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December 15, 2021

303362

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
December 15, 2021
Part of
Public Record

**RE: North Coast Railroad Authority – Abandonment Exemption – in Mendocino,
Trinity, and Humboldt Counties, CA | AB 1305X**

Reply to Motion for Exemption from Offers of Financial Assistance

Dear Ms. Brown:

Our office represents the California Coastal Commission in the above referenced proceeding and respectfully submits the following documents for filing:

(1) Motion for Leave to File Late Reply in Support of North Coast Railroad Authority's Motion for Exemption from Offers of Financial Assistance, and

(2) Reply in Support of North Coast Railroad Authority's Motion for Exemption from Offers of Financial Assistance.

Please add the California Coastal Commission to the service list as a party in this proceeding. Please note my e-mail address is Justin.Lee@doj.ca.gov and the California Coastal Commission's Chief Counsel's e-mail address is Louise.Warren@coastal.ca.gov. We consent to e-mail service of pleadings. A copy of the above documents is being sent to North Coast Railroad Authority's Counsel, as well as the parties of record identified on the service list for this docket (as of December 15, 2021).

Sincerely,

A handwritten signature in black ink, appearing to read "Justin J. Lee", is written over a horizontal line.

JUSTIN J. LEE
Deputy Attorney General

For **ROB BONTA**
Attorney General

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**AB 1305X
NORTH COAST RAILROAD AUTHORITY –
ABANDONMENT EXEMPTION –
IN HUMBOLDT, TRINITY, AND MENDOCINO COUNTIES, CA**

**CALIFORNIA COASTAL COMMISSION'S
MOTION FOR LEAVE TO FILE LATE REPLY IN SUPPORT OF
NORTH COAST RAILROAD AUTHORITY'S MOTION FOR EXEMPTION
FROM OFFERS OF FINANCIAL ASSISTANCE PROVISIONS**

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The California Coastal Commission (“Commission”) seeks leave to file a late reply in support of North Coast Railroad Authority’s (“NCRA”) Motion for Exemption from Financial Assistance Provisions.

BACKGROUND

On June 9, 2021, the Surface Transportation Board (“Board”) held this proceeding in abeyance until further Board order, to consider the jurisdictional issues surrounding the Arcata and Mad River Subsidiaries.¹

On July 26, 2021, NCRA filed a Motion for Exemption from Offer of Financial Assistance Provisions of 49 U.S.C. 10904 and 49 C.F.R. 1152.27.²

On August 26, 2021, the Board ordered a timeline to submit comments on the jurisdictional issues.³ In the same decision, the Board noted that it would address NCRA’s Motion for Exemption from Offer of Financial Provisions in a subsequent decision.⁴

ARGUMENT

Generally, “[a] party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board.”⁵ However, the Board may grant a party leave to file a late reply upon request and for good cause.⁶

Here, the Commission seeks to file a late reply to NCRA’s Motion for Exemption from Financial Assistance Provisions. The Board should allow the Commission to file a reply for several reasons. First, because this proceeding continues to be held in abeyance and the Board

¹ Surface Transportation Board, Decision, Filing No. 50823, served on June 11, 2021, 1.

² North Coast Railroad Authority, Motion for Exemption from Offer of Financial Assistance Provisions, Filing No. 302782, entered on July 26, 2021.

³ Surface Transportation Board, Decision, Filing No. 50868, served on August 26, 2021, 7.

⁴ *Id.* at 4, n. 6.

⁵ 49 C.F.R. 1104.13(a).

⁶ 49 C.F.R. 1104.7(b).

still has not decided NCRA's Motion for Exemption from Financial Assistance Provisions, no party will be prejudiced by the Commission's late reply. Second, the Commission is the primary state agency responsible for the regulation of land use within California's Coastal Zone. Several portions of the subject line are within the Coastal Zone. The continued use of the Line for commercial rail purposes would implicate multiple resource protection policies under the California Coastal Act. As such, the Commission is a stakeholder to the outcome of this proceeding and requests to be heard on any issues related to the resumption of any commercial rail operations on the subject line.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Board find good cause and allow the Commission to file a late reply, which the Commission has filed concurrently with this motion.

Dated: December 15, 2021

Respectfully Submitted,

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ANDREW M. VOGEL
Supervising Deputy Attorney General



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**AB 1305X
NORTH COAST RAILROAD AUTHORITY –
ABANDONMENT EXEMPTION –
IN HUMBOLDT, TRINITY, AND MENDOCINO COUNTIES, CA**

**REPLY OF CALIFORNIA COASTAL COMMISSION
IN SUPPORT OF NORTH COAST RAILROAD AUTHORITY'S
REQUEST FOR EXEMPTION FROM
OFFERS OF FINANCIAL ASSISTANCE**

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INTRODUCTION

This abandonment proceeding involves the North Coast Railroad Authority's ("NCRA") efforts to rail-bank a right-of-way that has not been used for freight rail service in over two decades and to establish in its place the Great Redwood Trail. NCRA has filed a Motion to be Exempt from Offers of Financial Assistance. The Surface Transportation Board ("Board") may exempt this abandonment proceeding from Offers of Financial Assistance if the right-of-way subject to the proceeding is needed for a valid public purpose, and no overriding public need for continued rail service exists.

That standard is met here. First, the Board's past decisions make clear that rail-banking a right-of-way to use as a trail serves a valid public purpose. Additionally, rail-banking the line to use as a trail serves another valid public purpose: advancing the State of California's coastal resource preservation policies under the California Coastal Act. Resuming commercial rail operations, on the other hand, particularly in environmentally sensitive areas and hazardous areas such as the Humboldt Bay region, would impede many of the Coastal Act's policies.

Second, no overriding public need for *continued* rail service exists. The right-of-way subject to this proceeding has not been in use for over two decades. Though there is apparently bare *interest* in resuming freight operations on the line, there is no current demand for it.

Moreover, even if the Board allowed Offers of Financial Assistance to be made in this proceeding, no offeror would be able to tender an offer that comports with the Board's regulations. These regulations require offerors to submit evidence of *continued* commercial need, community support for commercial use of the line, and operational feasibility of resumed freight activity. Continued need cannot exist on a line that has been inactive for over two decades. By contrast, there is overwhelming community support, at the local and state level, for the Great

Redwood Trail, and overwhelming opposition to commercial use of the right-of-way. Resuming commercial rail operations also would not be operationally feasible. To the contrary, such operations would pose distinct hazards. Many sections of the line subject to this proceeding are vulnerable to coastal and geologic hazards and are expected to be regularly inundated with floodwaters due to sea level rise, potentially as early as 2030.

An active commercial railroad, anticipated to service over 100,000 train cars per year, does not make sense here. The Board should exempt this abandonment proceeding from Offers of Financial Assistance.

BACKGROUND AND STATEMENT OF THE CASE

On May 14, 2021, NCRA filed a Verified Notice of Exemption pursuant to the two-year out-of-service class exemption under 49 C.F.R. § 1152.50, seeking authority to abandon approximately 175.84 miles of rail line and branches, spanning Mendocino, Trinity, and Humboldt Counties (collectively “the Line”).¹ The Line has remained inoperable for over two decades. NCRA, a California State agency, seeks to rail-bank the Line to use as a trail—the Great Redwood Trail, as required by California law.

On June 11, 2021, the Board held the entire proceeding in abeyance, pending resolution of jurisdictional issues surrounding the Arcata and Mad River subsidiaries.² Resolution of the jurisdictional issues is still pending.

¹ North Coast Railroad Authority - Abandonment Exemption, Filing No. 302339, entered on May 14, 2021.

² Surface Transportation Board, Decision, Filing No. 50823, served on June 11, 2021.

On July 6, 2021, Mendocino Railway, in a Board filing, expressed interest in making an Offer of Financial Assistance.³

On July 26, 2021, NCRA filed a Motion for Exemption from Offers of Financial Assistance (“Motion”).⁴

On August 16, 2021, in opposition to NCRA’s Motion, North Coast Railroad Company (“NCRCo”) also expressed interest in making an Offer of Financial Assistance.⁵

ARGUMENT

I. LEGAL STANDARD

This Board may exempt this abandonment proceeding from Offers of Financial Assistance made under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 if it finds that (1) the right-of-way subject to the proceeding is needed for a valid public purpose, and (2) no overriding public need for continued rail service exists.⁶

As discussed below, this proceeding should be exempt from Offers of Financial Assistance because a trail serves a valid public purpose and no overriding public need for continued freight service exists since the Line has not been operational for over two decades.

³ Mendocino Railroad Company, Verified Reply in Opposition to North Coast Railroad Authority’s Petition for Exemption from 49 U.S.C. § 10904, Filing No. 302860, entered August 16, 2021.

⁴ North Coast Railroad Authority, Motion for Exemption from Offer of Financial Assistance Provisions, Filing No. 302782, entered on July 26, 2021.

⁵ North Coast Railroad Company, LLC, Reply of North Coast Railroad, L.L.C. in Opposition to North Coast Railroad Authority’s Request for an Exemption from the Provisions of 49 U.S.C. § 10904, Filing No. 302869, entered August 16, 2021.

⁶ 49 U.S.C. 10502(a); *Union Pacific Railroad Company – Abandonment Exemption – in Kane County, IL*, AB 33, served April 29, 1997, 3.

II. THE BOARD SHOULD EXEMPT THIS ABANDONMENT PROCEEDING FROM OFFERS OF FINANCIAL ASSISTANCE BECAUSE THE USE OF THE LINE AS A TRAIL IS A VALID PUBLIC PURPOSE AND NO OVERRIDING NEED FOR CONTINUED RAIL SERVICE EXISTS.

In previous decisions, this Board has found that trails serve a valid public purpose for railroad rights-of-way that are not actively used by any shippers and are therefore exempt from Offers of Financial Assistance. For example, in *Union Pacific Railroad Company – Abandonment Exemption – in Kane County, IL*, AB 33, *supra*, Union Pacific Railroad Company sought abandonment of a line to convey the underlying real property to the City of Elgin, Illinois for use as a public trail.⁷ There were no active shippers on the line.⁸ The Board granted Union Pacific's request for an exemption from Offers of Financial Assistance, finding that the City of Elgin's proposed interim trail use was a valid public purpose and that because no active shippers used the line, there was no overriding public need for continued rail service.⁹

Similarly, in *Georgia Southwestern Railroad, Inc. – Abandonment Exemption – in Barbour County, AL*, AB 1000X, served April 25, 2007, Georgia Southwestern Railroad, Inc. sought to abandon a line that had not been active for over seven years.¹⁰ The line would have required \$4 million in rehabilitation costs to resume rail operations.¹¹ The City of Eufaula, Alabama had received a federal grant to rail-bank the line to use as a trail but the grant money was about to expire.¹² Georgia Southwestern requested an exemption from Offers of Financial Assistance to allow the trail to go forward.¹³ The Board exempted the abandonment proceeding from Offers of

⁷ *Union Pacific Railroad Company – Abandonment Exemption – in Kane County, IL*, AB 33, *supra*, 1.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Georgia Southwestern Railroad, Inc. – Abandonment Exemption – in Barbour County, AL*, AB 1000X, served April 25, 2007, 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Financial Assistance, finding that accommodating the City of Eufaula's need to quickly develop a trail on the line before a grant expired to be a valid public purpose.¹⁴ The Board further found no overriding public need for continued rail service because the line had not been operational for over seven years.¹⁵

In this matter, NCRA proposes to use the Line to develop the Great Redwood Trail, which under the Board's precedents represents a valid public purpose. Additionally, because no shippers have used the Line for over 20 years,¹⁶ no overriding public need for *continued* rail service can exist.

Mendocino Railroad Company and NCRCo argue that because they have an *interest* in resuming rail service, they should be allowed to tender Offers of Financial Assistance.¹⁷ However, the *Union Pacific* and *Georgia Southwestern* decisions cited above make clear that the Board's standard for an exemption from Offers of Financial Assistance is not whether a mere *interest* in rail service exists. Rather, the standard is whether there is a *continued need* for rail service, i.e., whether there is a current demand for rail service by active shippers *on the Line*.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ North Coast Railroad Authority, Motion for Exemption from Offers of Financial Assistance Provisions, Filing No. 302782, entered on July 26, 2021, 8 ("Shippers are quickly no longer shippers once they discover they would have to pay not only ordinary tariffs sufficient to pay for operating and maintenance costs, but also a minimum of \$2.35 billion to rehabilitate the line so it can provide any freight rail service at all, plus, on top of that, being on the hook for regular outlays to handle the wash-outs and soil movement that perpetually characterize this line.").

¹⁷ See Mendocino Railroad Company, Verified Reply in Opposition to North Coast Railroad Authority's Petition for Exemption from 49 U.S.C. § 10904, Filing No. 302860, entered August 16, 2021, 8 ("Here, there is a continued *interest* in rail service," emphasis added); North Coast Railroad Company, LLC, Reply of North Coast Railroad, L.L.C. in Opposition to North Coast Railroad Authority's Request for an Exemption from the Provisions of 49 U.S.C. § 10904, Filing No. 302869, entered August 16, 2021, 9 (The "[L]ine [] has been long inactive, and ... there is an interest in restoring the Line.").

Both decisions involved lines that were inactive at the time the railroad companies sought abandonment. In each decision, the Board based its finding that there was no continued need for rail service on the line's inactivity. Here, the Line has been inoperable for over 20 years.

Accordingly, there cannot be a continued need for rail service.

III. USING THE LINE AS A TRAIL ADVANCES THE STATE OF CALIFORNIA'S COASTAL PROTECTION POLICIES—AN ALTERNATIVE VALID PUBLIC PURPOSE.

In addition to the trail itself serving a valid public purpose, rail-banking the Line to establish the Great Redwood Trail serves another valid public purpose: advancing the State's statutory coastal protection and access policies under the California Coastal Act (Coastal Act).¹⁸

A. A Trail Would Maximize Public Access and Recreation.

The Coastal Act serves the goals of maximizing public access to and along the coast and public recreational opportunities within the coastal zone.¹⁹ Additionally, development in the coastal zone must not interfere with the public's right to access the sea.²⁰ The resumption of freight rail services on the Line would frustrate these legislative goals by significantly disrupting public recreational trail use opportunities on existing and future trails within the coastal zone.

For example, the City of Arcata currently manages the popular four-mile Humboldt Bay Trail North as a rail-with-trail within the NCRA corridor, running adjacent to the northern shore of Arcata Bay (North Humboldt Bay).²¹ The City recently secured \$5.3 million in state Active Transportation Program funding to connect the Humboldt Bay Trail North to downtown

¹⁸ CAL. PUB. RES. §§ 30000 *et seq.*

¹⁹ CAL. PUB. RES. §§ 30001.5(c), 30210.

²⁰ CAL. PUB. RES. § 30211.

²¹ Letter to Surface Transportation Board by Brett Watson, Mayor, City of Arcata, Filing No. 302966, entered August 31, 2021.

Arcata.²² This project depends on the successful rail-banking of the Line.²³ The City also seeks to connect the Humboldt Bay Trail North to a larger trail system, the Humboldt Bay Trail, which would connect the Cities of Arcata and Eureka and run adjacent to the Line from Arcata Bay to South Humboldt Bay.²⁴

The Great Redwood Trail would take the Humboldt Bay Trail a monumental step further by establishing a trail connecting Humboldt Bay to San Francisco Bay, which would create unparalleled recreational opportunities along the coast and within the coastal zone.

Additionally, because the Line runs parallel between Highway 101 and Humboldt Bay, active rail operations would impede existing and future public access from Highway 101 to the coast. Such operations would therefore be flatly inconsistent with the public access and recreational policies of the Coastal Act.²⁵ Further, the safety and noise problems associated with frequent commercial train operations on the Line would detrimentally affect current and future public access and recreational opportunities on the coast and within the coastal zone. Establishing and maintaining the Great Redwood Trail would advance the Coastal Act's public access policies, whereas new freight rail service would frustrate those policies.

²² *Id.*

²³ *Id.*

²⁴ City of Arcata, *Active Transportation Program, Cycle 1, Application, Part 1, Humboldt Bay Trail – Arcata Rail with Trail* (2014), <https://www.cityofarcata.org/DocumentCenter/View/701/Active-Transportation-Program-2014-Humboldt-Bay-Trail-Arcata-Rail-with-Trail-Submittal-PDF?bidId> (last accessed on Nov. 18, 2021).

²⁵ See CAL. PUB. RES. §§ 30221 (protection of oceanfront land suitable for recreational use and development), 30211 (no interference with public's right of access to sea), 30212 (new developments must provide public access from nearest public roadway to and along coast), 30213 (protection of lower costs visitor and recreational facilities such as trails).

B. A Trail Would Help Protect the Marine Environment, While Use of the Line for Rail Purposes Would Endanger It.

Various Coastal Act policies require the protection of the marine environment. Under the Coastal Act, marine resources must be “maintained, enhanced, and, where feasible, restored” and special protections must be given to areas of special biological or economic significance;²⁶ “[t]he biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health” must be also be maintained, and, where feasible, restored;²⁷ and any development or transportation of crude oil, gas, petroleum products, or hazardous substances must protect against spills.²⁸ A trail along the Line would further these policies.

Humboldt Bay is “one of the most biologically rich and significant marine ecosystems in California.”²⁹ Humboldt Bay provides habitat for over 300 species of birds, 40 species of mammals, and over 100 species of fish and marine invertebrates, many of which contribute to sport and commercial steelhead, Coho and Chinook salmon, and Dungeness crab fisheries.³⁰ “Humboldt Bay alone supports the majority of the state’s total amount of eelgrass habitat.”³¹ The federal government designated eelgrass beds as an Essential Fish Habitat and a Habitat Area of Particular Concern under the Magnuson-Stevens Fisher Conservation and Management Act.³²

²⁶ CAL. PUB. RES. CODE § 30230.

²⁷ CAL. PUB. RES. CODE § 30231

²⁸ CAL. PUB. RES. CODE § 30232.

²⁹ California Coastal Commission, Staff Report re Coast Seafoods Company, Application No. CDP 9-17-0646 (Aug. 25 2017), 24, <https://www.coastal.ca.gov/meetings/agenda/#/2017/9> (last accessed on Nov. 22, 2021) (“CCC Coast Seafoods Company Staff Report”).

³⁰ California Coastal Commission, Staff Report re Caltrans Highway 101 Corridor Improvement Project, Application No. CDP 1-18-1078 (Jul. 26, 2019), 42, <https://www.coastal.ca.gov/meetings/agenda/#/2019/8> (last accessed on Nov. 22, 2021) (“CCC Caltrans Highway 101 Staff Report”).

³¹ CCC Coast Seafoods Company Staff Report, *supra*, note 29, 24.

³² NOAA Fisheries, *California Eelgrass Mitigation Policy and Implementing Guidelines* (Oct. 2014), 3, https://media.fisheries.noaa.gov/dam-migration/cemp_oct_2014_final.pdf (last

Arcata Bay's eelgrass beds support populations of sensitive species including fish species listed as Threatened under the federal Endangered Species Act (such as green sturgeon, steelhead, and coho and chinook salmon) as well as migratory shorebirds and waterfowl listed as a State Species of Special Concern (such as the black brant).³³

Additionally, Humboldt Bay includes large areas of open intertidal mudflats that attract significant proportions of overwintering and migratory shorebird populations, so much so that the Western Hemisphere Shorebird Reserve Network has designated Humboldt Bay as a Site of International Significance,³⁴ and the Audubon Society identifies it as an Important Bird Area.³⁵ Depending on the season, Humboldt Bay is home to up to 100,000 shorebirds.³⁶ At least 24 shorebird species including American Avocets, sandpipers, dowitchers, plovers, godwits, and dunlin feed, rest, and roost in Humboldt Bay's mudflat habitats.³⁷ Two thirds of these shorebirds

accessed on Nov. 22, 2021). This designation requires federal agencies to consult with NOAA Fisheries on ways to avoid or minimize the adverse effects of their actions on eelgrass. NOAA Fisheries, *The Importance of Eelgrass* (Nov. 7, 2014), <https://www.fisheries.noaa.gov/feature-story/importance-eelgrass> (last accessed on Nov. 22, 2021).

³³ CCC Coast Seafoods Company Staff Report, *supra*, note 29, 24.

³⁴ Western Hemisphere Shorebird Reserve Network, *Humboldt Bay Complex*, Date Designated: September 1998, https://whsrn.org/whsrn_sites/humboldt-bay-complex/ (last accessed on Nov. 22, 2021).

³⁵ Audubon, *Important Bird Areas: Humboldt Bay, California*, <https://www.audubon.org/important-bird-areas/humboldt-bay> (last accessed on Nov. 22, 2021).

³⁶ Schlosser, S., and A. Eicher. 2012, *Humboldt Bay and Eel River Estuary Benthic Habitat Project*, California Sea Grant Publication T-075, prepared by California Sea Grant, Eureka, California and HT Harvey & Associates, Arcata, California for California Sea Grant College Program, University of California, San Diego.

³⁷ Danufsky, T., and M. Colwell, *Winter Shorebird Communities and Tidal Flat Characteristics at Humboldt Bay, California*, *The Condor* 105:117-129 (2003); Dodd, S., and M. Colwell, *Environmental Correlates of Diurnal and Nocturnal Foraging Patterns of Nonbreeding Shorebirds*, *Wilson Bulletin*, 110(2), 182-189 (1998); Evans, T., and S. Harris, *Status and Habitat Use by American Avocets Wintering at Humboldt Bay, California*, *The Condor* 96:178-189 (1994); Long, L., and C. Ralph, *Dynamics of Habitat Use by Shorebirds in Estuarine and Agricultural Habitats in Northwestern California*, *The Wilson Bulletin* 113(1): 41-52 (Mar. 2001).

are listed as Shorebirds of Concern or appear on the U.S. Fish and Wildlife Service's Birds of Conservation Concern List.³⁸

Moreover, Humboldt Bay is so biologically and economically significant that the California Department of Fish and Wildlife established the South Humboldt Bay State Marine Recreational Management Area, a type of marine managed area given special legal protections (such as a general prohibition against the take of any marine resources within the area) under the California Marine Life Protection Act.³⁹

Accordingly, under the Coastal Act, the State must maintain and enhance Humboldt Bay's diverse marine resources. Yet the close proximity of the Line to the shores of Humboldt Bay makes it difficult, if not impossible, to resume freight operations without threatening the biological productivity and quality of the bay waters and nearby wetlands and estuaries. For example, the intensive use of the tracks for commercial-scale operations will cause harmful dust, noise, and vibration that will negatively impact wildlife behavior and reduce wildlife abundance near the Line.⁴⁰ Such use will create a risk that creosote, oils, grease, and other hazardous materials commonly used or associated with railroad tracks and ties⁴¹ will leach into the aquatic

³⁸ U.S. Fish and Wildlife Service, Division of Migratory Bird Management, *Birds of Conservation Concern 2008* (Dec. 2008), Appendix C, <https://www.fws.gov/migratorybirds/pdf/grants/birdsofconservationconcern2008.pdf> (last accessed on Nov. 22, 2021); U.S. Shorebird Conservation Plan Partnership, *Shorebirds of Conservation Concern in the United States of America – 2015*, <https://www.shorebirdplan.org/wp-content/uploads/2015/01/ShorebirdsConservationConcernJan2015.pdf> (last accessed on Nov. 22, 2021).

³⁹ CAL. FISH & GAME CODE §§ 2850-2863; 14 C.C.R. 632(b)(9) (establishing the South Humboldt Bay State Marine Recreational Management Area).

⁴⁰ Silva Lucas, P., *Railway Disturbances on Wildlife: Types, Effects, and Mitigation Measures*, Railway Ecology, 81-99 (Sep. 19, 2017).

⁴¹ NOAA Fisheries – Southwest Region, *The Use of Treated Wood Products in Aquatic Environments: Guidelines to West Coast NOAA Fisheries Staff for Endangered Species Act and Essential Fish Habitat Consultations in the Alaska, Northwest and Southwest Regions* (Oct. 12,

environment and pose a risk to fish and invertebrates.⁴² Further, the real threat of spills resulting from a derailed train—the risk of which is particularly high in the areas of the Line that run directly adjacent to the ever-eroding shores of South Humboldt Bay—is unavoidably high due to the Line’s proximity to the Bay waters.⁴³ Finally, the continued presence of a rehabilitated rail line, including any necessary armoring to ensure its safety, would result in a barrier that would block the natural inland migration of shoreline and marine habitats. As sea levels rise (as discussed further in Section III(E), *infra*), this barrier would result in the drowning and eventual loss of eelgrass, wetland, intertidal, and other habitats as well as the ecosystem services they provide. Such environmentally disastrous risks to the marine environment will be avoided if the Line were simply used as a trail.

C. A Trail Would Help Protect Environmentally Sensitive Habitat Areas.

In addition to its policies protecting the marine environment, the Coastal Act also requires the protection of environmentally sensitive habitat areas (ESHA) “against any significant disruption of habitat values.”⁴⁴ The Coastal Act identifies an Environmentally Sensitive Area as “any area in which plant or animal life or their habitats are either rare or especially valuable

2009), 31 (“The vast majority of creosote treated wood (approximately 70% of all creosote use) is used in railroad construction and maintenance.”), https://preservedwood.org/portals/0/documents/NOAA_guidelines.pdf (last accessed on Dec. 13, 2021).

⁴² Metz, V., Coastal Water Quality Program, California Coastal Commission, *Use of Preservative-Treated Wood and Alternative Materials for Building Overwater and Waterfront Structures: Factsheet for the Marinas Interagency Coordinating Committee meeting, May 30, 2019*, 6, [https://documents.coastal.ca.gov/assets/water-quality/marina-boating/meeting-notes/Marinas%20mtg%20notes%20&%20materials%202019/May%202019%20mtg%20agenda%20&%20materials/Treated%20Wood%20&%20Alternative%20Materials%20in%20Overwater%20Structures%20\(Factsheet\)_Metz_May%202019.pdf](https://documents.coastal.ca.gov/assets/water-quality/marina-boating/meeting-notes/Marinas%20mtg%20notes%20&%20materials%202019/May%202019%20mtg%20agenda%20&%20materials/Treated%20Wood%20&%20Alternative%20Materials%20in%20Overwater%20Structures%20(Factsheet)_Metz_May%202019.pdf) (last accessed on Nov. 23, 2021) (noting “concerns about the high toxicity of polycyclic aromatic hydrocarbons (PAHs) that leach from creosote and accumulate in the sediment, adversely impacting fish and aquatic invertebrate.”).

⁴³ Exh. A, attached.

⁴⁴ CAL. PUB. RES. CODE § 30240(a).

because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”⁴⁵

Local governments and the Coastal Commission share responsibility for coastal development planning. The Coastal Act requires local governments to prepare a local coastal program for development within their jurisdictions’ coastal zones.⁴⁶ Once the Commission certifies a local coastal program as conforming to the Coastal Act’s statewide standards, the Commission delegates permitting authority to the local government.⁴⁷ Often, a local government will define and designate ESHA in its local coastal program.

In their respective certified local coastal programs, Humboldt County, the City of Eureka and the City of Arcata have each incorporated ESHA designations to protect Humboldt Bay, wetlands, and estuaries.⁴⁸ The Coastal Act prohibits any development in ESHA that is not dependent on the ESHA resource.⁴⁹ Railroad activities are not dependent on the resource and are prohibited development in ESHA. Since significant portions of the Line run through or are adjacent to Humboldt Bay, wetlands, and estuaries, the Coastal Act prohibits development that is not ESHA-dependent, such as rehabilitating and resuming commercial operations on the Line

⁴⁵ CAL. PUB. RES. CODE § 30107.5.

⁴⁶ CAL. PUB. RES. CODE § 30500.

⁴⁷ CAL. PUB. RES. CODE § 30512(d), 30513, 30519.

⁴⁸ Humboldt Bay Area Plan of the Humboldt County Local Coastal Program (Mar. 9, 1982), 3-4, <https://humboldt.gov/DocumentCenter/View/50844/Humboldt-Bay-Area-Local-Coastal-Plan?bidId> (last accessed on Nov. 23, 2021); City of Eureka Local Coastal Program, Section 6, Natural Resources, 6-2 (Feb. 1997), <https://www.ci.eureka.ca.gov/civicax/filebank/blobdload.aspx?BlobID=6850> (last accessed on Nov. 23, 2021); City of Arcata Local Coastal Program (Oct. 10, 1989), Appendix D, <https://www.cityofarcata.org/DocumentCenter/View/45/1989-Certified-Local-Coastal-Program--Coastal-Land-Use-Element-and-Implementing-Ordinances-PDF> (last accessed on Nov. 23, 2021).

⁴⁹ CAL. PUB. RES. CODE § 30240(a).

within ESHA. The Coastal Act also prohibits such development adjacent to these areas from significantly disrupting habitat values.⁵⁰

For the reasons set forth in the preceding section regarding the protection of the marine environment, significant disruption of habitat values cannot be avoided with the resumption of commercial rail services on the Line. Such a use would be inconsistent with the Coastal Act's ESHA policies.

D. A Trail Would Protect Visual Resources.

The Coastal Act protects the scenic and visual qualities of coastal areas as a resource of public importance.⁵¹ The area in which the Line runs affords scenic views of coastal areas. An analysis by the Coastal Commission of the Highway 101 corridor, which runs landward of and adjacent to the Line in Humboldt County, concluded that the area includes “picturesque wetlands, sloughs, forested hills, and coastal agriculture and pasturelands [to] the east of the [Highway 101] corridor, and scenic views of Humboldt Bay to the west of the [Highway 101] corridor.”⁵² Construction of railroad infrastructure and ports, and operation of over 100,000 train cars per year will obstruct and degrade these scenic views and be inconsistent with the visual qualities of the coastal areas within Humboldt Bay.

E. A Trail Would Minimize Hazards.

The Coastal Act requires that new development “[m]inimize risks to life and property in areas of high geologic, flood, and fire hazard.”⁵³ In addition, such development must assure stability and structural integrity and not cause destruction of the site or surrounding area.⁵⁴ This

⁵⁰ *Id.*

⁵¹ CAL. PUB. RES. CODE § 30251.

⁵² CCC Caltrans Highway 101 Staff Report, *supra*, note 30, 104.

⁵³ PUB. RES. CODE § 30253(a).

⁵⁴ PUB. RES. CODE § 30253(b).

means that in general, the Coastal Act prohibits new developments along coastal beaches, bluffs and cliffs if they cannot minimize hazard risks or would require the construction of shoreline armoring.⁵⁵ Lastly, any new development cannot rely upon the construction of shoreline armoring in the future.⁵⁶

Large portions of the Line, particularly the parts adjacent to Humboldt Bay, are already vulnerable to coastal hazards. Because the Line has not been commercially used or properly maintained for more than two decades, “the diked and railroad beds shoreline is currently vulnerable to overtopping by [mean annual maximum water], storm surges and stormwater runoff, low pressure systems, wind waves, and El Niño conditions.”⁵⁷ These conditions will worsen in the future with projected sea level rise. Certain sections of the Line are expected to become regularly inundated by 1.5 feet of sea level rise, which could potentially happen as early as 2030-2040, or by 2040-2050, depending on projection scenario.⁵⁸

Ensuring safety for new development in a manner consistent with the Coastal Act requires understanding sea level rise projections and possible impacts over the life of the project. Current statewide guidance from the Ocean Protection Council⁵⁹, as reflected in Coastal Commission-adopted sea level rise guidance⁶⁰, recommends that critical infrastructure projects should evaluate

⁵⁵ *Id.*

⁵⁶ *Id.*; PUB. RES. CODE § 30235

⁵⁷ Laird, A., Trinity Associates, Humboldt County Humboldt Bay Area Plan, Sea Level Rise Vulnerability Assessment (Jan. 2018), 15, <https://humboldt.gov/DocumentCenter/View/62872/Humboldt-Bay-Area-Plan-Sea-Level-Rise-Vulnerability-Assessment-Report-PDF?bidId=> (last accessed on Dec. 1, 2021).

⁵⁸ *Id.*; see also, California Ocean Protection Council, State of California Sea-Level Rise Guidance, 2018 Update, https://opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf (last accessed on Dec. 13, 2021).

⁵⁹ California Ocean Protection Council, *supra*, note 58.

⁶⁰ California Coastal Commission, Sea Level Rise Policy Guidance Final Adopted Science Update (Nov. 2018),

coastal hazard threats under high and extreme risk aversion sea level rise scenarios. This requirement applies to projects such as the subject Line rehabilitation. Such projects have long lifespans, have little to no adaptive capacity, would be irreversibly destroyed or significantly costly to relocate/repair, or would have considerable public health, public safety, or environmental consequences if impacted by sea level rise. Considering a typical lifespan of 100 years for critical infrastructure and the applicable risk aversion scenarios, sections of the Line could be subject to as much as 15 feet of sea level rise by 2120⁶¹. Coastal hazards like storms, flooding, and erosion would further compound the adverse impacts of this increased inundation of the Line. Rehabilitating the Line in a manner to make it sufficiently safe from sea level rise and coastal hazards would require significant engineering that may not be technically feasible. Even if a feasible rehabilitation method is found, it would likely require such extreme design and construction that it could not satisfy the Coastal Act's requirement that it represent the least environmentally damaging alternative.⁶² That is because such a project would likely violate other policies of the Coastal Act governing visual resources, public access and recreation, shoreline processes, environmentally sensitive habitat areas, and water quality. Such construction alternatives would also likely be financially infeasible.

The Line is also vulnerable to geologic hazards. The Humboldt Bay region “occupies a complex geologic environment characterized by very high rates of active tectonic deformation

https://documents.coastal.ca.gov/assets/slr/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf (last accessed on Dec. 13, 2021); California Coastal Commission, Critical Infrastructure at Risk: Sea Level Rise Planning Guidance for California's Coastal Zone (Nov. 2021), https://documents.coastal.ca.gov/assets/slr/guidance/SLR%20Guidance_Critical%20Infrastructure_11.3.2021_FINAL_FullPDF.pdf (last accessed on Dec. 13, 2021).

⁶¹ California Ocean Protection Council, *supra*, note 58.

⁶² PUB. RES. CODE § 30233.

and seismicity.”⁶³ Parts of the Line in Humboldt County exist near several faults that are capable of producing earthquakes of 6.0 to 7.0 magnitudes.⁶⁴ Consequently, a strong earthquake in the region may cause liquefaction—the loss of support strength that occurs in loose, saturated soil during and following seismic activity—which may endanger the structural components of the Line.⁶⁵ Rehabilitating the Line in an area with such high hazard risks would require significant engineering, which will conflict with the coastal resource protection policies identified above.

Importantly, by contrast, a recreational trail is generally not held to the same standards related to analyzing, siting, and designing for extreme sea level rise scenarios and other geologic hazards. Such development would not carry the same sorts of environmental and public health risks associated with impacts from current and future coastal hazards. A trail would be more minor in size and scope. It would have a higher adaptive capacity than a rail line, in that adaptation options for addressing future vulnerabilities (or even responding to damage) are easier and less costly to implement.

F. A Trail Would Minimize Energy Consumption and Vehicle Miles Traveled.

Developments within the coastal zone must minimize energy consumption and vehicle miles traveled.⁶⁶ The anticipated 100,000 or more train cars using the Line per year would require significant energy consumption and vehicle miles traveled.⁶⁷ Further, the Line is currently used either formally or informally as multi-modal trails, which provides an alternative

⁶³ CCC Caltrans Highway 101 Staff Report, *supra*, note 30, 52.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ PUB. RES. CODE § 30253(d).

⁶⁷ North Coast Railroad Authority, Motion for Exemption from Offer of Financial Assistance Provisions, AB 1305X, Filing No. 302782, entered on July 26, 2021, 16.

to traveling by vehicle. Active commercial operations would, thus, derail such multi-modal trail use, and result in an increase in vehicle miles traveled.

The People of the State of California have made the protection of coastal resources a priority through the enactment and enforcement of the Coastal Act. The Coastal Act policies set forth above serve a valid public purpose. Therefore, this Board should exempt this abandonment proceeding from Offers of Financial Assistance.

IV. EVEN IF THE BOARD ALLOWS OFFERS OF FINANCIAL ASSISTANCE IN THIS PROCEEDING, NO OFFEROR WOULD BE ABLE TO SATISFY THE BOARD’S REGULATIONS FOR MAKING SUCH OFFERS.

The Board should exempt this abandonment proceeding from Offers of Financial Assistance because a trail serves a valid public purpose and there is no overriding public need for continued rail service. However, even if the Board allows Offers of Financial Assistance in this proceeding, no offeror (including Mendocino Railroad Company and NCRCo) will ever be able to satisfy the Board’s requirements for making such offers.

Consistent with the Board’s standard for exempting Offers of Financial Assistance in abandonment proceedings, and to prevent abuse of the Board’s Offer of Financial Assistance process, the Board recently amended its governing regulations. These amended regulations now require offerors to “[d]emonstrate that there is a *continued need* for rail service on the line, or portion of the line, in question.”⁶⁸ The regulation provides “[e]xamples of evidence to be provided [in an Offer of Financial Assistance] includ[ing]:

Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that

⁶⁸ 49 C.F.R. 1152.27(c)(1)(iv)(E) (emphasis added); 82 FR 30997, effective July 29, 2017 (adopting “rule pertaining to Offers of Financial Assistance to improve the process and protect it against abuse”).

acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible.⁶⁹

No offeror will be able to demonstrate this continued need for commercial service on the Line, for several reasons. First, no offeror will be able to provide any evidence of support from shippers or receives *on the Line*, nor will they be able to provide any evidence of any *immediate* and significant commercial need. That is because no shippers or receivers currently use and rely on the Line and none have done so for more than 20 years.

Second, no offeror will be able to submit sufficient evidence of community support for freight rail service—service that would run through the densely populated San Francisco Bay Area. To the contrary, there is overwhelming community support for the Great Redwood Trail. Both the California Legislature and Governor support the Great Redwood Trail, as evidenced by the recent passage of Senate Bill 69 (2021), Great Redwood Trail Act. That legislation transitions NCRA to the Great Redwood Trail Agency, which manages the Great Redwood Trail.⁷⁰ U.S. Congressman Jared Huffman, whose district includes the areas in which the Line is located, also supports NCRA’s efforts to rail-bank the Line.⁷¹

And importantly, several local California North Bay governing bodies have adopted resolutions opposing the resumption of freight rail service operations on the Line including the Boards of Supervisors of Humboldt, Marin, Mendocino, and Sonoma Counties, the City Councils of Arcata, Novato, Ukiah, and Santa Rosa, and the Transportation Authority of Marin County.⁷²

⁶⁹ 49 C.F.R. 1152.27(c)(1)(iv)(E).

⁷⁰ Cal. Senate Bill No. 69 (2021), Ch. 423.

⁷¹ See Letters to Surface Transportation Board by Congressman Jared Huffman, Filing Nos. 302782 and 302848, entered July 26, 2021 and August 13, 2021, respectively.

⁷² See Humboldt County Board of Supervisors Resolution No. 21-450 (Oct. 5, 2021); Marin County Board of Supervisors Resolution (Sep. 28, 2021); Mendocino County Board of Supervisors Resolution No. 21-129 (Sep. 14, 2021); Sonoma County Board of Supervisors

Finally, no offeror will be able to show that the resumption of rail services is operationally feasible. As discussed above, coastal, flooding, and geologic hazards, and regular inundation of large sections of the Line by sea level rise that may occur as early as 2030, make an active freight line unreliable and very difficult, if not impossible, to operate feasibly.⁷³ Further, the approximately \$2.3 billion it would cost to rehabilitate the Line and the higher than normal costs of maintaining the Line due to geologic instability and coastal hazards that may frequently remove parts of the Line from service make it economically infeasible to resume commercial rail services on the Line.⁷⁴

Therefore, since no offeror would be able to submit a Board-compliant Offer of Financial Assistance, the Board should exempt this abandonment proceeding from any Offers of Financial Assistance.

CONCLUSION

For the foregoing reasons, the Coastal Commission respectfully requests that the Board exempt this abandonment proceeding from Offers of Financial Assistance.

Resolution No. 2021-0995 (Oct. 19, 2021); Arcata City Council Resolution No. 212-16 (Oct. 6, 2021); Novato City Council Resolution (Oct. 5, 2021); Ukiah City Council Resolution No. 2021-44 (Sep. 15, 2021); Santa Rosa City Council Resolution No. 2021-170 (Oct. 12, 2021); Transportation Authority of Marin Resolution No. 2021-08 (Sep. 23, 2021).

⁷³ Laird, *supra*, note 57, 15.

⁷⁴ Verified Statement of David Anderson, P.E. (Jul. 25, 2021), Exh. B to North Coast Railroad Authority, Motion for Exemption from Offers of Financial Assistance Provisions, Filing No. 302782, entered on July 26, 2021.

Dated: December 15, 2021

Respectfully Submitted,

ROB BONTA
Attorney General of California
ANDREW M. VOGEL
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read "Justin J. Lee". The signature is fluid and cursive, with the first name "Justin" and last name "Lee" clearly distinguishable.

JUSTIN J. LEE
Deputy Attorney General
Attorneys for
California Coastal Commission

EXHIBIT A

Photographs taken by the Coastal Commission's California King Tides Project

Date: January 11, 2020

Location: NCRA Line adjacent to Arcata Bay near intersection between Indianola
Cutoff and Highway 101, Eureka, CA







CERTIFICATE OF SERVICE BY E-MAIL

Case Name: **North Coast Railroad Authority – Abandonment Exemption**

No.: **AB_1305_X**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 15, 2021, I served **(1) CALIFORNIA COASTAL COMMISSION'S MOTION FOR LEAVE TO FILE LATE REPLY IN SUPPORT OF NORTH COAST RAILROAD AUTHORITY'S MOTION FOR EXEMPTION FROM OFFERS OF FINANCIAL ASSISTANCE PROVISIONS, and (2) REPLY OF CALIFORNIA COASTAL COMMISSION IN SUPPORT OF NORTH COAST RAILROAD AUTHORITY'S REQUEST FOR EXEMPTION FROM OFFERS OF FINANCIAL ASSISTANCE** by transmitting a true copy via electronic mail, addressed as follows:

*See attached service list of parties of record as provided on the Surface Transportation Board's website as of December 15, 2021.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 15, 2021, at Los Angeles, California.

A. Syp

Declarant

/s/ A. Syp

Signature

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