



MEMO

To: NCRA Board of Directors

From: Executive Director Stogner

Date: November 16, 2020

Subject: **Agenda Item E.3** - Discussion and Possible Action Regarding Proposed Effectuation of Transition Toward Establishment of Great Redwood Trail, Including Transfer and/or Railbanking of NCRA Property and Rail Service Rights and Duties; Update Regarding Transfer of Operations South of Mile Post 89 from NWP Co. to SMART

Background and Overview

SB 1029 (McGuire) became effective on January 1, 2019. This legislation finds that it is in the public interest to dissolve the NCRA, and transfer its rights of way to other public entities, for the potential purpose of trail use and for the purpose of continuing freight where it was operational in 2018. During the transition process, NCRA is prohibited from entering into any new property leases or selling any NCRA property without the approval of the California Transportation Commission (CTC).

Importantly, SB 1029 also makes findings which declare that “NCRA’s railroad right-of-way provides an opportunity to create a ‘Great Redwood Trail’ for hiking, biking and riding, that may be in the public and economic best interests of the north coast.” The legislature calls on the state to consider federal railbanking as a means of establishing the Great Redwood Trail.

The legislation requires the State Transportation Agency (CalSTA) to conduct an assessment and make a report to the legislature regarding dissolution of the NCRA and disposition of its assets and liabilities. NCRA was required to provide input and cooperate with this assessment and provide access to all NCRA records required by the state agencies conducting the assessment. The report was released on November 12, 2020, detailing the assets and liabilities of the NCRA, and the potential paths for the dissolution or modification of NCRA, and likely costs and challenges associated with the different approaches. The report can be accessed at <https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature-111220.pdf>. As noted in the report, additional legislation would be needed for the NCRA to be disbanded or changed in form.

Additionally, Sec. 17 of SB 1029 appropriates \$4 million dollars to the Sonoma-Marín Area Rail Transit District (SMART) for the acquisition of freight rights and equipment from the Northwestern Pacific Railroad Company (NWP Co.) to ensure efficient provision of goods

movement in the corridor where freight service currently exists, between the national railroad interchange (Lombard) south of Napa and Windsor. The terms and conditions of this agreement must be approved by both the Sec. of Transportation and the Dir. of Finance. The buyout of freight rights from NWP Co. by SMART is the first of two parts of the consolidation of freight service south of Mile Post 89 under SMART, rather than the NCRA.

Consolidation of Freight Service under SMART

In furtherance of the goals established by SB 1029, the NCRA Board of Directors approved specific actions on May 26, 2020 which I restate here:

1. Authorize the Executive Director, on behalf of the Board of Directors, to grant permission to NWP Co., pursuant to Section VII(B) of the 2006 Lease, to make such applications to the STB regarding modification or termination of service as necessary or prudent to complete the transfer of rights from NWP Co. to SMART with respect to all operations and rights south of Mile Post 89;
2. Authorize the Executive Director to approve and execute an agreement for partial termination, amendment and/or assignment of the 2006 contract with NWP Co, as amended in 2011, in a form approved by General Counsel, and as required to effectuate the terms of the transfer of rights under the lease from NWP Co. to SMART with respect to all operations and rights south of Mile Post 89;
3. Authorize and direct the Executive Director to engage in further discussion and negotiation with SMART regarding future actions of NCRA and SMART that may be necessary to effectuate the goal of SMART becoming a Common Carrier and Freight service provider from Sonoma-Mendocino County line south and east to Napa River, and return to the Board of Directors with appropriate further recommended action.

Pursuant to this authority, staff and counsel have been working with SMART and NWP Co., in coordination with CTC staff, toward execution of the above documentation to allow the transfer of freight service and associated rights and responsibilities from NWP Co. to SMART. As part of the consolidation of freight service under SMART, which is contemplated by the state grant of funds to SMART and CalSTA to effectuate the NWP Co. transaction, and consistent with the legislative intent to transfer right-of-way from the NCRA to other public entities, SMART has requested that NCRA execute documents to transfer its right of way and related interests to SMART south of Mile Post 89. Completion of such a transaction would require both NCRA's approval of documentation to transfer the real estate interest and freight operation rights, and the cooperation of the NCRA with any relevant STB filings. Additionally, the operating agreement between the NCRA and SMART will need to be amended upon completion of such a transaction to reflect the change in status with respect to freight operations.

Facilitation of Railbanking

Concurrent with negotiations with SMART and NWP Co, and pursuant to direction from the NCRA Board on June 12, 2019, staff and counsel have been performing preliminary work necessary to undertake railbanking filings before the STB. Staff and counsel are working with railbanking expert Charles Montange and railroad historian Joshua Buck to prepare for anticipated railbanking filings, including preparation of historical and environmental report documentation that must be circulated prior to any request to railbank. Formal filings will not be undertaken prior to NCRA Board and CTC approval, but upon the approval of your Board and

the CTC, staff and counsel will complete necessary work to bring proposed filings back for final approval.

In conjunction with the above-described actions, NCRA has been asked by the CTC staff to develop a Strategic Plan outlining NCRA activities to date and future plans to implement the provisions of SB 1029, with emphasis on plans to create the Great Redwood Trail in Mendocino , Trinity, and Humboldt Counties and plans to transfer freight railroad responsibility to SMART in Sonoma, Marin, and Napa Counties.

NCRA is scheduled to present its Strategic Plan to the CTC at its regularly scheduled monthly meeting December 3, 2020.

Staff Recommendation:

- 1) Approve the NCRA Strategic Plan including development of a final plan to railbank the rail corridor, initially from the Sonoma/Mendocino County line north to Samoa, including 3 branch lines in Humboldt County, and advance it to the CTC for approval;
- 2) Authorize Executive Director to finalize all documents necessary to transfer NCRA's ownership interest and freight easement interest to SMART, from the Sonoma/Mendocino County line south to the national rail interchange south of Napa (Lombard), in a form approved by General Counsel, and upon approval by the CTC;
- 3) Authorize Executive Director to enter into an amendment of the Operating Agreement between the NCRA and SMART to reflect the transfer of the NCRA's freight easement interest to SMART.