and instructions that is acceptable to FRA;
- NWP Co. has entered into a contract with Summit Signal, Inc., a signal maintenance company, for the maintenance of NWP Co. signals. NWP Co. has provided proper and adequate test equipment for all signal maintainers;
- NWP Co. has furnished to FRA a 12-month track maintenance plan that includes all of the necessary information required by Emergency Order No. 21;
- NWP Co. has furnished to FRA a copy of the employee training program on the Federal Track Safety Standards;
- NWP Co. has certified, in writing, that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections that will be performed by that individual.

FRA has verified these representations and determined that NWP Co. is in compliance at this time with the system-wide requirements; therefore, NWP Co. is eligible to request partial relief for the designated segment between (1) Brazos Junction, milepost MP B49.8 and the Ignacio Wye, MP 5–25.8 and (2) MP 62.9 near Windsor, California. FRA will monitor the railroad to determine whether it continues to comply with these system-wide requirements.

During the week of January 3, 2011, FRA inspected the track for which the NWP Co. has requested relief from Emergency Order No. 21 in its November 11, 2010, letter. The track inspection revealed certain FRA Class 1 defective conditions, which were reviewed and discussed with representatives of NWP Co. the same week. A follow-up inspection was conducted on January 6, 2011, and FRA determined that NWP Co. had corrected the defective track conditions that were identified on the main track and siding.

During the week of January 3, 2011, FRA also inspected the grade crossing signal systems on the track for which NWP Co. requested relief from Emergency Order No. 21 and found that not all necessary repairs, inspections, and tests had been performed. During the week of January 31, 2011, FRA conducted a follow-up inspection and determined that NWP Co. had corrected the defective grade crossing signal systems conditions and that all grade crossing signal systems on the track segment for which NWP Co. is seeking relief are in compliance with FRA regulations.

Grant of Partial Relief

In light of the foregoing, I grant NWP Co. partial relief from Emergency Order No. 21. The segment of track owned by SMART extending between (1) a point designated as Brazos Junction, milepost MP B49.8 and the Ignacio Wye, MP 5–25.8 and (2) a point designated as MP 62.9 near Windsor, California, may open immediately to rail traffic. The issuance of this notice of partial relief does not preclude imposition of another emergency order governing the segment of track should conditions of the track or rail operations deteriorate to the extent that I believe they pose an imminent and unacceptable threat to public safety.

Issued in Washington, DC, on May 4, 2011.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2011–11272 Filed 5–5–11; 11:15 am]

BILLING CODE 4910–06–P

[5] North Coast Railroad Authority is the owner of a perpetual, exclusive freight easement over the trackage involved in the request. On September 13, 2006, NWP Co. was formed and entered into a lease agreement with the NCRA as the sole operator of all freight trains, work trains, and passenger excursion trains over the line. NWP Co. is also designated as the company that will manage and maintain freight railroad operations over the NCRA and SMART properties.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration (FTA)

[FTA Docket No. 2011–0029]

Notice of Request for the Reinstatement of an Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the following information collection: Bus Testing Program.

DATES: Comments must be submitted before July 11, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Rymarz, Office of Research, Demonstration and Innovation, (202) 366–6410, or *e-mail: gregory.rymarz@dot.gov.*

SUPPLEMENTARY INFORMATION:

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

JUNE 2011 AMENDMENT TO AGREEMENT FOR THE RESURRECTION OF OPERATIONS UPON THE NORTHWESTERN PACIFIC RAILROAD LINE AND LEASE

WHEREAS North Coast Railroad Authority ("NCRA") and Northwestern Pacific Railroad Company now known as Northwestern Pacific Railroad Company, a California Corporation, ("NWP") entered into an Agreement For The Resurrection of Operations Upon The Northwestern Pacific Railroad Line and Lease, ("Agreement") providing for the resumption of operations upon the Northwestern Pacific Railroad Line on September 13, 2006;

WHEREAS freight operations contemplated by the Agreement will commence forthwith;

WHEREAS the parties have committed to renegotiation of the Agreement to reflect the current conditions and revised contemplations by the parties;

WHEREAS there is insufficient time to conduct such negotiations prior to the commencement of operations. The parties therefore enter into this Amendment as an interim agreement in contemplation that the parties will promptly meet and negotiate in good faith the amendment of the Agreement.

THERFORE it is agreed as follows:

1. Article IV is amended as follows: The conditions relating to execution of an Equipment Lease and receipt of necessary approvals relating to Private Activity Tax Rules are no longer necessary and are deleted. The condition relating to obtaining the necessary consent from Sonoma Marin Area Rail Transit ("SMART") is deemed satisfied. The condition relating to compliance with the California Environmental Quality Act (CEQA) is deemed satisfied as to the Russian River Division.

2. A provision is added to VIIB and numbered as paragraph 7 as follows:

NWP must comply with the Mitigation Monitoring and Reporting Plan set forth in the resolution certifying the environmental impact report on the Russian River Division by the North Coast Railroad Authority Board of Directors on June 20, 2011.

3. A provision is added to VIIB and numbered as paragraph 8 as follows:

> The operational obligations set forth in the Operating and Coordination Agreement between the NCRA and SMART dated June 2011 shall be assumed by NWP upon the commencement of freight operations. In those instances where the Operating and Coordination Agreement with SMART is inconsistent with this Agreement, the provisions

of the Operating and Coordination Agreement shall prevail except that:

(a) NWP shall perform normalized maintenance to the track class certified by the Federal Railroad Administration in May 2011 and any inconsistency with SMART shall be disregarded;

(b) NWP shall not carry any hazardous materials unless and until any necessary independent clearance under the California Environmental Quality Act is obtained.

NCRA shall timely enforce the provisions of the agreement and in the event that NCRA fails to do so, NWP may do so in NCRA's stead.

4. Article X relating to compensation shall be renegotiated by the parties. The parties agree to promptly meet in good faith to renegotiate the provisions of Article X to provide that the lease payments will be a monthly agreed-upon percentage of gross lease revenue, and further to negotiate the conversion of the Advanced Lease Payments made by NWP to the NCRA since October 2006 to a current payable.

5. The track class requirements set forth in section V11 B4 are amended to the class of track recognized by the Federal Railroad Administration in its release of Emergency Order 21 in May 2011.

6. Article XVI relating to a negotiation reopener is amended to reflect that the negotiations contemplated by this Agreement shall replace the renegotiation reopener as to the SMART Operation and Coordination Agreement.

7. Article XB2 relating to transfer of property management will be renegotiated. However, pending renegotiation of this agreement, the NCRA will retain any property proceeds for its own account.

8. Until the time of the renegotiation contemplated by the parties the parties shall have the following interim obligations:

NCRA Interim Obligations:

NCRA must: (1) promptly process the pending Railroad Rehabilitation & Improvement Financing (RRIF) program Loan in the maximum amount available and dedicate the application of proceeds to repay NWP Co its allowable costs for the Rehabilitation Project with NCRA as the principal obligor; (2) NCRA must refrain from granting any security interests in either the Ukiah Depot or in any metals in the Eel River Division from MP 142.5 and MP 238.0; and (3) NCRA must refrain from dispersing proceeds from any sale of the Ukiah Depot or Eel River Division metals such as might

otherwise be permitted by the California Transportation Commission without the prior written consent of NWP, or completion of renegotiations, whichever first occurs.

NWP Interim Obligations:

NWPCo. must on the first day of each month following the commencement of operations pay the sum of $25,000 per month with NWP having the discretion to apply up to $15,000 per month of accrued Advance Lease Payments toward this payment.

9. NWP shall ~~be the sole and exclusive provider~~ of freight rail service from and across the Russian River Division pursuant to its common carrier authority. The NCRA shall retain its residual common carrier authority to exercise its common carrier obligations by and through the NWP pursuant to the Agreement and this Interim Agreement

Dated: June 20, 2011

Northwestern Pacific Railroad Co.

By J. H. Williams
John Williams
its President

J. H. Williams
Secretary

North Coast Railroad Authority

By _____
Hal Wagenet
its Chairman

Attest: Mitch Stogner
Mitch Stogner

Approved as to Form

Christopher J. Neary

otherwise be permitted by the California Transportation Commission without the prior written consent of NWP, or completion of renegotiations, whichever first occurs.

NWP Interim Obligations:

NWPCo. must on the first day of each month following the commencement of operations pay the sum of $25,000 per month with NWP having the discretion to apply up to $15,000 per month of accrued Advance Lease Payments toward this payment.

9. NWP shall be the sole and exclusive provider of freight rail service from and across the Russian River Division pursuant to its common carrier authority. The NCRA shall retain its residual common carrier authority to exercise its common carrier obligations by and through the NWP pursuant to the Agreement and this Interim Agreement

Dated: June 20, 2011

Northwestern Pacific Railroad Co.

By_____
John Williams
its President

_____
Secretary

North Coast Railroad Authority

By_____
Hal Wagenet
~~its Chairman~~

Attest:_____
Mitch Stogner

Approved as to Form

_____
Christopher J. Neary

please date

OPERATING & COORDINATION AGREEMENT FOR THE NORTHWESTERN PACIFIC LINE

THIS OPERATING & COORDINATION AGREEMENT ("Agreement"), dated as of the 20th day of June, 2011, by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, created under California law ("SMART"), and NORTH COAST RAILROAD AUTHORITY, created under California law ("NCRA").

RECITALS:

WHEREAS, pursuant to the JPA Agreement (defined below) and the Cooperative Agreement and set of Principles of Agreement (each dated as of April 30, 1996), all between NCRA and Northwestern Pacific Railroad Authority ("NWPRA"), various commitments were made, including (1) that NWPRA would acquire title to the Healdsburg and Lombard Segments (defined below) and that the NCRA would acquire title to the Willits Segment (defined below), (2) that upon acquisition of the Healdsburg and Lombard Segments NWPRA would convey a perpetual and exclusive easement for the operation of freight service and grant contract rights for the operation of passenger excursion service over the Healdsburg and Lombard Segments to NCRA, and (3) that upon acquisition of the Willits Segment NCRA would convey to NWPRA a permanent easement over the Willits Segment for operation of regularly scheduled passenger commuter service and for operation of certain intercity and other passenger service; and

WHEREAS, on April 30, 1996, NWPRA acquired ownership of the Healdsburg and Lombard Segments and NCRA acquired title to the Willits Segment; and

WHEREAS, NWPRA conveyed the aforementioned easement to NCRA covering the Healdsburg and Lombard Segments; and

WHEREAS, NCRA conveyed the aforementioned easement to NWPRA covering the Willits Segment; and

WHEREAS, on August 19, 1996, NWPRA and NCRA entered into an Operating Agreement for certain portions of the Northwestern Pacific Railroad line (the "Operating Agreement 1996"); and

WHEREAS, the 1996 Operating Agreement was a condition precedent to effectuate the Grant of Easement conveyed by NWPRA to NCRA and by entering into this new operating agreement, the parties do not intend to, in any way, revoke, rescind or otherwise nullify the effectuation of the Grant of Easements from NWPRA to NCRA or NCRA to NWPRA (or its successor, SMART); and

WHEREAS, the 1996 Operating Agreement provided that if NWPRA undertook to provide passenger commuter operations, the parties would enter into an agreement (referred to therein as the "Coordination Agreement") that described in detail the respective rights and obligations of the parties with respect to maintenance, capital expenditures, dispatching, scheduling of operations, environmental liability, taxes and other matters concerning the joint use of the Healdsburg Segment and the Lombard Segment; that passenger commuter operations would receive operating priority over freight operations, provided that freight service continued

to be provided on the Healdsburg Segment and the Lombard Segment in a manner that meets the needs of the shippers on the line; that passenger operations disrupt NCRA's freight operations to the minimum extent possible; and that the agreement would include provisions that address the issues set forth in Schedule 3.10 to the Operating Agreement 1996; and

WHEREAS, SMART is NWPRA's successor in interest; and

WHEREAS, SMART intends to undertake passenger commuter operations on the Healdsburg Segment and on a portion of the Willits Segment pursuant to its easement thereon (together defined more specifically below as the "Shared Track") and may later expand such operations to include some or all of the Lombard Segment and more or the rest of the Willits Segment covered by its easement thereon; and

WHEREAS, multi-use pathways are part of SMART's enabling legislation and integral to SMART's project and planned use of its property; and

WHEREAS, on September 13, 2006, NCRA and Northwestern Pacific Railroad Company ("NWPCo"), a California corporation, entered into a lease agreement for NWPCo to provide freight and excursion service over (inter alia) the Subject Segments;

WHEREAS, the Parties desire to enter into this Agreement setting forth terms and conditions for the use and management of the Subject Segments, superseding the Operating Agreement 1996 and all prior agreements between the parties relating in any way to the subject matter of the Operating Agreement 1996 (including, without limitation, the JPA Agreement, the Cooperative Agreement and the set of Principles Agreement), it being the express intent of the parties to have this Agreement govern exclusively, and formalizing SMART's consent to designation of NWPCo as NCRA's operator, pursuant to Section 16.04 of the Operating Agreement 1996.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NCRA and SMART hereby agree as follows:

ARTICLE I – DEFINITIONS

In addition to capitalized terms defined in the Agreement, Exhibit 1 (incorporated herein by reference) is a list of additional definitions used in this Agreement.

ARTICLE II – MULTI-USE PATHWAY AND OPERATING RIGHTS

SECTION 2.01 NCRA Passenger Excursion Service. In addition to the rights granted pursuant to the aforementioned easements granted to NCRA on the Healdsburg Segment and the Lombard Segment, but subject to the condition set forth in SECTION 7.08, NCRA shall have the right to use the Healdsburg Segment and the Lombard Segment to provide passenger excursion service intended primarily for entertainment and recreation and not primarily for transportation, provided that the service originates and terminates off of the Healdsburg Segment (except at Healdsburg Station, approximately NWP MP 68.00) and the Lombard Segment (except to the extent the Lombard Segment remains not part of the Shared Track) and does not provide

intermediate stops on the Healdsburg Segment (except at Healdsburg Station) or the Lombard Segment (except to the extent the Lombard Segment remains not part of the Shared Track) (the "NCRA Passenger Excursion Service"); provided that NCRA may not use the Healdsburg Segment or the Lombard Segment for any other type of passenger service, except that NCRA may transport officers, employees and freight business invitees of NCRA. NCRA acknowledges that it shall have no right to conduct intercity passenger rail service on the Healdsburg Segment or the Lombard Segment. NCRA shall have no right to appoint more than two (2) Passenger Excursion Service contract operators on any portion of the Shared Track during any twelve (12) month period.

SECTION 2.02 Industrial Track. NCRA, at its own expense, shall have the exclusive right to manage all existing or later built track on the Healdsburg and Lombard Segments used solely for NCRA Freight Service (the "Industrial Track"). NCRA shall have the right to enter into new industrial track agreements on the Subject Segments that are necessary for NCRA to discharge its exclusive common carrier rail freight responsibilities, provided that all such agreements are subject to (and conterminous with) this Agreement (including but not limited to ARTICLE VI hereof) and, on the Lombard and Healdsburg Segments only, such agreements (i) include the standard agreement provisions provided by SMART and the requirements of SMART's Encroachment Policy adopted April 22, 1996, as may be amended from time to time; and (ii) are approved in advance by SMART (which approval shall not be unreasonably withheld, conditioned or delayed).

SECTION 2.03 SMART Pathway Rights. Subject to the terms of this Agreement, SMART shall have the right to design and construct Pathways on the portion of the Willits Segment that is part of the Shared Track.

ARTICLE III – NWPCO AS NCRA OPERATOR

SMART hereby consents to NWPCo as NCRA's designated operator. NCRA hereby acknowledges that any agreement it may have with NWPCo or any successor designated operator or any third party operator admitted to the Shared Track or the Lombard Segment (collectively defined herein as, the "Operator") is subject to and conterminous with this Agreement.

ARTICLE IV – MAINTENANCE

SECTION 4.01 Inspections. Within thirty (30) days after the Execution Date of this Agreement, SMART plans to make an inspection of the Shared Track and the Lombard Segment, the result of which shall be contained in a written report. NCRA shall have the right (but not the obligation) to participate in the inspection and shall be furnished with a copy of the inspection report. No more than thirty (30) days before the commencement of NCRA train operations, NCRA and SMART shall make a joint inspection of that portion of the Shared Track and the Lombard Segment on which NCRA plans to operate to document the actual condition and the FRA classification of such track, the result of which shall be contained in a written report (delineated by FRA track classification), reviewed and approved by both Parties within thirty (30) days after the completion of the inspection. This joint inspection may be waived if the

parties agree (in their sole discretion) that a joint inspection is unnecessary due to the FRA inspections conducted in connection with the commencement of NCRA service.

SECTION 4.02 NCRA Maintenance Responsibility. Subject to SECTION 4.04, NCRA shall perform all ordinary inspection and maintenance functions (including the provision of security, emergency grade crossing notification and response, vegetation control within 15 feet of the center line of track and any additional vegetation control required by law) on any portion of the Lombard Segment and the Healdsburg Segment that it operates on, at its sole cost and expense. NCRA shall maintain such Track to at least FRA Class 1 standards, provided that NCRA's inspection, maintenance and security responsibilities shall not include any equipment and buildings used solely by SMART.

SECTION 4.03 Second Joint Inspection. At least ten (10) days before any Changeover Date as described in SECTION 4.04, NCRA and SMART shall make a joint inspection of the applicable segment of the Shared Track to document the actual condition and the FRA class of the Track thereon, the result of which shall be contained in a written report (delineated by FRA track classification), reviewed and approved by both Parties within ten (10) days after the completion of the inspection.

SECTION 4.04 SMART Maintenance Responsibility. SMART shall have the right to take over maintenance on any portion of the Shared Track at any time and an obligation to take over maintenance of any portion of the Shared Track before commencement of construction of Changes and/or Additions to facilitate SMART Commuter Operations. With at least one (1) month advance notice, SMART shall notify NCRA of the date on which it will take over maintenance of any particular portion of the Shared Track. The date of such take over with respect to any particular portion shall be the "Changeover Date" with respect to such portion. After the Changeover Date with respect to any particular portion of Shared Track, SMART shall perform all ordinary maintenance functions and shall inspect and maintain the Track to at least the same requirements set forth in SECTION 4.02. SMART shall maintain all Pathways from inception at its sole cost and expense.

SECTION 4.05 Maintenance Plans and Reports. Each Party shall, on an annual basis, provide such other Party with a maintenance plan (including vegetation control) and maintenance budget on any portion of the Track where such Party has a maintenance obligation. Each Party also will provide to the other Party annual reports of its actual maintenance expenditures on a schedule agreed to by the Parties.

ARTICLE V – OPERATIONS AND DISPATCHING

SECTION 5.01 Dispatching. SMART shall manage and control the Shared Track. SMART shall dispatch the Shared Track and the Lombard Segment. Subject to the ultimate authority of the dispatcher, SMART shall manage and control SMART Commuter Operations and Ancillary Passenger Service, and NCRA shall manage and control NCRA Freight Service and NCRA Passenger Excursion Service. If SMART's dispatcher is not present and on duty, then upon three days notice to SMART, NCRA shall have the right to take over dispatching on the Shared Track and the Lombard Segment. Both parties have the right to seek injunctive relief with respect to any allegation that the SMART dispatcher is not present and on duty. This

SECTION is not subject to ARTICLE XIV. This SECTION is not intended to apply in any situations where SMART's dispatcher is present and on duty, but NCRA has an objection regarding the dispatcher's conduct of his/her duty.

SECTION 5.02 Rule Book. After prior consultation with NCRA, wherein differences or disputes are reasonably addressed, SMART shall have the right to specify a rule book, employees timetable, special instructions, standard operating procedures, and/or any other rules it reasonably determines are necessary for the safe and efficient operation of the Shared Track and Lombard Segment, and upon receipt of copies thereof, NCRA and the Operator shall follow such rules. Without limiting the generality of SECTION 16.05, maximum allowable freight and passenger train speeds on any segment of track shall adhere to FRA regulations established for the Class of Track on that segment.

SECTION 5.03 Priority.

(a) SMART Commuter Operations shall have reasonable priority over all other operations on the Shared Track, provided that such priority shall not materially adversely affect NCRA's performance of its common carrier obligation, NCRA's conduct of rail freight operations, or NCRA's ability to provide adequate service to shippers and receivers. SMART Commuter Operations will require blocks of time ("windows") during which there will be no NCRA Freight Service or NCRA Passenger Excursion Service on segments of the Shared Track. These windows may need to be widened in the future as passenger traffic develops and/or formalized in order to meet the FRA's requirements for temporal separation of freight and passenger service to support waiver or other relief from Positive Train Control requirements on the Shared Track. Notwithstanding the generality of the foregoing, SMART expects to have greater flexibility during midday periods, late evenings, nights and weekends/holidays. SMART will meet and confer with NCRA to schedule freight service slots on the Shared Track. A list of windows is attached hereto, for illustrative purposes only, as Exhibit 2.

(b) After consultation with NCRA, SMART shall establish a schedule of all train operations and other activities on the Shared Track. Six months before commencement of SMART Commuter Operations, SMART shall prepare and furnish to NCRA a draft definitive schedule for SMART Commuter Operations. NCRA shall have the right to provide SMART with comments on the draft definitive schedule and SMART shall consider any such comments before finalizing the definitive schedule. SMART shall finalize the definitive initial schedule at least ninety days before commencement of SMART Commuter Operations.

(c) NCRA Passenger Excursion Service and SMART Ancillary Passenger Service shall (i) be subordinate to SMART Commuter Operations, (ii) be of equal dispatch priority (as between themselves) and (iii) shall have reasonable priority over NCRA Freight Service, subject to the standard set forth in the first sentence of SUBSECTION (a) of this SECTION and provided that NCRA shall have the right to subordinate the NCRA Passenger Excursion Service (but not the SMART Ancillary Passenger Service) to NCRA Freight Service.

ARTICLE VI – MODIFICATIONS AND IMPROVEMENTS

Changes and/or Additions to the Subject Segments shall be subject to the following requirements:

SECTION 6.01 Right to Make Changes; Financial Responsibility. Each Party shall have the right to make Changes and/or Additions to the Subject Segments at its own cost and expense, except as provided in Exhibit 3. The Parties acknowledge that Changes and/or Additions to the Subject Segments may require alteration or modification of existing Track or other improvements and that the cost and expense of such alteration or modification would be the financial responsibility of the Party then making the Changes and/or Additions. SMART shall manage and control construction of Changes and/or Additions on the Shared Track, including SMART's construction pursuant to its Initial Design Plans; provided that NCRA shall manage and control construction of NCRA-funded and administered Changes and/or Additions on (i) the Lombard Segment or (ii) that portion of the Shared Track between Healdsburg (MP 68.22) and Cloverdale (MP 85.35) before any Changeover Date with respect to such portion; provided further that SMART shall reasonably consider NCRA proposals to manage and control construction of NCRA-funded and administered Changes and/or Additions on the Shared Track not meeting the requirements of subpart (ii) of the foregoing proviso.

SECTION 6.02 Plans. The Party undertaking the Changes and/or Additions (the "Constructing Party") to the Subject Segments shall deliver to the other Party a set of the design plans (including available schematic drawings and specifications) for Changes and/or Additions at the conceptual stage, thirty percent (30%) completion stage, sixty percent (60%) completion stage and Final Plans. The Party reviewing plans (the "Reviewing Party") shall have thirty (30) days from receipt to review and comment on the conceptual plans and the 30% plans, fifteen (15) days from receipt to review and comment on the 60% plans and fifteen (15) days from receipt to review and approve the Final Plans.

SECTION 6.03 Review.

(a) If the Reviewing Party reasonably determines that the proposed design or location of Changes and/or Additions, as reflected in any such set of plans, would materially interfere with NCRA Freight Service or SMART Commuter Operations (as the case may be), the Reviewing Party shall provide written comments to the Constructing Party explaining its concerns in this regard within the applicable review period. The Reviewing Party shall have an obligation to identify material interference concerns at the plan review stages where they arise and the Constructing Party shall have no obligation to address concerns that could have been raised in an earlier plan review stage. The Parties shall then use their best efforts to agree on modifications to any such set of plans to resolve such expressed concerns. If the Reviewing Party fails to provide written comments to the Constructing Party on any set of plans within the applicable review period, such Party shall be deemed to have approved such set of plans. Once a set of plans is approved pursuant to this SECTION, or Material Modifications are approved pursuant to SECTION 6.04 such plans or Material Modifications shall be deemed to be final and a part of the Subject Segments as though already constructed.

(b) NCRA's review of the Initial Design Plans shall follow the review provisions in SUBSECTION (a), except that NCRA and SMART hereby agree that the Siding and Spur Provisions (Exhibit 3) are the solution for all cost issues pertaining to freight siding and spur track connections (including without limitation material interference issues) and that (except as set forth in Exhibit 3) SMART shall have no obligation to pay for freight siding or spur track connections.

SECTION 6.04 Construction; Modification. The Constructing Party shall construct Changes and/or Additions in accordance with the Final Plans approved by the other Party pursuant to this ARTICLE VI and subject to any modifications issued by the Constructing Party that are authorized by this subparagraph. The Constructing Party shall notify and obtain the other Party's advance written consent to any Material Modifications. The other Party shall use its best efforts to complete its review of such Material Modifications as soon as possible but in any event within three (3) business days of receipt of such Material Modifications from the Constructing Party. The other Party's approval shall not be unreasonably withheld, conditioned or delayed unless any such Material Modifications would materially interfere with the other Party's use of the involved property (as articulated in SECTION 6.03).

SECTION 6.05 Operations During SMART Construction. The Parties have agreed to the following reasonable accommodations for freight operations during SMART's initial and any subsequent construction of Changes and/or Additions for SMART Commuter Operations:

(a) SMART shall establish a schedule for NCRA Freight Service providing 12-hour daytime windows on Sundays and Thursdays on portions under construction or proximate to construction. During such times, NCRA shall have uninterrupted access to such segments for NCRA Freight Service and any construction activities will be subject to such uninterrupted access. During all other times, SMART shall have exclusive access to such segments.

(i) Provided that for a single period not to exceed eighteen (18) weeks, when SMART is undertaking its primary track-laying project on its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), which might include using the mechanized track laying equipment (herein, the "Track Construction Period"), SMART shall establish a schedule for NCRA Freight Service providing 48-hour single window on Saturday and Sunday. During such times, NCRA shall have uninterrupted access to track segments under construction or proximate to construction and SMART construction activities will be subject to the requirement that NCRA be afforded such uninterrupted access. During all other times (i.e., 5 consecutive days), SMART shall have exclusive access to the track under construction. SMART shall give NCRA at least thirty (30) days notice of the planned date for commencement of the Track Construction Period. For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the Track Construction Period.

(ii) Provided further that for a single period not to exceed eighteen (18) days during SMART's construction of its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), there shall be

no NCRA Freight Service on the Shared Track (herein, the "Designated Shutdown Period"). During the Designated Shutdown Period, SMART shall have exclusive access to the Shared Track. SMART shall give NCRA at least sixty (60) days notice of the planned date for commencement of the Designated Shutdown Period. For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the Designated Shutdown Period.

(b) During SMART's construction of its initial operating segment (presently expected to include, as relevant, the line from the Ignacio Wye to Santa Rosa Railroad Square), except for the Designated Shutdown Period, if SMART's construction renders the Shared Track out of service for freight for seven (7) days (herein, a "Shutdown Period"), SMART shall have the right to shut down the segment in issue and alternative service to NCRA freight customers shall be arranged, in accordance with this SUBSECTION:

(i) SMART shall procure and pay for an on-call broker to arrange for truck transportation, truck transload or other alternative transportation service for rail freight customers (the "Broker"). NCRA shall notify the Broker if one of its customers wishes to receive such alternative transportation arranged by the Broker. Upon such notification, NCRA shall provide Broker with information pertaining to the alternative transportation, including the identity of the shipper, the shipper's contact information, the location of the shipper facility and the commodities and desired schedule for transportation. The Broker shall arrange alternative transportation and inform NCRA and SMART of the arrangements. The customer shall pay the cost of the alternative transportation. SMART shall reimburse the customer for the alternative transportation to the extent it exceeds the cost that the customer would have paid to NCRA. SMART shall have the right to confer in advance with the Broker regarding the cost of alternative transportation in order to ensure that the cost is reasonable.

(ii) To the extent NCRA arranges alternative transportation for one of its customers or a customer makes its own alternative transportation arrangements, the customer shall pay the cost of the alternative transportation. SMART shall reimburse the customer for the costs of the alternative transportation to the extent it exceeds the cost that the customer would have paid to NCRA, provided that SMART shall have the right to confer in advance with NCRA or the customer regarding the cost of alternative transportation and approve such additional costs in advance, in order to ensure that the cost is reasonable. SMART's approval shall not be unreasonably withheld, conditioned or delayed.

(iii) In either case, SMART also shall pay to NCRA an amount equal to the product of (i) the number of days of the Shutdown Period *multiplied by* (ii) the daily average number of loaded cars originated, terminated or moving over Shared Track calculated from the sixty-day period before the beginning of the Shutdown Period *multiplied by* $500.

(iv) Alternative transportation service may not work for certain shippers. SMART will use commercially reasonable efforts to advise NCRA in advance of any Shutdown Period so that NCRA can inform those shippers of such cessations.

(c) For any subsequent construction of Changes and/or Additions for expanded SMART Commuter Operations, the Parties shall negotiate in good faith to establish an arrangement similar to the above for Shutdown Periods.

(d) Except as set forth in this ARTICLE VI, NCRA shall have no right to compensation of any kind or character for any interference with or interruptions in freight service during construction or for any extra costs or administrative burdens associated with freight operations or cessations during construction.

SECTION 6.06 Operations During NCRA Construction. The Parties do not anticipate that NCRA's Changes and/or Additions on the Shared Track would require cessation of SMART Commuter Operations. Such cessations could, but for this SECTION, harm SMART's Commuter Operations. To avoid any such harm, NCRA's Changes and/or Additions on the Shared Track shall be conducted on weekends and during non-Rush Hour periods, as designated on the schedule established pursuant to SECTION 5.03. If NCRA determines that its Changes and/or Additions on the Shared Track would require cessation of SMART Commuter Operations, it shall so notify SMART thirty (30) days in advance of such cessation and SMART shall arrange for a bus bridge of its passengers around the affected Shared Track during NCRA construction. SMART shall consult with NCRA regarding the bus bridge and such additional operating costs and secure NCRA's approval in advance of commencing the bus bridge (or incurring related costs). NCRA's approval shall not be unreasonably withheld, conditioned or delayed. NCRA shall reimburse SMART for any such documented increased costs associated with the bus bridge for the duration of the cessation. Except as set forth in this SECTION, SMART shall have no right to compensation for such cessations.

SECTION 6.07 Construction Schedule. The Constructing Party shall deliver to the other Party on a weekly basis, (i) a schedule for the construction of Changes and/or Additions over the next four weeks showing both the sequence and location of such construction work and (ii) a general schedule of construction activity planned over the next 12 weeks. Upon request of the other Party, the Constructing Party shall meet to discuss and review the schedules.

SECTION 6.08 Ownership; Salvage. The Party that pays for Changes and/or Additions shall own such Changes and/or Additions and shall be entitled to sell or reuse the material removed but not reused in the Changes and/or Additions ("Salvage Materials") regardless of when or by whom such material was installed or paid for; provided that upon subsequent removal or replacement of such Changes and/or Additions by such Party, that Party shall have an obligation to restore the relevant portion of the track to at least the condition that existed immediately before the Changes and/or Additions; provided further that the Party removing the Salvage Materials shall give the other Party written notice of, and a right of first refusal for thirty (30) days from such notice on, any proposal to sell the Salvage Materials; provided further that SMART shall indemnify NCRA for any claims by counter-parties under the agreements listed on Exhibit 4 that Salvage Materials purchased by NCRA from the Healdsburg Segment or the Lombard Segment violated such agreements; provided further that NCRA shall be entitled to reuse Salvage Materials from the Willits Segment, but shall have an obligation to remove such Salvage Materials from the construction site within thirty (30) days of notice from SMART, which notice will state the time period when such Salvage Materials will be available for removal. Except as set forth in this ARTICLE VI, neither Party shall have an obligation to

compensate the other Party for the costs of prior Changes and/or Additions, removal of prior Changes and/or Additions or Salvage Materials.

ARTICLE VII – OTHER RIGHTS AND OBLIGATIONS – OPERATIONS

SECTION 7.01 Expansion of Shared Track. If SMART wants to expand the geographic scope of the Shared Track to include any portion of the Lombard Segment or any additional portion of the Willits Segment, SMART shall notify NCRA and the Parties shall amend (effective on the date provided in the notice) this Agreement to expand the geographic scope of the Track that constitutes Shared Track under this Agreement and all provisions governing Shared Track shall control over other provisions pertaining to such portions. Such notice by SMART shall be not less than six (6) months in advance of SMART's designated effective date for expansion of the Shared Track. Notwithstanding the foregoing, for the duration of any transportation emergency or non-rail infrastructure outage, SMART shall have the right to conduct SMART Commuter Operations on any portion of the Subject Segments not already part of the Shared Track. In such emergencies, SMART shall give NCRA any advanced notice that is practicable and the Parties will make arrangements for SMART to assume management, control and dispatching of rail operations pursuant to ARTICLE V and maintenance responsibilities pursuant to ARTICLE IV.

SECTION 7.02 No Admission Of Third Parties. SMART acknowledges that it has no right to grant, and shall not attempt to grant, to any third party any rights whatsoever to conduct rail freight operations on the Healdsburg Segment, the Lombard Segment, or the Willits Segment. SMART and NCRA each (i) acknowledges that is has no right to grant any third party rights to conduct freight or passenger rail service of any kind on the portion of the Subject Segments owned by the other Party and (ii) agrees not to grant such rights (except as required by law) during the term of this Agreement on the portion of the Subject Segments owned by it. For the avoidance of doubt, bona fide contractors (including but not limited to NWPCo and its successors and entities operating trains pursuant to SECTION 7.09) are not third parties within the scope of this SECTION.

SECTION 7.03 Contractors. Each Party shall have the right to arrange for all or some of its rights and/or obligations under this Agreement to be performed by one or more contractors; provided that (i) neither Party shall admit a contractor to the Shared Track without first providing the other Party with an insurance certificate for Workers Compensation insurance for such contractor and an insurance certificate for liability insurance for such contractor naming the other Party as an additional insured, (ii) the contract shall be subject to the terms of this Agreement and (iii) each Party shall remain responsible for performance of this Agreement. The requirements of this SECTION apply to any successor Operator and to any contract operator of NCRA Passenger Excursion Service or any contract operator of SMART Ancillary Passenger Service.

SECTION 7.04 Track Modifications Required by Law. SMART shall pay all of the cost and expense of Positive Train Control on the Shared Track, except SMART's obligation to pay for the cost and expense of cabbing up NCRA's or Operator's locomotive fleet shall be limited to (i) the number of locomotives in regular freight operations on the day that the Positive Train Control system becomes operational or (ii) five (5) locomotives, whichever is lower. (For

the avoidance of doubt, SMART shall have no obligation to pay for the cost and expense of cabbing up any additional locomotives, including additional locomotives that may be used for NCRA Passenger Excursion Service.) Once furnished and installed, NCRA shall be responsible for ongoing maintenance of the on-board equipment. Except as set forth in Exhibit 3, NCRA shall be responsible for the cost and expense of new freight siding and spur track connections required by law. Each Party shall pay for and perform any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of the Track on the property it owns; provided that if the Party otherwise responsible for such work can reasonably demonstrate that such work would not be required in the absence of the other Party's operations or operating rights or that such work would be substantially lower in cost in the absence of the other Party's operations or operating rights, then the other Party shall be responsible for the cost and performance of all such work (in the first instance) or the Parties shall agree to an allocation of the cost of such work (in the second instance).

SECTION 7.05 Hazardous Materials. Neither Party shall use, generate, transport, handle or store Hazardous Materials on the Subject Segments other than as may be used by the Party in its operations in the normal course of business or, in the case of NCRA, as may be transported by NCRA in its capacity as a common carrier by rail and in all events in accordance with Applicable Laws. Neither Party shall dispose of Hazardous Materials of any kind on the Subject Segments.

SECTION 7.06 Locomotive Storage. At each location where a Party parks or stores its locomotives while not in use, the Party shall implement appropriate contamination containment procedures with respect to fuel or lubricant drippings.

SECTION 7.07 Shared Track Blockages. Neither Party shall store or stop equipment or cars on the Shared Track (excluding Industrial Track or other Track designated for the storage, stoppage or passing of trains or equipment or cars) in a way that blocks or fouls the Shared Track. Both Parties shall have the right to help stalled trains or equipment of the other Party (or to move improperly stored or stopped equipment or cars).

SECTION 7.08 NCRA Passenger Excursion Service and SMART Ancillary Passenger Service. NCRA Passenger Excursion Service on any segment of the Healdsburg Segment shall not commence until ninety (90) days after commencement of SMART Commuter Operations on the same segment; provided that NCRA may operate NCRA Passenger Excursion Service on the portion of the Healdsburg Segment between Healdsburg Station and the northern end of the Healdsburg Segment at any time when such portion is not under construction. SMART may operate SMART Ancillary Passenger Service on the Willits Segment. Specific plans for the operation of NCRA Passenger Excursion trains or SMART Ancillary Passenger Service shall be provided to and discussed with the other party at least 60 days in advance of their proposed date(s) of operation.

SECTION 7.09 Company Material. SMART (directly or through contractors) shall have the right to move its own company material on the Shared Track or the Lombard Segment, including but not limited to track material and passenger equipment in transport for use in the SMART Commuter Operations. If SMART elects to use a contractor to move such company material, NCRA shall have a right of first refusal for ten (10) days on the work at the contractor's

quoted rate; provided that such right of first refusal shall not apply to passenger equipment in transport for use in the SMART Commuter Operations.

ARTICLE VIII – OTHER RIGHTS AND OBLIGATIONS – PROPERTY

SECTION 8.01 No Liens. Neither Party will take any action or fail to take any action which would cause the Subject Segments to be encumbered by any mortgage, indenture, bond, note or lien of any kind that would have a material, adverse effect on the other Party's conduct of rail operations thereon or that would require the payment of money by the other Party.

SECTION 8.02 Nuisance. Neither Party shall use nor permit the use of the Subject Segments in any manner that will tend to create a nuisance or would materially interfere with the continued commercial, industrial or transportation corridor uses of the Subject Segments.

SECTION 8.03 Future Easements. Each Party reserves the exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the property it owns (the Willits Segment in the case of NCRA and the Healdsburg and Lombard Segments in the case of SMART), provided that approval of such future easements, leases, licenses or rights of occupancy by either Party does not unreasonably interfere with SMART Commuter Operations or NCRA Freight Service.

SECTION 8.04 Utilities. Before a Changeover Date for any particular segment, NCRA shall pay all bills for utilities, including without limitation those for water, sewer, gas and electric service to the Subject Segments, and the Parties shall negotiate in good faith for SMART's reimbursement to NCRA for any utility costs attributable to SMART's activities. After a Changeover Date for any particular segment, each Party shall pay all bills for utilities used solely for such Party's consumption, including without limitation those for water, sewer, gas and electric service, and SMART shall pay all bills for all utilities on the Shared Track, subject to the provisions of SECTION 9.01.

SECTION 8.05 Defeasance. Neither Party shall make any use of the Subject Segments that is inconsistent with the owning Party's right, title and interest therein and which may cause the right to use and occupy such property to revert to any third party.

SECTION 8.06 Right of Entry; Cooperation. Each Party hereby grants to the other Party a general right of entry to the Subject Segments owned by it for any lawful purpose related to the rights and obligations of the other Party (whether by law, easement or this Agreement), subject to reasonable advanced notice and safety procedures, and each Party agrees to cooperate in the arrangement of such entry.

SECTION 8.07 Incorporation of Reserved Rights. SMART hereby reserves all of the reservations made by NWPRA with respect to the Lombard Segment and the Healdsburg Segment in Sections 1.02 and XV of the Operating Agreement 1996, as fully restated in Exhibit 5. NCRA hereby reserves all of the Certain Reserved Rights with respect to the Willits Segment, as stated in Exhibit 5.

SECTION 8.08 Settlement & Consent Agreements. Any and all settlement agreements of any kind or character (including but not limited to the agreement between NCRA and the City of Novato) whether executed before or after this Agreement are subordinate and subject to this Agreement. Each Party agrees to secure any necessary agreement amendments or estoppel certificates with respect to any such agreements executed before this Agreement.

ARTICLE IX – COST SHARING

SECTION 9.01 Dispatching Cost Sharing. Commencing with the first month where there is NCRA Freight Service or NCRA Passenger Excursion Service (herein, "NCRA Trains") and for each month thereafter (regardless of whether there are NCRA Trains in any particular month) before there are any SMART Commuter Operations or SMART Ancillary Passenger Service (herein "SMART Trains"), NCRA shall pay SMART a fee of $2,500 for dispatching services. Commencing with the first month where there are NCRA Trains and SMART Trains (assuming that NCRA Trains have commenced), NCRA shall pay SMART a fee for dispatching services that is negotiated in good faith between the parties. If the parties are unable to reach an agreement, then the issue shall be submitted to arbitration. The arbitrator shall decide the appropriate equitable allocation of dispatch costs based upon the parties' use of the rail line. While arbitration is pending NCRA shall pay SMART the fee applicable before SMART commenced operations.

SECTION 9.02 Maintenance Cost Sharing. After SMART assumes responsibility for maintenance on a particular segment pursuant to SECTION 4.04, NCRA shall pay SMART for that segment the charges set forth on Exhibit 6.

SECTION 9.03 Reporting and Invoices for Dispatching and Maintenance. Within ten (10) days of the end of a month, NCRA shall send SMART a report of the prior month's carloadings showing carloadings that originated, terminated, or moved overhead on the track maintained by SMART. The report also shall identify any cars that weighed more than 263,000 pounds. By the end of the month in which the carloading report was due, SMART shall send NCRA an invoice for the above-described dispatching and maintenance fees.

SECTION 9.04 Annual Adjustment. The fees in SECTION 9.01 and SECTION 9.02 shall be adjusted annually on the anniversary of the Effective Date by the same percentage as the percentage increase or decrease, if any, in the STB's rail cost adjustment factor, unadjusted for productivity. If the rail cost factor ceases to exist, the Parties shall use the Consumer Price Index for all Urban Consumers (CPI-U) issued by the U.S. Department of Labor's Bureau of Labor Statistics or a substantially similar index.

SECTION 9.05 Five-Year Adjustment. The Parties have concluded that the above-referenced fees fairly reflect the dispatching and maintenance expenses that NCRA reasonably would have expended in the absence of SMART Commuter Operations. On the fifth anniversary of the Effective Date and every five (5) years thereafter, the Parties will negotiate in good faith to re-set the dispatching and maintenance fees in accord with this rationale.

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SECTION 9.06 No Other Related Compensation. Except as set forth above in this ARTICLE IX, or elsewhere in this Agreement, neither Party shall owe the other Party any compensation for maintenance, dispatching or operations on the other Party's property.

ARTICLE X – ALLOCATION OF LIABILITY; INDEMNITY

SECTION 10.01 Allocation of Liability.

(a) It is the express intention of the Parties that NCRA assumes the risk of and agrees to indemnify, defend and hold harmless SMART, or any agent, contractor, lessee or licensee of SMART, from any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or source for (i) personal injury to or death of persons whomsoever; (ii) property damage or destruction of whatsoever nature (including without limitation damage to property of SMART or NCRA, or property in NCRA's care, custody or control, and third party property), (iii) violation of any Applicable Laws; or (iv) breach of this Agreement (collectively, "Claims") when such Claims arise out of acts or omissions (whether or not negligent) of NCRA or any agent, contractor, lessee or licensee of NCRA occurring on the Subject Segments after the Execution Date and before the termination of this Agreement; except that NCRA shall not indemnify, defend or hold harmless SMART, or any agent, contractor, lessee or licensee of SMART, to the extent that the Claim arises out of or in connection with acts, omissions or negligence of SMART, or any agent, contractor, lessee or licensee of SMART or is otherwise covered by SECTION 10.01(b).

(b) It is the express intention of the Parties that SMART assumes the risk of and agrees to indemnify, defend and hold harmless NCRA, or any agent, contractor, lessee or licensee of NCRA, from any orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, losses and expense (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim), or demands of whatsoever nature or source for (i) personal injury to or death of persons whomsoever; (ii) property damage or destruction of whatsoever nature (including without limitation damage to property of NCRA or SMART, or property in SMART's care, custody or control, and third party property), (iii) violation of any Applicable Laws; or (iv) breach of this Agreement (collectively, "Claims") when such Claims arise out of acts or omissions (whether or not negligent) of SMART or any agent, contractor, lessee or licensee of SMART occurring on the Subject Segments after the Execution Date and before the termination of this Agreement; except that SMART shall not indemnify, defend or hold harmless NCRA, or any agent, contractor, lessee or licensee of NCRA, to the extent that the Claim arises out of or in connection with acts, omissions or negligence of NCRA, or any agent, contractor, lessee or licensee of NCRA or is otherwise covered by SECTION 10.01(a).

SECTION 10.02 Procedure.

(a) Claims. If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified Party under this ARTICLE X, the indemnified Party shall,

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within sixty (60) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying Party, provided that failure to notify the indemnifying Party shall not relieve the indemnifying Party from any liability which it may have to the indemnified Party under this ARTICLE X except to the extent that the rights of the indemnifying Party are in fact prejudiced by such failure. The indemnifying Party shall have the right, at its sole cost and expense, to participate in the defense of, any such claim or demand, and the Parties agree to cooperate fully with each other in connection with any such defense, such negotiation or claim settlement. In any event, the indemnified Party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying Party under this ARTICLE X without either providing the indemnifying Party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the Parties, under the terms of this ARTICLE X, are to share a Loss, each Party shall be entitled to select its own counsel and defend itself against the claim or demand at its sole cost and expense, and neither Party shall make any settlement of any such claim or demand without giving the other Party reasonable prior notice of the proposed settlement.

(b) Actions. In the event any lawsuit is commenced against either Party for or on account of any Loss for which the other Party may be solely or jointly liable under this Agreement, the Party thus sued shall give the other Party timely written notice that such action is pending, and thereupon the Party so notified may assume or join in the defense thereof. Neither Party shall be bound by any judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the Party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

SECTION 10.03 Insurance Not Limit On Indemnification. In no event shall the indemnification provisions of this ARTICLE X be limited to the insurance coverage required under ARTICLE X.

SECTION 10.04 No Delay Claims. Except as provided in SECTION 6.05, SECTION 6.06 or in instances of intentional or willful delays (in which case the Party asserting the claim shall have the burden of proof), neither Party shall have any claim against the other Party for interruption of or delay to such Party's business, and neither party shall have any claim against the other Party for loss of revenue or profit.

SECTION 10.05 Survival. Each Party hereto covenants and agrees that its obligations under this ARTICLE X shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any matter whatsoever.

SECTION 10.06 Claims. Notwithstanding Government Code Section 905(i) any claim arising out of this Agreement shall be subject to and governed by Government Code sections 900 et seq., commonly referred to as the Government Claims Act, provided that the

filing of a demand for arbitration pursuant to ARTICLE XIV shall satisfy any requirement to file suit within the time specified by the Government Claims Act.

ARTICLE XI – INSURANCE

SECTION 11.01 Insurance.

(a) NCRA shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Agreement:

(i) Comprehensive Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with limits as follows: (1) as of the Effective Date, a combined single limit of at least one million dollars ($1,000,000) for each incident and a general aggregate limit of at least two million dollars ($2,000,000); (2) as of the commencement of NCRA Freight Service, a combined single limit of at least ten million dollars ($10,000,000) for each incident and a general aggregate limit of at least ten million dollars ($10,000,000); and (3) as of the commencement of NCRA Excursion Service, a combined single limit of at least fifty million dollars ($50,000,000) for each incident and a general aggregate limit of at least fifty million dollars ($50,000,000).

(ii) Workers' compensation coverage and employer's liability coverage, with a minimum limit of $2 million each accident, with coverage for Federal Employer's Liability Act exposure, each with a waiver of subrogation endorsement;

(iii) During any time when NCRA is engaged in construction on the Shared Track or the Lombard Segment: (1) railroad protective liability insurance, with liability limits of $2,000,000 per occurrence and $6,000,000 aggregate; (2) builders risk insurance, excluding coverage for rail vehicles, with a direct damage limit of $100,000,000, and earthquake and flood limits of $50,000,000 each; (3) general liability insurance, with limits of $2,000,000 per occurrence, and $4,000,000 aggregate; and (4) excess liability insurance, with limits of $75,000,000 in excess of the underlying limits general liability limits.

(iv) Provided that, if NCRA can reasonably demonstrate that the cost of its Comprehensive Railroad Liability insurance was higher than it would have been but for the presence of the Pathways, then SMART shall reimburse NCRA for the difference in cost.

(b) SMART shall, at its sole cost and expense, procure the following kinds of insurance for the term of this Agreement:

(i) Prior to commencement of operations: Comprehensive Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with limits as follows: (i) as of the commencement of SMART Commuter Operations, a combined single limit of at least one hundred million dollars ($100,000,000) for each incident and a general aggregate limit of at least one hundred million dollars ($100,000,000).

(ii) Effective on the date of the first Changeover Date and during any time when SMART is engaged in construction on the Shared Track: (1) railroad protective

liability insurance, with liability limits of $2,000,000 per occurrence and $6,000,000 aggregate; (2) builders risk insurance, excluding coverage for rail vehicles, with a direct damage limit of $100,000,000, and earthquake and flood limits of $50,000,000 each; (3) general liability insurance, with limits of $2,000,000 per occurrence, and $4,000,000 aggregate; (4) excess liability insurance, with limits of $75,000,000 in excess of the underlying limits general liability limits; and (5) workers' compensation coverage, with a minimum limit of $2 million each accident, with a waiver of subrogation endorsement. SMART shall have the option to obtain and maintain such insurance in an owner controlled insurance program, in accordance with California law.

(c) The limits in SECTION 11.01(a) and (b) shall be reviewed every five (5) years to ensure that such limits are in accordance with industry standards, provided that they shall not be lowered.

(d) This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Agreement, severability of interests and name the other Party as an additional insured with respect to liabilities arising out of the primary insured's obligations in this Agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced. NCRA may self-insure to $1,000,000; SMART may self-insure to $5,000,000.

(e) Upon the failure of either Party to maintain insurance as provided herein, the other Party shall have the right after giving ten (10) days written notice, to obtain insurance and receive prompt reimbursement.

(f) Both Parties represent and warrant to the other Party that this Agreement has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name the other Party as an additional insured.

(g) Each Party shall furnish to the other Party certificates of insurance evidencing the required coverage and endorsement(s) and upon written request shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) to either Party shall notify the other Party in writing of any material alteration in any policy, including but not limited to any change in the retroactive date in any "claims made" policies or any reduction of aggregation limits, or cancellation thereof, at least thirty (30) days prior thereto.

(h) The insurance policy(ies) shall be written by an insurance company or companies with current Best's Insurance Guide Rating of A or better. Such insurance company shall be authorized to transact business in the State of California.

ARTICLE XII – REPRESENTATIONS AND WARRANTIES

SECTION 12.01 SMART. SMART represents and warrants that:

(a) SMART has full power and authority to enter into this Agreement and, subject to necessary regulatory authority, to carry out its obligations hereunder.

(b) This Agreement has been duly authorized, executed and delivered by SMART and is a legal, valid and binding obligation of SMART, enforceable against SMART in accordance with its terms, including without limitation the terms of SECTION 15.03, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by SMART, the consummation by SMART of the transactions contemplated hereby, nor compliance or performance by SMART with any of the provisions hereof does or will violate any judgment, order, law, rule or regulation applicable to SMART or any provisions of the JPA Agreement or SMART's by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of SMART (other than the encumbrances on the Subject Segments created by this Agreement).

SECTION 12.02 NCRA. NCRA represents and warrants that:

(a) NCRA has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) This Agreement has been duly authorized, executed and delivered by NCRA and is a legal, valid and binding obligation of NCRA, enforceable against NCRA in accordance with its terms, including without limitation the terms of SECTION 15.03, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement by NCRA, the consummation by NCRA of the transactions contemplated hereby, nor compliance or performance by NCRA with any of the provisions hereof does or will violate any judgment, order, law, rule or regulation applicable to NCRA or any provisions of NCRA's certificate of incorporation or by-laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NCRA (other than the encumbrances on the Subject Segments created by this Agreement).

ARTICLE XIII – COORDINATION COMMITTEE

SMART's General Manager and NCRA's Executive Director shall establish a Coordination Committee consisting of not more than two (2) representatives of each Party. NCRA may select representatives from the Operator. SMART may select representatives from its operator, if any. The Coordination Committee shall provide the functions set forth for it in SECTION 5.03, SECTION 6.05 and SECTION 6.06 and shall be a forum for the Parties to share information, discuss matters submitted by one Party to the other Party for review and/or approval, and seek resolution of any issues between the Parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the Parties that require prompt resolution.

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ARTICLE XIV – ARBITRATION

SECTION 14.01 Controversies Subject to Arbitration. The Parties hereby agree that any failure to pay money when due under the Agreement, any failure to maintain insurance as required under this Agreement, and any disputes arising under SECTION 5.01 or SECTION 16.09 are not subject to arbitration. Otherwise, any and all claims, disputes or controversies between SMART and NCRA arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the Parties through the Coordination Committee or by negotiations shall be submitted (subject to SECTION 14.02) to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the Parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the Parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 14.02 Controversies Subject to "Baseball" Style Arbitration.

(a) Any and all claims, disputes or controversies between SMART and NCRA regarding the number of turn-outs on the portion of the Shared Track north of Santa Rosa Railroad Square (MP 53.8)(or any portion thereof) shall be determined by the arbitrator picking, between the list submitted by NCRA and the list submitted by SMART, which Party's list comes closest the standard set forth in the applicable paragraph of Exhibit 3. The arbitrator shall not be authorized to award a composite or blend of the two lists. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Any and all claims, disputes or controversies between SMART and NCRA regarding the amount NCRA shall pay SMART for dispatching services after commencement of SMART Trains pursuant to SECTION 9.01 shall be determined by the arbitrator picking, between the amount submitted by NCRA and the amount submitted by SMART, which Party's amount is most reasonable. The arbitrator shall not be authorized to award a composite or blend of the two amounts. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 14.03 Expedited Arbitration Schedule. The Parties hereby agree that the expedited arbitration procedures set forth in the AAA Commercial Arbitration Rules, Optional Rules for Emergency Measures of Protection, shall apply to any disputes arising under ARTICLE IV, ARTICLE VI or SECTION 7.07 and accordingly the Party applying to the AAA for such emergency relief pursuant to this SECTION shall not be required to set forth in its application the reasons why the Party is entitled to such relief or the reasons why such relief is required on an emergency basis.

SECTION 14.04 Pending Resolution. During such arbitration proceedings, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

SECTION 14.05 Party Expenses. Except as otherwise set forth in this SECTION, attorneys' fees, costs and expenses incurred by the Parties in connection with such arbitration shall be apportioned as set forth in the AAA Commercial Arbitration Rules. Any administrative fees imposed by the AAA, including but not limited to the initial filing fee, case service fee, proceed fee, and final fee, shall be apportioned evenly between the Parties. The arbitrator shall have the power to award attorneys' fees and costs to either Party if the arbitrator determines in its reasonable discretion that the position of the other Party to the arbitration was frivolous or otherwise an abuse of the arbitration process.

ARTICLE XV – TERM AND TERMINATION

SECTION 15.01 Term. This Agreement shall have a term of forty (40) years and shall automatically renew for three successive terms of ten (10) years each, unless either Party gives notice (at least six [6] months before expiration of the then current term) of its intention to not renew.

SECTION 15.02 Default. An "Event of Default" by either Party shall have occurred if any of the following shall occur:

(a) if either Party fails to pay an amount of money due under this Agreement in excess of $5,000 and such failure continues thirty (30) days after written notice from the other Party of such failure.

(b) if either Party fails to meet its insurance obligations under this Agreement.

(c) for other obligations not subject to arbitration, if either Party fails to meet any such obligation and such failure continues ninety (90) days after written notice from the other Party of such failure.

(d) for obligations subject to arbitration, if an arbitrator finds that either Party has failed to meet any material obligation under this Agreement.

SECTION 15.03 Remedies Upon Event of Default. If a Party causes an Event of Default to occur (the "Defaulting Party"), the other Party may, at its option:

(a) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Defaulting Party of the applicable provisions of this Agreement, to enforce the award of an arbitrator and/or to recover damages (together with attorneys' fees and such Party's other costs) for a breach thereof, or to seek other remedies, which may include, but are not limited to:

(i) for default under Section 15.02(a), monetary damages;

(ii) for default under Section 15.02(b), injunctive relief suspending operations of the Defaulting Party until such time as the default is cured and appropriate measures are taken to ensure that future defaults will not occur;

(iii) for default under Section 15.02(c), injunctive relief or monetary damages;

(iv) for cessation of all NCRA Freight Service or of all SMART Commuter Operations lasting more than 24 months where the party who has ceased such operations cannot reasonably demonstrate that such operations will recommence within 36 months, or for sustained or persistent Events of Default, termination of this Agreement; provided that in the case of such cessation of NCRA Freight Service or SMART Commuter Operations, the 24 month period shall be tolled for a maximum of 12 months if the party that has ceased such operations is prevented from re-starting such operations by the existence of an injunction. In the event of termination, the non-Defaulting Party shall continue to operate under its easement rights substantially as contemplated by this Agreement as if it were in effect and the Defaulting Party shall have no right to operate but shall maintain its statutory and easement rights. Nothing in this Agreement shall be construed as a forfeiture of the property easement rights held by either party, which are described in the Recitals. In the event the Defaulting Party is NCRA, NCRA shall take all actions necessary and expedient before the STB to secure abandonment and/or discontinuance of service authority on behalf of NCRA and the Operator.

(b) cure the default by making any such payment or performing any such obligation, as applicable, at the Defaulting Party's sole expense, without waiving or releasing the Defaulting Party from any obligation.

(c) The foregoing rights and remedies are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different or inconsistent remedy.

(d) Any waiver by either Party of any Event or Default under this Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Agreement for any subsequent Event or Default, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

(e) The Operator may, in its sole discretion, perform any of the obligations imposed upon NCRA hereunder and cure any default on behalf of NCRA and such performance or cure shall have the same effect as if it had been performed or cured by NCRA; however, nothing in this subsection shall reduce or relieve NCRA of any rights or obligations under this Agreement.

ARTICLE XVI– MISCELLANEOUS TERMS

SECTION 16.01 Reports, Records and Inspections.

(a) FRA and CPUC Reports. The Party responsible for maintenance on a particular segment of Track shall provide a copy of all reports (including) all notices or citations alleging deficiencies from FRA track standards of track inspections by FRA or California Public Utilities Commission inspectors on such segment to the other Party promptly upon receipt of such reports, but in no case more than ten (10) business days after receipt.

(b) Records. Each Party shall maintain full and complete records of all maintenance, rehabilitation, track relocation or removal performed on the Subject Segments and shall keep all track profiles and track charts up to date so as to show all program maintenance and rehabilitation performed on the Track. Copies of updated records and track charts on the Subject Segments shall be provided by each Party to the other Party promptly upon request.

(c) Inspections. Each Party shall have the right at any time, upon reasonable notice (except for emergencies, where no notice is required) to inspect the Track then maintained by the other Party for conformity with the standards of maintenance contained in this Agreement and to verify compliance with this Agreement; provided that such inspections shall not unreasonably interfere with the other Party's operations; that all persons conducting such inspections shall execute appropriate releases and indemnity acknowledgements; and that the other Party may accompany the inspecting Party during such inspections. Each Party shall be notified by the other of, and have the right to attend, any FRA or CPUC inspection of any Track on the Subject Segments

(d) Inspection of Records. Each Party shall have the right at any time upon reasonable notice to inspect the other Party's books, records, or any other reports or supporting documents or materials necessary to determine compliance with any provisions of this Agreement. The inspecting Party will conduct inspections during normal business hours and the other Party shall make its facilities available to the inspecting Party's inspectors to permit such inspection without undue interference with the other Party's operations. Any direct expense arising from making the inspection shall be borne by the inspecting Party.

SECTION 16.02 Billing and Payment. Invoices submitted to the Parties under this Agreement ("Invoices") must be itemized with a detailed description of the charges. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a Party disputes any items on an Invoice, that party may not deduct the disputed item from the payment, but shall notify the payee of the disputed item and the Parties shall use best efforts to resolve the disputed items within thirty (30) days after receipt of the disputed payment. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the expense or cost covered thereby is incurred.

SECTION 16.03 Employee Matters. The Parties agree that the employees of each Party are not the employees of the other Party. Each Party assumes exclusive responsibility for compliance with all employment laws and regulations applicable to its operations, as well as the

terms of any collective bargaining agreements to which each Party may, from time to time, be a party. During the term of and following termination of this Agreement, each Party shall bear any and all costs of protection of its current or future employees, arising from any labor protective conditions imposed on such Party by the STB or any other regulatory agency or statute as a result of such Party's use, operation or maintenance of the Subject Segments and any related agreements or arrangements, including collective bargaining agreements, or arising as a result of the termination of this Agreement. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder.

SECTION 16.04 Offers of Financial Assistance. If either NCRA or the Operator elect to abandon/discontinue common carrier operations on all or any portion of the Healdsburg Segment or the Lombard Segment and SMART or a party designated by SMART files an offer of financial assistance under 49 U.S.C. § 10904, NCRA shall agree to negotiate with SMART or SMART's designee regardless of whether another party files such an offer.

SECTION 16.05 Compliance with Laws. During the term of the Agreement, each Party shall comply with all Applicable Laws on the Subject Segments, including but not limited to those controlling air, water, noise, hazardous waste, solid waste, and other pollution, or relating to the use, generation, storage, transport, release, or disposal of Hazardous Materials.

SECTION 16.06 Entire Agreement; Effect of Prior Agreements. It is the intention of the Parties that this Agreement shall govern use of their respective rights under their respective easements. This Agreement contains the entire agreement between the Parties, and supersedes all other prior oral or written agreements, commitments, or understanding with respect to the matters provided herein as of the Execution Date, including but not limited to the Operating Agreement 1996, the Cooperative Agreement and the Principles Agreement. (For the avoidance of doubt, the Parties intend by the prior sentence to terminate, annul, replace and make void all of the terms of all prior agreements including any terms that purport to survive termination.) The Parties hereby waive all claims of any kind or character arising out of or under or during the pendency of any of the prior agreements, including without limitation, claims which but for this sentence would survive under California Code Section 1542. THE PARTIES INTEND THIS WAIVER TO COVER ANY CLAIMS THEY DO NOT KNOW OF AGAINST EACH OTHER. For the avoidance of doubt, as of the execution of this Agreement, the Parties have no claims against each other. Notwithstanding the foregoing, at the time of executing this agreement, the parties have not yet resolved and finalized the reconveyance of a deed of trust, to NCRA, encumbering certain property located in Mendocino County commonly referred to as the Ukiah Depot Property. A promissory note executed by NCRA in favor of SMART's predecessor, NPWRA, has been cancelled by SMART, but the reconveyance of the deed of trust has not occurred. Accordingly, this section is not intended to release any obligations SMART may have in regard to effectuating the reconveyance of the deed of trust. No modification of this Agreement shall be binding upon the Party affected unless set forth in writing and duly executed by the Party to be charged; provided that nothing in this agreement shall affect the rights and obligations of the Parties under the Operating Agreement 1996 with respect to matters arising prior to the Effective Date of this Agreement.

SECTION 16.07 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for SMART, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to SMART at:

SMART District Office
750 Lindaro Street, Suite 200
San Rafael, CA 94901
Attention: General Manager

with a copy to:

Office of Sonoma County Counsel
575 Administration Drive
Room 105
Santa Rosa, CA 95403
Attention: County Counsel

(b) If intended for NCRA, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by national overnight delivery service, prepaid, addressed to NCRA at:

North Coast Rail Authority
419 Talmage Road, Suite M
Ukiah, CA 95482
Attention: Executive Director

with a copy to:

Christopher J. Neary, Esq.
110 S. Main Street, Suite C
Willits, California 95490

And to:

The Northwestern Pacific Railroad Company
250 Cambridge Avenue, Suite 104
Palo Alto, CA 94306-1554

Each notice, demand, request or communication which shall be mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 16.08 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of SMART and NCRA, and shall be binding upon the successors and assigns of SMART and NCRA, subject to the limitations hereinafter set forth. NCRA may not assign its rights under this Agreement or any interest therein, attempt to have any other person assume its obligations under this Agreement, or permit the Operator to assign its lease of NCRA's ownership or operating easement on the Subject Segments without the prior written consent of SMART, which consent may not be unreasonably withheld or delayed. SMART may not assign its rights under this Agreement or any interest therein, attempt to have any other person assume its obligations under this Agreement, or permit any operator to assign its rights of the Subject Segments without the prior written consent of NCRA, which consent may not be unreasonably withheld or delayed. NCRA may not change the Operator or change/engage a contract operator of NCRA Passenger Excursion ~~Service without~~ the prior written consent of SMART, which consent shall not be unreasonably withheld, conditioned or delayed. SMART may not change/engage a contract operator of SMART Ancillary Passenger Service without the prior written consent of NCRA, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to a proposed change in the Operator, NCRA shall secure any necessary approvals from the STB and such other regulatory approvals as may be then required.

SECTION 16.09 Severability. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

SECTION 16.10 Headings: Interpretation. The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement. With respect to interpretation of this Agreement and resolution of any ambiguities, neither Party shall be deemed to be the drafter of the Agreement.

SECTION 16.11 Waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

SECTION 16.12 Counterparts. This Agreement may be executed in counterparts both of which, when executed and delivered, shall be deemed to be an original and both counterparts taken together shall constitute but one and the same instrument.

SECTION 16.13 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

SECTION 16.14 Agreement Runs With Land; Recordation. This Agreement shall run with the land, except that any parcel transferred by a Party to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in

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connection with the rail operations of the other Party, shall be deemed removed from the property as applicable. This Agreement may be recorded.

SECTION 16.15 Not for the Benefit of Others. This Agreement and each and every provision herein is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the Parties hereto. Notwithstanding the fact that it has certain direct obligations under this Agreement, NWPCo is not a party to this Agreement and this Agreement shall not be construed to create or increase any right in NWPCo to recover by way of damages or otherwise against either of the Parties hereto.

SECTION 16.16 Survival. The Parties agree that their respective rights, duties and obligations under any provision which by its terms imposes an obligation on either Party that is continuing in nature shall survive the expiration or termination of this Agreement.

SECTION 16.17 Force Majeure. Neither Party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each Party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other Party or to a third Party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God; provided, that if either Party suffers a work stoppage due to a labor dispute, such Party shall make such reasonable efforts to staff its operations so as to minimize disruptions.

SECTION 16.18 Participation In Proceedings. If either Party asks the other Party in writing to participate in regulatory proceedings or public hearings of any kind concerning the first Party, the first Party shall reimburse the other Party for the reasonable expenses incurred (including without limitation attorneys' fees) as a result of such participation. Absent such a written request, neither Party shall have an obligation to participate in any such regulatory proceedings or public hearings.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the day and year first herein written.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____

Title: Board Chair

By: _____

Title: _____

Approved as to form:

_____

NORTH COAST RAILROAD AUTHORITY

By: _____

Title: Exec. Dir.

By: _____

Title: CHAIR

Approved as to form:

_____

EXHIBIT 1 – CERTAIN DEFINITIONS & CROSS-REFERENCES TO TERMS DEFINED IN THE AGREEMENT

"Agreement" shall mean this Operating & Coordination Agreement.

"Applicable Laws" shall mean all federal, state, and local laws, rules, regulations, directives, orders and judgments applicable to the Subject Segments, regardless of scope.

"Changes and/or Additions" shall mean any material improvements (including Pathways) to the Subject Segments constructed after the Execution Date (including but not limited to material additions, betterments and capital projects, for railroad highway grade crossing separations, quiet zones, CTC Signal Systems), and any construction, reconstruction, alteration and modification thereto, and any retirements therefrom, but excluding ordinary maintenance and repair.

"Changeover Date" shall have the meaning set forth in SECTION 4.04.

"Cooperative Agreement" shall mean the Agreement dated April 30, 1996 by and between NWPRA and NCRA.

"CPUC" shall mean California Public Utility Commission or any successor agency.

"CTC Signal Systems" shall mean any signal systems with a bi-directional block signal system under which train movements are authorized by block signal indications with the absolute signals and power switches controlled by the dispatcher from a remote console (including the wayside block signals, power operated switch machines, electronic coded track circuits, relays, and underground cable), including such systems with positive train control.

"Dispatching" shall have the meaning set forth in 49 C.F.R. § 241.5.

"Event of Default" shall have the meaning set forth in SECTION 15.02.

"Execution Date" shall mean the date of execution of this Agreement, as set forth on the first page hereof.

"Final Plans" shall mean design plans for all Changes and/or Additions at the one hundred percent (100%) completion stage, covering all signals and signaling systems.

"FRA" shall mean the Federal Railroad Administration of the United States Department of Transportation or any successor agency.

"Hazardous Materials" shall mean:

(i) Any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;

(B) the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.;

(C) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;

(D) the Clean Water Act, 33 U.S.C. §1251 et seq.;

(E) California Health and Safety Code §§25115-25117, 25249.5, 25249.8, 25281, and 25316;

(F) the Clean Air Act, 42 U.S.C. §7901 et seq.; and

(G) California Water Code §13050;

(ii) any amendments to such enumerated statutes or acts; and

(iii) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated as of the Closing Date under any other applicable federal, state or local environmental laws, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum (or any fraction thereof), natural gas and synthetic fuel products and byproducts.

"Healdsburg Segment" shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 68.22 near Healdsburg, CA to NWP MP 26.96 near Novato, CA, a distance of approximately 41.2 miles; and between MP 26.96 in Novato and MP 25.57 at Ignacio, together with all Track located thereon, except for Industrial Track or stations, track and other facilities constructed exclusively for SMART Commuter Operations.

"Industrial Track" shall have the meaning set forth in SECTION 2.02.

"Initial Design Plans" shall mean all Changes and/or Additions to be constructed on the Shared Track (or any portion thereof) prior to the initiation of SMART Commuter Train Service.

"Invoices" shall have the meaning set forth in SECTION 16.02.

"JPA Agreement" shall mean the Agreement dated May 24, 1995 by and between the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and NCRA.

"Lombard Segment" shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 25.6 near Ignacio, CA to Brazos Junction Station in Napa County, CA, at the former Southern Pacific Transportation Company MP 63.4, a distance of approximately 25.3 miles, together with all Track located thereon, except for Industrial Track or stations, track and other facilities constructed exclusively for SMART Commuter Operations.

"Loss" or "Losses" shall mean orders, directives, judgments, causes of action, penalties, fees, claims, costs, liabilities, damages, and expenses (including without limitation court costs and attorneys' fees and all costs of investigating, remediating, or responding to the existence of a claim) of whatsoever nature or source.

"Material Modifications" shall mean a change order issued by the Constructing Party to the approved Final Plans that, in the Constructing Party's reasonable judgment, is material to the overall design and construction of the Changes and/or Additions.

"NCRA" shall mean the North Coast Railroad Authority.

"NCRA Freight Service" shall mean the freight service conducted pursuant to NCRA's perpetual and exclusive easement over the Healdsburg and Lombard Segments and the freight service conducted on the Willits Segment.

"NCRA Passenger Excursion Service" shall have the meaning set forth in SECTION 2.01

"NWPRA" shall mean the Northwestern Pacific Railroad Authority.

"NWPCo" shall mean Northwestern Pacific Railroad Company), a California corporation.

"Operating Agreement 1996" shall mean the Agreement dated August 19, 1996, by and between NWPRA and NCRA.

"Operator" shall have the meaning set forth in ARTICLE III.

"Party" or "Parties" shall mean SMART and NCRA or one of them.

"Pathway(s)" shall mean ancillary bicycle and pedestrian pathways on the Shared Track.

"Principles Agreement" shall mean the Agreement dated April 30, 1996 by and between NWPRA and NCRA.

"Shared Track" shall mean and include the Healdsburg Segment and that portion of the Willits Segment from Healdsburg to Cloverdale (MP 85.35), and as modified as provided in SECTION 7.01.

"SMART" shall mean the Sonoma-Marin Area Rail Transit District.

"SMART Ancillary Passenger Service" shall mean any SMART passenger service (e.g., intercity or excursion passenger service) other than SMART Commuter Operations.

"SMART Commuter Operations" shall mean regularly scheduled passenger service.

"STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

"Subject Segments" shall mean the Lombard Segment, the Healdsburg Segment and the Willits Segment, collectively, and shall not include Industrial Track.

"Track" shall mean and include all rail and fastenings, switches and frogs complete, ties, ballast and signals and all appurtenances thereto, including without limitation bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts and any other structures or things necessary for support or construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, any crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and crossing warning devices.

"Willits Segment" shall mean that portion of the Northwestern Pacific Railroad Right-of-Way as particularly defined in the JPA Agreement, generally extending from NWP MP 142.5 near Outlet Station to NWP MP 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles, together with all Track located thereon, except for Industrial Track or track and facilities constructed exclusively for SMART Commuter Operations.

EXHIBIT 2 – PASSENGER WINDOWS EXAMPLE

Station (Milepost)	AM	PM
Cloverdale (84.7) - Healdsburg (68.0)	6:15 – 7:43*	17:34 – 19:02*
Healdsburg (68.0) – Guerneville Road (55.4)	5:40 – 8:59	16:24 – 19:58
Santa Rosa (53.8) – Petaluma (38.5)	4:42 – 10:00	15:12 - 20:35
Petaluma (38.5) – Ignacio North (25.8) vs (25.57)?	5:16 – 9:31	15:46 – 20:01

Assumes pro-forma passenger timetable of 6-30-10, and ten-minute clearance time by freight trains in advance of scheduled passenger movements.

*In the Cloverdale-Healdsburg segment, freight trains may have access to the mainline during the morning passenger window after passage of the southbound 7:25 AM train from Cloverdale (#113), and during the afternoon passenger window after passage of the northbound 18:44 PM train (#124) from Healdsburg.

During passenger-only windows, where gaps of more than ten minutes may exist between successive passage of passenger trains, and where feasible operationally, short freight movements may be permitted on or across the mainline at the discretion of the SMART dispatcher.

During the midday, at night, and on weekends and holidays, no passenger-only windows are considered necessary under the current operating concept. Passenger and freight trains will be dispatched by SMART with the objective of minimizing or eliminating delays to either passenger or freight trains.

EXHIBIT 3 – SIDING/SPUR CONNECTION PROVISIONS

For the portion of the Shared Track between the Ignacio Wye (MP 25.57) and Santa Rosa Railroad Square (MP 53.8) (or any portion thereof):

1. SMART shall pay the Incremental Cost (as defined below) of a turn-out at the following locations (MPs are approximate):

   - Burdell South (MP 30.5)
   - Burdell North (MP 31.7)
   - Park South (MP 39.2)
   - Park North (MP 39.7)

2. In addition, SMART shall pay the Incremental Cost (as defined below) of a turn-out where NCRA can reasonably demonstrate, on or before January 31, 2014, the presence of a bona fide freight rail customer that requires service from a location requiring such a turn-out (i.e., service from the line where the turn-out would be installed).

3. The foregoing obligation is subject to an absolute maximum of 12 turn-outs.

4. "Incremental Cost" means any cost that would not be required if there were no SMART Commuter Operations.

5. Parties other than SMART shall pay (i) the difference between full cost and Incremental Cost on all tie-ins where SMART is responsible for Incremental Cost (as described above) and (ii) the full cost (including for the more expensive turn-out and for signal system tie-in) of any additional turn-outs regardless of whether such cost includes elements that would not be required if there were no SMART Commuter Operations.

6. To the extent NCRA's commencement of NCRA Freight Service is delayed solely as a result of an injunction, the date set forth above (January 31, 2014) shall be extended; provided that the extension is subject to an absolute maximum of one year.

For the portion of the Shared Track north of Santa Rosa Railroad Square (MP 53.8)(or any portion thereof):

7. SMART shall pay the Incremental Cost (as defined above) of a turn-out where NCRA has a bona fide freight rail customer receiving service by such turn-out on the date that SMART issues for review thirty percent (30%) plans pursuant to SECTION 6.02. Any dispute about the number of such turn-outs shall be submitted to "baseball-style" arbitration pursuant to SECTION 14.02(a).

8. Parties other than SMART shall pay the full cost (including for the more expensive turn-out and for signal system tie-in) of any additional turn-outs, including for any freight rail customers identified after SMART issues for review thirty percent (30%) plans pursuant

to SECTION 6.02 and regardless of whether such cost includes elements that would not be required if there were no SMART Commuter Operations.

EXHIBIT 4 – LIST OF CERTAIN NCRA GRANT AGREEMENTS

[NCRA List provided 6/2/11; SMART needs to review agreements]

EXHIBIT 5 – CERTAIN RESERVED RIGHTS

SMART reserves all of the following reservations made by NWPRA in the Operating Agreement 1996 with respect to the Lombard and Healdsburg Segments:

- Reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes;
- Existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;
- Encroachments or other conditions that may be revealed by a survey, title search or inspection;
- All existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and
- The exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Healdsburg and Lombard Segments, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with NCRA's rail operations.

NCRA shall not make any use of the Healdsburg and Lombard Segments which is inconsistent with SMART's right, title and interest therein and which may cause the right to use and occupy the Healdsburg and Lombard Segments to revert to any party other than SMART.

NCRA reserves all of the following reservations with respect to the Willits Segment:

- Reservations or exceptions of minerals or mineral rights, and all private and public easements and rights-of-way, however created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes;
- Existing and future building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;
- Encroachments or other conditions that may be revealed by a survey, title search or inspection;
- All existing ways, alleys, privileges, rights, appurtenances and servitudes, however created, liens of mortgage or deeds of trust, and
- The exclusive right to approve or deny any and all future easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the

Willits Segment, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with SMART Commuter Operations.

☐ SMART shall not make any use of the Willits Segment which is inconsistent with NCRA's right, title and interest therein and which may cause the right to use and occupy the Willits Segment to revert to any party other than NCRA.

EXHIBIT 6 – MAINTENANCE CHARGES

Charge per car mile for cars (loaded or empty) weighing
less than or equal to 263,000 pounds $0.55

Charge per car mile for cars (loaded) weighing
more than 263,000 pounds $0.65

Charge per month for maintenance of
freight-only turns-outs.....$200 per freight turn-out

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Willits Segment, or any portion thereof, so long as such future easements, leases, licenses or rights of occupancy do not unreasonably interfere with SMART Commuter Operations.

☐ SMART shall not make any use of the Willits Segment which is inconsistent with NCRA's right, title and interest therein and which may cause the right to use and occupy the Willits Segment to revert to any party other than NCRA.

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Charge per car mile for cars (loaded or empty) weighing
less than or equal to 263,000 pounds $0.55

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EXHIBIT B

NORTHWESTERN
PACIFIC
RAILROAD
COMPANY

BUSINESS PLAN

FOR THE

NORTHWESTERN PACIFIC RAILROAD COMPANY

Prepared For:

California Transportation Commission

Prepared By:

NWP Co.

Date Due:

October 24, 2006

385 Sherman Avenue • Suite 1 • Palo Alto, CA 94306-1840 • (650) 289-9850 • FAX (650) 289-9856

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administration, including placement of car orders, payment of car hire, and shipper billing.

Until such time as the expansion of NWP Co. necessitates additional clerical forces, all of the NWP Co. administrative functions will be provided by The Woodside Consulting Group, Inc. These include the accounts receivable, accounts payable, bookkeeping, and accounting functions.

It is expected by NWP Co. that a larger but fully qualified Management Team will be installed at NWP Co. prior to the commencement of the movement of high volumes of Island Mountain aggregate, in order to efficiently and effectively manage the continuing operations on the NWP Line.

In addition to a team of railroad experts, NWP Co. will have unique advantages in the navigation of the logistical challenges inherent in rehabilitating the railroad. As General Counsel, Doug Bosco will focus on building trusted relationships with the public agencies. J. T. Wick, an expert in the fields of environmental mitigation and entitlements, will serve as an advisor on all issues pertaining to the inevitable physical, environmental, and other entitlement-related challenges of the rehabilitation process.

Because NWP Co. is NCRA's rail service contract operator with responsibility for operating the NWP in accordance with all FRA and regulatory standards, NWP Co. will fully participate with NCRA in the planning, implementation, and acceptance of the NWP Line rehabilitation, as provided by the Lease Agreement. NWP Co. expects the NWP Line rehabilitation to be overseen primarily by the following four individuals:

- Alan D. DeMoss, Vice President, MofW&S;
- Richard R. Mahon, past Chief Engineer of Southern Pacific;
- James C. Mahon, past Manager of Track Programs of Southern Pacific; and
- Richard (Dick) Carter, past Manager of Structural Projects of Union Pacific and Southern Pacific.

A resume for Mr. DeMoss is contained in Attachment C. Resumes for the three Engineering Staff experts, Messrs. R. Mahon, J. Mahon, and Carter, are contained in Attachment E. In combination, this engineering team's combined experience spans work on various aspects of the Union Pacific, Southern Pacific, and NWP Lines. Their experience in railroad engineering will commit to this task a level of expertise that is unparalleled in the history of the NWP Line.

IV. Rehabilitation Plan

NCRA has adopted a policy of reopening the entire Northwestern Pacific Railroad Line from Lombard to Arcata/Samoa. Reopening the entire line is currently estimated to cost $150.6 million.

The first phase of construction has been identified as the Russian River Division Phase 1 from Lombard to Windsor based on the market demand for rail service, the existing condition of the line, the ability to team with SMART, and the ability to work within NCRA's right-of-way to restore a prior-existing service.

Future construction phasing will be based on several factors including market demand for rail service, environmental clearance, and availability of funding. However, the current plan, once the Russian River Division Phase 1 is completed, is to move forward with the Russian River Division Phase 2, then the Canyon, and finally the North End.

NWP Co.'s schedule for the resumption of service on the NWP Line is contingent upon receiving from NCRA and the funding agencies the authorization to spend the available public funds in accordance with our proposed construction schedule.

A. Russian River Division

It is NWP Co.'s objective to reopen that portion of the Russian River Division from Lombard to Windsor as soon as possible. Because all of the Russian River Division's known traffic will originate or terminate between Lombard and Windsor, rehabilitation in that area has received the highest priority.

NCRA proposes to use TCRP funds to open Phase 1 of the Russian River Division, Lombard to Windsor, to FRA Class 3 standards. This will allow NWP Co. the ability to serve several shippers that have expressed interest in using rail and to provide Sonoma County with an economical rail movement alternative for their solid waste.

The items listed below summarize the major work elements required for the Phase 1 Project. These items are further described in the 2005 Capital Assessment Report and rehabilitation plans.

- Replacement or repair of 53 railroad grade crossing warning systems. This work is specifically required to address FRA's Emergency Order 21;