

CALIFORNIA COASTAL COMMISSION

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Th17a

MEMORANDUM

Date: April 6, 2022

To: Commissioners and Interested Persons

From: Shana Gray, Deputy Director
Melissa Kraemer, North Coast District Manager
Catherine Holloway, District Planner

Subject: Addendum for Commission Meeting for Thursday, April 7, 2022
Item Th17a, CDP Application No. 1-20-0560 (Humboldt County)

The purpose of this staff report addendum is to update the staff recommended findings to (1) add minor, non-substantiative clarifications to the language of Special Condition 18, and (2) present and respond to public comments received since publication of the staff report, including added findings to address issues raised in public comments.

Staff continues to recommend that the Commission, upon completion of the public hearing, approve the coastal development permit with the special conditions and findings included in the staff recommendation of March 18, 2022, as modified by the changes recommended herein.

I. Changes to Special Condition 18

Amend Special Condition 18 (page 19 of the March 18, 2022 staff report) as follows (text to be deleted is shown in ~~bold double strikethrough~~ format, and text to be added is shown in bold double underline format):

18. Length of Development Authorization. Development authorized by this permit is authorized: only so long as (1) ~~the permittee is legally authorized by the property owner(s) to use the site~~ until July 1, 2046 (i.e., the expiration date of the County's lease with the railroad authority or its successor agency unless extended), except that the Executive Director has authority to extend authorization up to 5 years for good cause and any further extensions to the authorization period require approval by the Commission pursuant to an amendment to this CDP; (2) until the County or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the authorized development is currently and permanently unsafe for use due to damage or

destruction from waves, flooding, tsunami run-up, liquefaction, or other hazards related to coastal processes or seismic hazards, and that there are no feasible measures that could make the development suitable for use without the use of shoreline protective devices; (3) until removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) until the development ~~does not~~ requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies. In addition, the development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. The permittee shall obtain a CDP for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

II. Responses to Comments

Since publication of the staff report through the date of this addendum, the Commission received [correspondence](#) from ten individuals, organizations, agencies, and local governments, the majority of which express support for the proposed project. Two of the commenters (Timber Heritage Association and Uri Driscoll) raise concerns and recommendations related to (1) the NCRA's pending railbanking application, which has not yet been approved by the Surface Transportation Board (STB), (2) compatibility of trail design with railroad use, (3) removal of railroad infrastructure, and (4) use of a living shoreline rather than raising the railroad and repairing rock armoring along segments 7-8. Responses to issues raised are provided below and are suggested to be added as findings to the staff report as noted in Section III of the addendum.

In response to comments related to the status of the County's railbanking application, compatibility of trail design with railroad use, and removal of railroad infrastructure, the Commission is satisfied that the County has legal authority to undertake the proposed development and that the project, with the staff recommended conditions, is consistent with the Coastal Act. The Commission additionally adopts the staff recommended modifications to Section D (Permission to Build Rail-with-Trail Project as Conditioned) as set forth in Section III of the addendum.

In response to the comments received related to alternatives to the County's proposal to raise the rail bed and railroad berm repairs along segments 7 and 8, the staff report (Finding K starting on page 76) addresses coastal hazards risks to the proposed trail and measures proposed by the applicant to address these risks. An analysis of alternatives to proposed rock armoring, including a living shoreline alternative, is provided on pages 85-86. As described in the staff report, while the County is in the planning phase for a living shoreline alternative, the feasibility of such an alternative has not been definitively established at this time. The County has provided conceptual design plans for a living shoreline project that shows the rock slope protection (RSP) treatments integrating with a future living shoreline project. The proposed RSP for the rail-with-trail project also could be removed or re-positioned as needed to be integrated

into a future living shoreline project. Therefore, the proposed project does not preclude the larger planning effort for a living shoreline alternative.

III. Modifications to Staff Recommended Findings

The Commission incorporates the following modifications to Section D (Permissions to Build Rail-with-Trail Project as Conditioned) on pages 32-33 of the staff recommended findings as follows:

...

Permission to Use the Railroad Right-of-Way for the Proposed Rail-With-Trail Project

North Coast Railroad Authority (NCRA) was created in 1989 to maintain and operate freight rail service between the Bay Area and Humboldt Bay.¹¹ The NCRA has applied to the Surface Transportation Board (STB), an independent federal agency that regulates modes of surface transportation, with a request to railbank the rail line.¹² On May 14, 2021, NCRA completed the first step and filed a notice to abandon 175.84 miles of rail line from the City of Willits to Eureka. This process is still under review by the STB. While railbanking is a means of maintaining a railroad's right-of-way (ROW) while a railway is not being actively used to operate rail, the County is not relying on railbanking for access to the ROW for the proposed Bay Trail South Project. The County owns the land through which segments 7-9 would pass and the NCRA holds an easement for railroad purposes over the rail corridor through these parcels. NCRA owns the parcels through which segments 1-4 would pass and has authorized this trail through a 25-year lease agreement executed with the County in 2021 for the use of the rail corridor. Segments 5-6 avoid the railroad ROW by placing the trail on the CRC levee. The lease agreement is subject to special conditions imposed by the NCRA and also to conditions imposed by the California Transportation Commission (CTC) in March of 2021. Therefore, railbanking is not needed to maintain the ROW along this stretch of the railroad.

Some comments expressed concern that portions of the project are not consistent with the lease agreement and may not proceed before the STB approves the railbanking application, including sections where the trail would be located on the railroad bed and removing rails and ties in connection with the repair of the railroad prism. These comments do not raise issues regarding the project's consistency with Coastal Act or LCP policies, which provide the standard of review for the project. In addition, an April 5, 2022 letter from the NCRA to the County concludes that the County's project substantially conforms to the lease agreement. NCRA also asserts that whether or not railbanking ultimately is approved by the STB is immaterial to the project for several reasons. First, the County is not relying on railbanking to secure right-of-way for the project, as described above. Second, for those segments of the project that are within the NCRA rail corridor, the proposed project will comply with NCRA design requirements for rail-with-trail spacing and geometry (segments 4, 7, 8, and 9) or for cooperative use (e.g., use of flangeway fillers for segments 1 and 2 where trail

will be aligned on top of the rail). Third, for all segments of trail, the project is designed to be compatible with future railroad use.

Given the continued use of ~~the southern~~ portions of the railroad tracks along the proposed trail alignment by speeders and potential future renewed operation of the railroad **by freight or passenger trains**, the project incorporates design features consistent with NCRA Trail Guidelines and relevant legislation.¹³ The project incorporates ~~the minimum 8.5-foot~~ **sufficient** setback distance between the railroad centerline and edge of trail ~~where feasible~~ **for railroad compatibility** and **also includes the installation of railroad crossing pavement markings, signage at crossing locations to avoid substantial conflicts between the rail line and trail users, and warning and safety protocols for shared use of the Eureka Slough bridge segment. The project also** incorporates **clamp-system, durable** flangeway fillers where the trail runs directly on top of the railroad (~~segment 1 – Eureka Slough Bridge and segment 2~~) and where the trail crosses the railroad to connect with the CRC Levee (~~segments 5 and segment 6~~). **The flangeway fillers proposed for use in the project are designed for compatibility with railroad uses and were tested for compatibility with expected trail uses (e.g., bikes, strollers, etc.) and the THA’s speeder rail cars.**¹⁴ **As noted by the CTC in its approval of the NCRA’s lease agreement with the County for the project (accessible from this web link: <https://catc.ca.gov/-/media/ctc-media/documents/ctc-meetings/2021/2021-03/98-4-35.pdf>):**

The project was designed using principles in alignment with NCRA’s existing trail guidelines for rail-with-trail projects. It is anticipated that this design will allow for continued use of the railroad corridor by Timber Heritage Association for speeder cars where the railroad is currently intact and suitable for this use. The spacing and geometry of the Project is compatible with future restoration of the railroad corridor for freight or passenger use or excursion trains. However, significant upgrades and improvements to the rail corridor would be necessary if an excursion train or future freight/passenger railroad use are pursued.

Although the project proposes to remove some damaged railroad infrastructure along segments 7 and 8, if required by the NCRA (or its successor agency) and/or the CTC, the County will store the rails and ties from these segments after removal at a County facility (e.g., County Corp Yard) for possible future use by a future railroad operator. The County also proposes to remove debris (including ties, piles, culvert) associated with the failed Brainard Slough railroad crossing in segment 9 and does not propose to replace this crossing with a new bridge. The previous crossing failed several years ago and would need to be replaced if/when

¹⁴ **Tests were conducted in September of 2019. Although the proposed flangeway fillers are expected to be compatible with continued use of speeder cars, it’s unknown whether the fillers are compatible with lighter-weight rail uses, such as rail bikes.**

needed for future use. The County's design is compatible with a future replacement railroad bridge at this location.¹⁵

In addition, the NCRA expressed support for the County's proposal to remove damaged rails and ties as necessary to facilitate future use of the railroad:

Placement of the damaged rails and ties back in their former location between Brainard and Bracut without full rehabilitation of the line in those locations is not in the public interest because such placement would likely create a safety hazard and/or lead to a release of debris and hazardous materials into Humboldt Bay. It is further not in the interest of GRTA because such replacements would not render the trackage useable, meaning that in order to actually run rail traffic, GRTA would need to again move the tracks and replace them in the process of rehabilitating the rail. Further, were GRTA to undertake a project to rehabilitate the line to serviceable condition, the work done by the County of Humboldt would itself be of significant value to that rehabilitation effort. It would not be reasonable to require, nor is it required via the lease agreement, that the County of Humboldt replace the damaged rail infrastructure as part of a trail project. Thus, the placement of the old rail and tie on their former location, while technically required by the lease, is not to the benefit of either party.

~~The County has a signed lease agreement with NCRA, dated July 1, 2021, for the use of the rail corridor throughout the trail alignment from just before the Eureka Slough Bridge (Mile Post 285.5) to the southern terminus of the City of Arcata's Humboldt Bay Trail North Project (Mile Post 289.6). The term of the agreement is 25 years until July 1, 2046. The lease agreement is subject to special conditions imposed by the NCRA in its approval on December 17, 2020 and also to conditions imposed by the California Transportation Commission (CTC) in March of 2021. The NCRA imposed conditions address general construction (including design requirements for minimum separation distance between rail and trail except where cooperative use is authorized), trail use, and maintenance of the trail. The CTC imposed conditions in some ways are more complicated, because they require certain project modifications depending on whether railbanking is approved by the STB. The STB's decision is expected later this year, as explained below.~~

¹⁵ There are other project examples where failed railroad infrastructure along the NCRA line has been removed for fish habitat restoration projects and not replaced upon project completion, e.g., two salmonid habitat restoration projects funded through the CDFW Fisheries Grant Restoration Program implemented by CalTrout on the Eel River at Bridge Creek in Humboldt County and Woodman Creek in Mendocino County. See <https://caltrout.org/regions/north-coast/bridge-creek-not-your-usual-fish-passage-project> and <https://caltrout.org/projects/woodman-creek-project>

~~The CTC conditions outline three scenarios, and the project as proposed is consistent with all three. Scenario 1 allows the County to construct the trail prior to completion of the railbanking process provided that “any rail infrastructure that is relocated during construction to rehabilitate the railbed underneath must be fully documented and approved by NCRA prior to construction and replaced in its former location and condition prior to project completion.” In Scenario 2 the STB approves NCRA’s application to railbank, and there is no requirement to replace railroad infrastructure (e.g., rails and ties along segments 7 and 8 where railroad will be raised) upon project completion. In Scenario 3 the STB denies the NCRA’s railbank application, and the County is required to replace railroad infrastructure upon project completion.~~

~~The railbanking process is currently in abeyance due to a land ownership dispute over a separate rail segment east of Arcata disjunct from and unrelated to the Humboldt Bay Trail South project. However, even if the STB denies NCRA’s application to railbank (Scenario 3), the County could still construct the trail as proposed. For the segments of trail where the County has not acquired fee ownership of the land where the trail would be built (segments 1-4, from Target to Brainard), the proposed project will comply with NCRA imposed conditions for design requirements, standards for cooperative use (e.g., use of flangeway fillers), and maintenance of the trail. The remaining segments of trail (segments 5-9) either are not along the railroad/within the rail right of way (segments 5-6, along the CRC Levee) or are owned in fee by the County and not relying on easement restrictions (segments 7-9, where the railroad has easements on County owned land).~~

Nevertheless, to ensure that the project will comply with the conditions imposed in the lease between the County and NCRA (or its successor agency), as conditioned by the CTC, ~~and with requirements related to the forthcoming STB decision on railbanking,~~ the Commission attaches Special Conditions 4, 7, 16, and 18. **Special Condition 4** requires that the County, prior to permit issuance, submit evidence that NCRA (or its successor agency) and the CTC have agreed in writing that the applicant may undertake development within NCRA’s right-of-way pursuant to CDP 1-20-0560 as conditioned by the Commission. Although it is not expected to be necessary, the condition specifies that if the NCRA’s or its successor agency’s application to railbank the portion of the railroad in the project area is denied by the STB, the County must inform the Executive Director of any changes to the project necessitated by STB’s denial and, if necessary, obtain a CDP amendment prior to making such changes to the trail project. **Special Condition 7 requires the applicant to submit final site and construction plans prior to permit issuance that substantially conform with the project description and draft plans, including design features consistent with NCRA guidelines for cooperative use. Special Condition 16 requires the applicant to submit a final Construction Stockpiling and Debris Disposal Plan prior to commencement of construction that addresses the stockpiling of railroad infrastructure for future use if required by the NCRA or its successor agency.** **Special Condition 18** requires in part that development authorized by this permit is

1-20-0560 Addendum
(Humboldt County DPW)

authorized only until July 1, 2046, the expiration date for the County's lease with the NCRA, unless the Commission Executive Director or the Commission authorizes an extension.

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