

BEFORE THE SURFACE TRANSPORTATION BOARD

305085

North Coast Railroad Authority -)
Abandonment Exemption -) AB 1305X
in Humboldt, Trinity and Mendocino)
Counties, CA)

ENTERED
Office of Proceedings
July 29, 2022
Part of
Public Record

**SEEKER ENTERPRISES' SUBMITTAL OF EVIDENCE OF PAST FAILURES OF
NCRA'S STEWARDSHIP OF THE RAIL RIGHT-OF-WAY**

This letter is intended to provide the STB with information on the NCRA's conduct as caretaker and steward of the rail ROW. In at least four locations that we are aware of, it appears that NCRA has failed to provide required notifications to the Board and the CPUC when it authorized removal of rail infrastructure.

Seeker Enterprises asserts that this information is relevant to NCRA's request for railbanking. Not only did NCRA poorly perform its duties as a regulated agency, the evidence demonstrates that NCRA had no expectation of rail service ever returning. Because railbanking is considered to be only an interim use of rail infrastructure, if there is no likelihood that commercial rail service will resume, there would be no justification for the federal government to legally protect the rail ROW under 16 U.S.C. 1247(d) from adjacent property owners' attacks on historic easements.

In the Woodman Creek (Exhibit 1 a,1 b,1 c,1 d) and Bridge Creek (Exhibit 2) projects, NCRA approved track removal without replacement prior to project completion. These are significant rail infrastructure removal projects that have not been reported to the STB, in which tracks remain unreplaced. These specific locations were not the scenes of natural disasters. The Board can infer from NCRA's authorization of these projects that NCRA expected that rail service would never be restored.

In Fortuna, CA a section of mainline track has been covered for the purpose of establishing a designated pedestrian trail. (Exhibit 3.) There is no such approval or notice on record with the STB.

NCRA/GRTA approved an executed conditional lease agreement with the County of Humboldt for trail construction on tracks currently being utilized and maintained by the local non-profit Timber Heritage Association. (Exhibit 4a.)

The California Transportation Commission (CTC) imposed conditions on the lease that requires STB approval of GRTA railbanking. (Exhibit 4a, paragraph 6.) Recently, NCRA supplied a letter to the County of Humboldt circumventing the conditions imposed by the CTC. (Exhibit 4b.) In fact, the County is moving forward with fund allocation for this project prior to the related STB decision. If such construction were to commence, Timber Heritage Association's maintenance-of-way vehicles would be precluded from utilizing this section of rail for their ongoing rail vegetation maintenance and speeder program.

The examples listed above may be only a small sampling of the locations in question. Through the California Public Records Act, Seeker Enterprises has sought a complete listing of all purposely decommissioned rail infrastructure conducted under NCRA's authority (Exhibit 5.) In contravention of the Act's mandatory timelines, little relevant information has yet been provided despite months having elapsed.

I certify that all parties to this proceeding have been served these comments. Dated July 29, 2022

A handwritten signature in blue ink, appearing to read 'Uri Driscoll'.

Francis D Driscoll (AKA Uri Driscoll)
Co-owner Seeker Enterprises

Exhibit 1a



Exhibit 1b

[Hank Sims](#) / [Tuesday, April 9, 2013](#) @ 1:33 p.m.
/ [Local Government](#), [Railroad](#)

Big Showdown A-Brewin' for Tomorrow's North Coast Railroad Authority Meeting in Eureka

All signs are pointing to a contentious Wednesday for the eternally beleaguered and self-beleaguering North Coast Railroad Authority, the state agency that manages the dead railroad lines out of Humboldt County.

There are three items of particular interest to locals on the agenda for tomorrow's NCRA board meeting, which starts at 10:30 a.m in the Humboldt County Board of Supervisors' chambers. In no particular order, they are:

- 1). The inevitable presentation on the proposed East-West rail line, without which no public meeting in the county is complete. The mysterious "Land Bridge Alliance" is heading up this presentation — another Humboldt-based organization sprung up out of nowhere but evidently possessing cash to burn, if their [recent \\$35,000 pledge to the city of Eureka](#) is any indication. (The "Land Bridge Alliance" follows the voguish local trend of calling itself a "non-profit," or at least allowing itself to be called one, without actually possessing non-profit status or any of the troublesome financial disclosure requirements that go along with it.)
- 2). A presentation from CalTrout regarding a salmon restoration project it wishes to design on Woodman Creek, a tributary of the Eel. The project would evidently interfere with a NCRA bridge in the treacherous Eel River Canyon section of the line, which the NCRA currently says it has no plans to reopen. However, in past meetings the NCRA's private operator has signaled that wishes to attach complete replacement of the \$10 million, 100-year-old bridge as a condition of the salmon restoration project, which would effectively doom it.
- 3). The big thing on tap, though, is a last-ditch legal maneuver aimed at sidestepping the world of pain that two environmental groups — Friends of the Eel,

California for Alternatives for Toxics — are poised to bring down upon the authority in Marin County Superior Court. The maneuver contemplated is a declaration that the authority — division of the state of California, supported by state of California funds — is not bound by the state of California’s environmental laws.

The basis of the enviros’ lawsuit is not that difficult to explain. A few years ago the North Coast Railroad filed an environmental impact report with the state in order to open up the very south end of the line for freight traffic for the first time in a decade. The environmental groups charged that the environmental impact report was inadequate by California law, in that it broke the line up into segments and only considered the impact only of the very south end of the line. This was bound to insignificant compared to reopening the entire line, as was NCRA policy at the time. “Segmentation” of this sort is a big no-no in terms of the California Environmental Quality Act.

In response, the NCRA quickly reversed its decade-long practice of claiming that the whole entire railroad was going to be opened up any day now and started saying that the Eel River Canyon section of the line was dead for the foreseeable future. We’re only talking about the southern end, it said. Northern end operations are dead for now. (So why the need for Caltrans to build the railroad a whole new bridge in the Canyon? Good question.)

To date, though, the courts have not been buying the NCRA’s change of story. And so, tomorrow, the nuclear option: The board may effectively rescind the environmental impact report that the taxpayers paid to prepare, and instead assert that it is not bound by the California Environmental Quality Act at all — that as a railroad, it answers only to the Federal Railroad Administration. This will surely be a novel argument for a state agency to make.

It looks like it’s going to be a hell of a meeting. Here’s a [press release from Friends of the Eel and CATs](#). Here’s [their letter to the NCRA board](#), objecting to the proposed maneuver in great detail. Here’s a letter from [former Marin County NCRA Director Tom Macdonald](#) listing all the people NCRA is poised to piss off with its declaration, including the California Transportation Commission, which gave the NCRA the \$3 million it used to fund the environmental impact that the board now stands ready to flush down the toilet.

Exhibit 1c



Exhibit 1d

**California Department of Fish and Wildlife
Fisheries Restoration Grants Program Habitat Restoration Project**

LANDOWNER AGREEMENT

**North Coast Rail Authority, 419 Talmage Road, Suite M, Ukiah CA 95482
and
California Trout, 360 Pine Street, Fourth Floor, San Francisco, CA 94104
for the
WOODMAN CREEK FISH PASSAGE RESTORATION AND
RAILROAD PRESERVATION PROJECT**

I. PURPOSE

The following agreement details requirements of both the landowner and California Trout regarding the **Woodman Fish Passage Restoration and Railroad Preservation Project**. Said property is controlled by the North Coast Rail Authority, and is located along the mainstem Eel River at Post Mile 171.49 approximately 5 miles north of Dos Rios, Mendocino County, CA.

I, Mitch Stogner, Executive Director of the North Coast Rail Authority, representing the Board of Directors (NCRA Board, Hereinafter called "Landowner"), am aware that a habitat restoration project has been fully funded by the Department of Fish and Wildlife's Fisheries Restoration Grants Program for project implementation. The project has been explained to the Landowner by California Trout. The NCRA supports the goals of the project, which include: (1) decommissioning and removal of the railroad crossing (the rails and the fill prism) across Woodman Creek, (2) stockpiling of sediment fill nearby on the NCRA right-of-way and on the Simmerly Ranch (owned by Ron Christensen), and (3) restoration of a stream channel providing unimpeded fish passage into Woodman Creek, without reconstruction of the railroad crossing as a result of this project. CalTrout, The Department of Fish and Wildlife (CDFW), and Landowner acknowledge that the NCRA may choose to reconstruct a railroad crossing in the future at its own expense, while preserving unimpeded fish passage. The project is administered by CalTrout and implemented with assistance by technical subcontractors.

II. ACCESS PERMISSION

Landowner hereby grants California Trout, their subcontractors, and CDFW representatives permission to enter onto real property owned by the Landowner to perform pre-implementation planning and site preparations; to perform the fish passage implementation project; and to conduct post-project inspections and monitoring for needed maintenance for a 10-year period following project completion. Access shall be limited to those portions of landowner's real property where actual stream restoration work is performed and those additional portions of the real property which must be traversed to gain access to the work site.

III. DURATION OF AGREEMENT

The term of this agreement shall be 36 months for work performance (through June 30, 2020), and ten years for maintenance, inspection, and monitoring purposes from the last date of execution shown below. This is provided that CalTrout and/or the California Department of Fish and Wildlife shall give Landowner reasonable actual notice and any necessary arrangements are made prior to each needed access. Reasonable and actual notice may be given by mail, email, in person, or by telephone.

This agreement can be amended only by prior written agreement of both parties executing this permit.

IV. LIABILITIES

1. In conducting activities relevant to this agreement, reasonable precautions will be exercised by California Trout and their subcontractors to avoid damage to persons and property.
2. CalTrout agrees to indemnify and hold harmless Landowner and agrees to pay for reasonable damages proximately caused by reason of the uses authorized by this Agreement, except those caused by the gross negligence or intentional conduct of the Landowner.

3. Landowner agrees to indemnify and hold harmless CalTrout, its agents and designees from any liabilities and/or costs resulting from willful or negligent acts or omissions on the Landowner's part for activities covered under this Agreement.
4. CalTrout shall not be held responsible for injury to anyone working under the direction or supervision of Landowner on activities relevant to this Agreement.
5. Landowner requires that NCRA's engineer, David Anderson, to review all of the plans and to enter into a third party agreement with him for that purpose.

If you are in agreement to the above, please sign and date below.

Mitch Stogner 5-10-2017

Mitch Stogner
Executive Director
North Coast Rail Authority
419 Talmage Road, Suite M, Ukiah CA 95482



Darren Mierau
North Coast Director
California Trout
615 11th Street, Arcata, CA 95521

5/16/17

Date

Exhibit 2

CALIFORNIA TROUT



FISH • WATER • PEOPLE

CALTROUT NEWS

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Bridge Creek – Not Your Usual Fish Passage Project

November 5, 2014

CalTrout and Partners Complete Barrier Removal at Bridge Creek

Along the mainstem of the Eel River about 35 miles from the Pacific Ocean, Bridge Creek drains its watershed into the famous Holmes Hole, a gigantic pool guarded by towering sandstone walls and deep water that annually provides safe haven for thousands of adult salmon and steelhead on their way up river to their natal spawning grounds.

For many decades, those fish have been blocked from migrating into Bridge Creek by the North Western Pacific Railroad crossing, which long ago erected a 45 foot high earthen dam and culvert system through which no adult fish could ever pass.

Now, this barrier is gone.

And, not only is Bridge Creek able to flow freely to the Eel River once again, but the project has revealed a rather unique geologic feature at the creek-river confluence, exhumed after lying buried under railroad fill for decades. Sandstone cliffs, mirroring those at the Holmes pool carved by the Eel River, also rise high along the lower reaches of Bridge Creek.

Incredibly, these cliffs were buried by the construction of the railroad, and no one could remember what lay hidden under the mound of dirt.



Lower channel of Bridge Creek

CalTrout and our partners have completed the construction phase of the Bridge Creek Fish Passage Project. Following several years spent lining up funding and support from the North Coast Rail Authority (NCRA), and another year finalizing construction plans, the project was launched into construction early this summer. Project funding comes from the California Department of Fish and Wildlife Fisheries Restoration Grants Program and the State Coastal Conservancy, with a small share of costs, and tons of determination, coming from our project partners. In addition to our funders, the Bridge Creek project has received unanimous support from the NCRA board, and engineering oversight from the NCRA and National Marine Fisheries Service engineers. From start to finish, the project has been in the capable hands of Pacific Watershed Associates (PWA) and our construction contractor Ryan Rice Construction.

Many technical aspects challenge a project of this scale, such as deconstructing and stockpiling railroad tracks and wooden ties, re-routing the creek and diverting dirty water away from the Eel, and removing trees and vegetation. But the biggest task for this project was simply moving dirt, tons of it. Excavators and dump trucks toiled for more than eleven weeks, removing layers of fill foot-by-foot. In total, more than 55,000 yards of dirt were removed and stockpiled safely along the railroad line. That's a mere 2,750 truck-loads (more or less) using a gigantic 20-yard off-road dump truck. With the dirt-moving complete, construction crews worked to re-create a natural Bridge Creek stream channel and banks, and a new confluence with the Eel River. Large wood logs and boulders will be

placed back on the streambed to armor the bed, along with extensive erosion control measures to minimize winter erosion.



Bridge Creek from mouth of Eel River

Now we wait for the fish to arrive.

We would like to acknowledge the invaluable support from private landowners, Jack Rice and his family, as well as the Humboldt Redwood Company, for their willingness to allow this project on their properties.

We will let you know when that first fish arrives in Bridge Creek.

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Exhibit 3



Exhibit 4a

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made as of this 1 day of July, 2021, by and between the North Coast Railroad Authority, a public agency formed pursuant to Government Code Section 93000 et seq. ("NCRA") and the County of Humboldt, a municipal public entity ("County").

RECITALS

- A. NCRA is the property owner or easement holder of the Northwestern Pacific Railroad railway right-of-way corridor ("Rail Corridor") located in Humboldt County.
- B. In August 2009, NCRA adopted an amended Policy and Procedures Manual for the design, construction, safety, operations, and maintenance of shared use public trails located within the Rail Corridor ("Rails-with-Trails").
- C. In December 2012, NCRA adopted Resolution 2012-13 which states that NCRA will consider clearly defined and strictly limited exceptions to its current trail policy to enable development of a trail in the Humboldt Bay corridor without compromising the prospects of rail service restoration.
- D. In September 2018, Governor Brown signed Senate Bill No. 1029, known as the North Coast Railroad Authority Closure and Transition to Trails Act, to dissolve NCRA and transfer the rights-of-way and other properties to a successor agency that would create a Great Redwood Trail for hiking, biking, and riding.
- E. The County seeks to develop a non-motorized path along the Humboldt Bay shoreline between Eureka and Arcata consistent with Senate Bill No. 1029. The County's Humboldt Bay Trail South Project would link the Eureka Waterfront Trail located within the City of Eureka with the southern terminus of the Humboldt Bay Trail North facility developed by the City of Arcata. NCRA previously issued license agreements to the City of Eureka and City of Arcata for their respective trail projects.
- F. In January 2019, the California Transportation Commission ("CTC") awarded funds to the County through Cycle 4 of the Active Transportation Program to implement the Humboldt Bay Trail South Project.
- G. NCRA desires to issue a lease to the County to use the Rail Corridor for the Humboldt Bay Trail South Project, and the County desires to accept such lease, on the terms and conditions set forth in this Lease Agreement.
- H. The parties hereto acknowledge that pursuant to Senate Bill No. 1029, NCRA may be dissolved during the term of this Agreement. It is the intent of the parties that should such dissolution occur, the rights and obligations of NCRA hereunder may be assigned to a successor in interest.
- I. On December 17, 2020, NCRA approved this Agreement contingent upon approval by the CTC.
- J. On March 24, 2021, the CTC approved this Agreement subject to the conditions specified in Section 6.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements recited herein and made a material part hereof, the NCRA and County agree as follows:

1. Definitions.

- (a) "Commencement Date" is defined in Section 4.
- (b) "Construction Plans" is defined in Section 8.
- (c) "Rail Corridor" is defined in Recital A.
- (d) "Rails-with-Trails" is defined in Recital B.
- (e) "Rails with Trails Policy and Procedures Manual" is that specific document adopted by the NCRA on May 13, 2009, amended August 12, 2009, and includes all future amendments thereto.
- (f) "Lease Property" is defined in Section 2.

2. Description of Lease Property. The property subject to this Agreement (the "Lease Property") is defined as that specific section of the Rail Corridor, beginning in the southwest at or near Mile Post (MP) 285.5 in Eureka and terminating in the northeast at or near MP 289.6, the southern terminus of the City of Arcata's Humboldt Bay Trail North Project, specifically excluding therefrom any and all County property, County roads and other County rights-of-way. The location of the Lease Property is depicted in Exhibit A hereto and incorporated herein by this reference.

3. Use. NCRA hereby grants to the County a non-exclusive lease to access and use the Lease Property to construct, install, maintain, reconstruct, remove, repair and manage a multi-modal public path, for shared use by, including but not limited to, bicyclists, pedestrians, wheelchairs, joggers, and other non-motorized uses in accordance with applicable standards. Motorized vehicles shall be permitted access and use as needed by the County, its agents and contractors, for construction and maintenance purposes, and by emergency response personnel. County's use under this Agreement shall be subject and subordinate to any agreements entered into by NCRA, and its successors or assigns, for the purposes of preserving the Rail Corridor; provided that any such agreements shall not unreasonably interfere with the County's rights under this Lease and the rights of the public to use the trail established hereunder. NCRA agrees to consult with County regarding any proposed new agreements involving the Lease Property to determine whether the proposed use would unreasonably interfere with the County's rights under this Lease.

4. Term. The term of this Agreement shall be twenty-five (25) years (the "Term") commencing on July 1, 2021 (the "Commencement Date"), and, unless sooner terminated or extended as herein provided, shall terminate on July 1, 2046. During the Term and any extensions of the Term, the lease granted hereunder shall be irrevocable except as expressly provided in Section 13, below.

- (a) Extension of term. Upon the election of both parties, evidenced by written notice provided by each party hereto of its election to extend no later than ninety (90) days prior to the completion of the existing term, this Agreement may be extended upon the same terms as set forth herein for additional five-year terms. The election by only one party to this Agreement to extend its term shall be of no force or effect.

5. Conditions Precedent. This Agreement shall be null and void in the event (1) the County fails to obtain funding and all regulatory permits required for trail construction, or (2) the CTC does not approve this Agreement pursuant to California Government Code section 93020. Each party shall cooperate with the other to satisfy these conditions.

6. CTC Conditions. This Agreement is subject to the following conditions:

- (a) NCRA files a petition to railbank with the Surface Transportation Board within 90 days of CTC approval.

- (b) The Lessee (County) will not remove rails and ties from the project area or construct a trail or other infrastructure on the railbed until the Surface Transportation Board has approved NCRA's petition to Railbank and the State has issued a Notice to Proceed. In the interim, 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.
 - (c) If the Surface Transportation Board denies NCRA's application to Railbank, Lessee (County) will redesign the project to align its trail parallel to, rather than on top of, the railbed and observe all clearances required by the California Public Utilities Commission and/or the Federal Railroad Administration. 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 during project completion.
 - (d) If the Surface Transportation Board approves NCRA's application to Railbank, Lessee (County) will be authorized to place its trail or other infrastructure which would not preclude future railroad use, on the alignment. Following a notice to proceed which authorizes removal of rails and ties salvage proceeds shall be given to NCRA or its successor in interest.
 - (e) Preserve the utility right of way.
7. Lease Fee. In lieu of either a one-time or annual lease fee payment, the County shall provide maintenance to completed trail segments located in the Lease Property as follows: a) maintain drainage structures; and, b) provide all vegetation management, including tree trimming and removal. Said maintenance shall be performed to standards as determined by the County in its reasonable discretion, however in no event may the County use a lesser standard than that typically used in its maintenance of the County's other similar public trails and paths. The County, at its sole discretion and expense, may perform such additional maintenance as it deems appropriate within the Lease Property.
8. Trail Construction.
- (a) *Trail Construction, Timing.* The County may construct trail improvements in the Lease Property in segments as funding allows. Individual trail segments shall not be open for public use until completion of the trail improvement in said segment. Where required by permitting or other regulatory authorities, NCRA, and its successors and assigns, reasonably agree to execute and deliver applications for permits, licenses or other authorizations relating to the Rail Corridor. Trail segments shall be constructed in accordance with approved Construction Plans, and all applicable laws, rules, regulations and permits. In order to preserve the corridor for future rail use, the County shall conform to California Public Utilities Commission General Order 26-D regarding vertical and horizontal clearances wherever practicable. (E.g. Posts, pipes, warning signs and similar obstructions should, where practicable, have a side clearance of at least ten (10) feet from the center line of the location of the former pair of railroad tracks.). The County shall provide 15 days advance written notice to NCRA or its successors and assigns prior to beginning construction on any trail segment. The County shall provide 15 days advance written notice to the NCRA or its successors and assigns prior to opening any trail segment for public use
 - (b) *Construction Plan Approval.* The County shall submit detailed construction ready plans and specifications ("Construction Plans") to the NCRA or its successors and assigns for

review and approval prior to constructing any trail segment. Within one hundred twenty (120) days of receipt, the NCRA, or its successors and assigns, shall provide comments and input on the Construction Plans to the County.

(c) *Construction Plan Contents.* Construction Plans shall include, but not be limited to, specifications for temporary construction fencing, permanent landscaping, fencing or other trail demarcation and setbacks, and signage.

(d) *As-Built Plans.* Upon completion of construction and acceptance of any segment, the County shall provide copies of As-Built Plans to NCRA or its successors and assigns.

9. Ongoing Maintenance.

(a) The County shall, during the Term, at its own cost and expense and without any cost or expense to NCRA or its successors and assigns:

- i. Keep and maintain all trail improvements (subject to County's right to remove) in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. NCRA and its successors and assigns shall not be obligated to make any trail repairs of any kind; and
- ii. Comply with and abide by all applicable federal, state, and local laws and regulations affecting the Lease Property.

10. Insurance. The County shall maintain general liability coverage in the amount of no less than \$2,000,000 per occurrence and aggregate. Insurance shall be placed with a carrier having a current A.M. Best rating of at least A:VII or with the Redwood Empire Municipal Insurance Fund ("REMIF"). Evidence of coverage shall be provided to NCRA or its successors and assigns annually. The policy shall include NCRA, its successors and assigns as additional named insureds with respect to the trail.

11. Indemnification. To the maximum extent allowed by law, the County agrees to indemnify, defend and hold harmless NCRA, including its officers, employees, agents contractors, successors and assigns, from and against all loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses, arising out of or connected in any manner with the use or misuse of the Lease Property by the County, members of the public, or any act or omission by the County therewith. Such indemnity shall not apply to the extent such loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses are solely caused by NCRA's or any of its official's, employee's, consultant's, agent's, contractor's or successors' and assigns' active negligence or intentional conduct. This provision shall survive any termination of the Lease for actions or inactions that may arise during the time this Lease is in effect.

12. Abandonment. In the event of action by the Board of Supervisors for the County to abandon the use of the Lease Property, or any part thereof, this Agreement shall terminate to the extent of the portion so abandoned or discontinued.

13. Surrender. Upon termination of this Agreement, including but not limited to a termination resulting from expiration of the lease term, breach, or abandonment of all or a portion of the trail improvements, NCRA, or its successors and assigns, may direct the County to remove, at its own cost and expense, any and all trail improvements. Upon removal of any trail improvements, the County shall, upon direction from NCRA, or its successors and assigns, (i) reasonably restore the

affected portion of the Lease Property to a state or condition as it existed prior to the construction of trail improvements, or (ii) leave all or a portion of the trail improvements in place. Notwithstanding the foregoing, the County shall have no obligation to reasonably restore the affected portion of the Lease Property to a state or condition as it existed prior to the construction of trail improvements in the event NCRA terminate the Agreement pursuant to Section 14(b), below.

14. Termination. This Agreement shall terminate upon the expiration of the term thereof, pursuant to Section 4, or upon either of the following events:
- (a) Breach. In the event the County breaches, or fails to keep, observe or perform any covenant, term or condition of this Agreement, in addition to all other rights and remedies of NCRA and its successors and assigns provided hereunder or by law, after written notice or demand, and the County's failure to cure the breach within thirty (30) days of notice or commence to cure the breach within thirty (30) days for any breach that cannot be reasonably cured within thirty (30) days, NCRA or its successors and assigns may terminate this Agreement and thereafter recover possession of the Lease Property by lawful means.
 - (b) Rail Operations. In the event that the Lease Property is determined by NCRA, or its successors and assigns, to be needed for rail operations, it may terminate this Agreement by providing written notice to the County of termination on the basis of the need for the Lease Property for rail purposes. Such termination notice shall include the date upon which the Leased Property will be needed by NCRA or its successors or assigns for rail uses, or to perform work in preparation for such rail uses, and the date upon which such termination shall be effective, which shall not be less than ninety (90) days after written notice is given to County. For purposes of this provision, "rail operations" means the construction of rail facilities or actual use of the Lease Property by NCRA, or its successors and assigns, for the passage of railroad cars through the Lease Property.
15. Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder.
16. Notices. Except as otherwise provided hereunder; any notice or communication to NCRA, its successors and assigns, or the County shall be in writing and be mailed by postage prepaid. Notices or communications shall be addressed to the parties at the following addresses, which may be changed at any time by notice to the other party:

To NCRA:
Executive Director
North Coast Railroad Authority
419 Talmage Road, Ste M
Ukiah, CA 95482

To County:
Public Works Director
County of Humboldt
1106 Second Street
Eureka, CA 95501

Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office. Notice may be sent by email when simultaneously provided using one of the methods set forth above.

17. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or

unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

18. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.
19. Consents. Whenever in this Lease the consent or approval of either NCRA, or its successors and assigns, or County is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.
20. Attorney's Fees. In the event of any action or proceeding at law or in equity between NCRA, or its successors and assigns, and County to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment.
21. Integration. This instrument constitutes the entire agreement between NCRA and County with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by NCRA, or its successors and assigns, and County.
22. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.
23. Assignment and Subletting. County may assign this Agreement, or any interest herein, at any time provided that, (i) NCRA has consented to the assignment, (ii) the assignment shall be in writing, duly executed and acknowledged by County and the assignee, in form satisfactory to NCRA, or its successors and assigns, providing that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of County to be performed and observed, and (iii) an executed original of such assignment shall be delivered to NCRA, or its successors and assigns. NCRA may assign this Agreement upon the transfer of its interest in the Leased Property, or pursuant to any dissolution of NCRA.
24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Nothing in this Agreement is intended to alter, limit, or otherwise affect the immunities and liability limitations provided to public entities under the laws of the State of California, including without limitation the Government Claims Act set forth in the California Government Code.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NORTH COAST RAILROAD AUTHORITY:

By: Mitch Stogner

Name: Mitch Stogner

Its: Executive Director

Date: July 1, 2021

Approved as to form:

Elizabeth Coleman

General Counsel

Date: 7/22/2021

COUNTY OF HUMBOLDT:

By: Thomas K. Mattson

Name: Thomas K. Mattson

Its: Director of Public Works

Date: 7/12/21

Approved as to form:

J. H. Ngo

County Counsel

Date: 7/12/2021

Exhibit 4b

**Great Redwood Trail Agency
419 Talmage Road, Suite M, Ukiah, CA 95482
707-463-3280**

April 5, 2022

Hank Seemann, Deputy-Director
County of Humboldt
Department of Public Works
1106 Second Street
Eureka, CA 95501

Subject: Lease Agreement for the County of Humboldt's Humboldt Bay Trail South Project

Dear Mr. Seemann:

This letter is written on behalf of the Great Redwood Trail Agency ("GRTA"), which is the successor agency to the North Coast Railroad Authority ("NCRA"), to document GRTA's understanding of the current status of the Humboldt Bay Trail South Project ("Project"). NCRA received the County of Humboldt's application dated October 23, 2020, for a Lease Agreement ("Agreement") to construct and operate the Project between Eureka and Arcata from approximately Mile Post 285.5 to Mile Post 289.6. The Agreement was approved by the NCRA board on December 17, 2020, and by the California Transportation Commission on March 24, 2021. The executed Agreement is dated July 1, 2021, and extends through July 1, 2046, unless sooner terminated or extended. The Agreement is expressly transferrable from NCRA to the GRTA at paragraph no. 23.

The County's application identified that approximately 3.2 miles of the Project is situated within NCRA's railroad corridor. The County is not relying on railbanking to secure right-of-way for the Project. A portion of the Project will be located on parcels owned in fee by GRTA, and where the Project is situated on parcels over which GRTA holds an easement for railroad purposes, the County has acquired ownership of the underlying property in fee simple. The trail will be a paved Class I bike path designed in accordance with Caltrans Highway Design Manual standards. The County's application highlighted specific design aspects at the Eureka Slough Bridge, the westerly and easterly approaches to the Eureka Slough Bridge, an approximately 6,000-foot section of damaged railroad between the Brainard mill site and Bracut Industrial Park, and the damaged railroad crossing at Brainard's Slough.

On the Eureka Slough Bridge, the trail will be situated directly on the bridge with the incorporation of flangeway fillers to allow cooperative use with speeders and heavy rail vehicles. Similarly, the trail will be situated directly on the rail prism along the approximately 100-foot westerly approach to the Eureka Slough bridge with the incorporation of flangeway fillers. For the approximately 1,500-foot easterly approach to the Eureka Slough bridge, the rail prism will be widened, and the trail will be situated adjacent to the rail alignment. For the section of damaged railroad between Brainard and Bracut, the Project will remove the rails and ties, raise the elevation of the rail prism approximately 1.5 to 2 feet, widen the rail prism, construct the trail parallel to and offset 10 feet from the rail alignment, and repair the shoreline armoring. At Brainard's Slough, the Project will remove railroad-related debris from the waterway, remove approximately 60 feet of rails and ties that are currently hanging in air, stabilize the ends of the rail prism, and construct a trail bridge parallel to and offset 10 feet from the rail alignment.

Where rails and ties are to be removed, the County of Humboldt has proposed that it will stockpile the salvageable portion of rails and ties within the Humboldt Bay region for potential future re-use within the Project area by others. The County proposes that materials that are not suitable for re-use will be removed and disposed of by the County without replacement.

The County of Humboldt is removing the rails and ties between Brainard and Bracut and at Brainard's Slough solely for the purpose of raising the elevation of the rail prism and repairing the rail corridor where it has been damaged by erosion, to protect the railroad and the inland area from flooding. The segment of the railroad between Brainard and Bracut is currently impassable for any rail vehicle, where large areas of ballast are absent, and the rail connections are severely corroded. The rail prism at Brainard's Slough has completely washed out.

The County's Project is not locating the trail on top of the railbed at these locations and leaves sufficient space whereby the railroad could reasonably be restored in the future by a railroad entity. 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 of Humboldt has gone to great lengths to design the Project for compatibility with future railroad use. Moreover, the County is making a significant investment to repair the railbed along the Humboldt Bay shoreline and improve railbed conditions to resist future flooding damage. Such improvements will help protect the railroad, Highway 101, the Humboldt Bay Trail, and inland properties from flooding. The County is not relying upon NCRA easements nor railbanking for right-of-way. The County's Project will not sever the rail line's connection with the interstate rail network and will not preclude future construction of the railroad within the Project area.

Based upon the forgoing, GRTA is prepared to accept the stockpiling the usable rails and ties in the local area for potential future re-use as substantial performance of the terms of the lease requiring the track and tie to be placed back in their former location.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mitch Stogner", with a stylized flourish at the end.

Mitch Stogner,
Executive Director

Exhibit 5

From: Uri Driscoll <humboldthorse@yahoo.com>
Subject: Re: NCRA Agreement with Humboldt Trails Council
Date: April 18, 2022 at 8:17:29 AM PDT
To: "ncra.hiedy" <ncra.hiedy@sbcglobal.net>

Good Morning Hiedy,

Can you please send me all of the agreements NCRAA has with any agency that involves removing or covering rail tracks on its main rail line.
Please consider this a Public Record Request

Thank you and good day to you.

Uri

On Apr 7, 2022, at 5:56 PM, <ncra.hiedy@sbcglobal.net>
<ncra.hiedy@sbcglobal.net> wrote:

Uri-

The attached Corridor Management Plan includes vegetation management as well. Please see attached.

Hiedy

-----Original Message-----

From: Uri Driscoll <humboldthorse@yahoo.com>
Sent: Wednesday, April 6, 2022 1:29 PM
To: ncra.hiedy <ncra.hiedy@sbcglobal.net>
Subject: NCRA Agreement with Humboldt Trails Council

Hi Hiedy,

Can you tell me if the Humboldt Trails Council has an agreement with NCRA to plant trees along the rail line in Eureka?

Thanks

Uri

<Eureka Corridor Management Plan.pdf>