



Santa Cruz County Regional Transportation Commission

Transportation Policy Workshop

REVISED AGENDA

Thursday, June 17, 2010
9:00 a.m.

NOTE LOCATION THIS MONTH
SCCRTC Conference Room
1523 Pacific Ave
Santa Cruz Ca

1. Introductions
2. Oral communications

Any member of the public may address the Commission for a period not to exceed three minutes on any item within the jurisdiction of the Commission that is not already on the agenda. The Commission will listen to all communication, but in compliance with State law, may not take action on items that are not on the agenda

Speakers are requested to sign the sign-in sheet so that their names can be accurately recorded in the minutes of the meeting.

3. Additions or deletions to consent and regular agendas
4. Review of items to be discussed in closed session

CLOSED SESSION

5. Conference with Real Property Negotiator Pursuant to Government Code 54956.8 for acquisition of the Santa Cruz Branch Rail Line Property: Santa Cruz Branch Rail Line from Watsonville Junction to Davenport

Agency Negotiator: Kirk Trost, Miller Owen & Trost

Negotiation Parties: SCCRTC, Union Pacific

Under Negotiation: Price and Terms

6. Conference with Labor Negotiators Pursuant to Government Code 54957.6

Commission Negotiators: George Dondero and Yesenia Parra

Bargaining Units: RTC Association of Middle Managers (RAMM) and
Community of RTC Employees (CORE)

OPEN SESSION

7. Report on closed session

CONSENT AGENDA

All items appearing on the consent agenda are considered to be minor or non-controversial and will be acted upon in one motion if no member of the RTC or public wishes an item be removed and discussed on the regular agenda. Members of the Commission may raise questions, seek clarification or add directions to Consent Agenda items without removing the item from the Consent Agenda as long as no other Commissioner objects to the change.

8. Approve side letters for Memoranda of Understanding extensions

REGULAR AGENDA

8a. Santa Cruz Branch Rail Acquisition – Administration, Coordination and License Agreement (Luis Pavel Mendez, Deputy Director)

- a. Staff report
- b. Draft administration, coordination and license agreement with Sierra Northern Railway

9. Early mitigation planning for transportation projects in Santa Cruz County
(Kim Shultz, Senior Transportation Planner)

- c. Staff report
- d. Draft Memorandum of Understanding

10. Certification of the *Final Supplemental Environmental Impact Report* (FSEIR) and adoption of the *2010 Regional Transportation Plan* (RTP) – (Rescheduled from June 3, 2010 RTC meeting)
(Rachel Moriconi, Senior Transportation Planner)

- a. Staff report
- b. Resolution
- c. Final SEIR*

- d. Memorandum from AMBAG – addition to the final SEIR
- e. Recommended final RTP*
- f. Replacement page 2-5 of the RTP
- g. Mitigation Monitoring Program (MMP)*

*Reports (c, e, g) available on RTC web site

c- http://www.sccrtc.org/pdf/2010/2010MTP_RTP_FSEIR.pdf

e – www.sccrtc.org/rtp.html

g - www.sccrtc.org/rtp/2010/mmrp.pdf

11.Next meetings

The next SCCRTC meeting is scheduled for Thursday, August 5, 2010 at 9:00 a.m. at the Scotts Valley City Council Chambers, 1 Civic Center Drive, Scotts Valley, CA.

The next Transportation Policy Workshop is scheduled for August 19, 2010 at 9:00 am at the SCCRTC Offices, 1523 Pacific Avenue, Santa Cruz, CA.

HOW TO REACH US

Santa Cruz County Regional Transportation Commission

1523 Pacific Avenue, Santa Cruz, CA 95060

phone: (831) 460-3200 / fax (831) 460-3215

email: info@sccrtc.org / website: www.sccrtc.org

HOW TO STAY INFORMED ABOUT RTC MEETINGS, AGENDAS & NEWS

Broadcasts: *Many of the meetings are broadcast live. Meetings are cablecast by Community Television of Santa Cruz. Community TV's channels and schedule can be found online (www.communitytv.org) or by calling (831) 425-8848.*

Agenda packets: *Complete agenda packets are available at the RTC office, on the RTC website (www.sccrtc.org), and at the following public libraries:*

- Aptos Branch Library
- Central Branch Library
- Watsonville Library
- Branciforte Library
- Scotts Valley Library

For information regarding library locations and hours, please check online at www.santacruzpl.org or www.watsonville.lib.ca.us.

On-line viewing: *The SCCRTC encourages the reduction of paper waste and therefore makes meeting materials available online. Those receiving paper agendas may sign up to receive email notification when complete agenda packet materials are posted to our website by sending a request to info@sccrtc.org. Agendas are typically posted 5 days prior to each meeting.*

Newsletters: To sign up for E-News updates on specific SCCRTC projects, go to www.sccrtc.org/enews.

HOW TO REQUEST

❖ ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

The Santa Cruz County Regional Transportation Commission does not discriminate on the basis of disability and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. This meeting location is an accessible facility. If you wish to attend this meeting and require special assistance in order to participate, please contact RTC staff at 460-3200 (CRS 800/735-2929) at least three working days in advance of this meeting to make arrangements. People with disabilities may request a copy of the agenda in an alternative format. As a courtesy to those person affected, Please attend the meeting smoke and scent-free.

❖ SERVICIOS DE TRADUCCIÓN/ TRANSLATION SERVICES

Si gusta estar presente o participar en esta junta de la Comisión Regional de Transporte del condado de Santa Cruz y necesita información o servicios de traducción al español por favor llame por lo menos con tres días laborables de anticipo al (831) 460-3200 para hacer los arreglos necesarios. (Spanish language translation is available on an as needed basis. Please make advance arrangements (at least three days in advance by calling (831) 460-3200.

AGENDA: June 17, 2010

TO: Transportation Policy Workshop of the Transportation Commission

FROM: Yesenia Parra, Administrative Services Officer
George Dondero, Executive Director

RE: Memoranda of Understanding Extensions

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC):

1. Adopt the side letters with the bargaining units, Community of RTC Employees (CORE) and the RTC Association of Middle Management (RAMM), to extend the corresponding Memoranda of Understanding (MOU) and;
 2. Authorize the Executive Director to take all necessary administrative actions including signing the appropriate documents to make the benefit and administrative changes to implement the provisions of the side letters.
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BACKGROUND

Early on in the year, staff reported to the RTC that both bargaining units were interested in extending the current labor agreements for one year. At the same time the RTC was notified that the County would no longer be providing payroll services nor any ancillary benefits to RTC staff. Both bargaining units indicated to the RTC that the extension of the contract was dependent on the RTC offering the same level of ancillary benefits as currently outlined in the bargaining agreements.

At its June 2, 2010 meeting the RTC approved contracts for staff ancillary benefits. The new ancillary benefits contracts will offer an improved level of benefits from what is outlined in the current agreements at a lower cost.

DISCUSSION

The Community of RTC Employees (CORE) and the RTC Association of Middle Management (RAMM) have reached an agreement with the RTC for the extension of one year for both labor agreements. The provisions to the one year extension which are outlined in the side letters (Attachment 1 and 2) are:

1. Labor agreement extension for one year with an expiration date of November 13, 2011
2. Compensation study postponed for one year and to take place in 2011
3. RTC will maintain the same level of benefits as outlined in the current labor agreements
4. RTC agrees to pay the same percentage of benefit premiums as outlined in the labor agreements based on premiums for each year.

SUMMARY

Both RTC bargaining units, CORE and RAMM have agreed to extend the current labor agreements for one year. The side letters (Attachments 1 and 2) outline the provisions for the 1 year extension.

Attachments:

1. CORE side letter
2. RAMM side letter

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SIDE LETTER AGREEMENT
MEMORANDUM OF UNDERSTANDING BETWEEN
SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION (RTC)
AND COMMUNITY OF RTC EMPLOYEES (CORE)
SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 521
EFFECTIVE NOVEMBER 21, 2010

The Santa Cruz County Regional Transportation Commission (RTC) and Community of RTC Employees Service Employees International Union (SEIU) Local 521 (CORE) hereby agree to amend the current Memorandum of Understanding with this side letter.

RTC and CORE agree that, given the economic crisis facing our community and funding constraints at the RTC, employees are willing to temporarily forgo parity and cost of living adjustments and the RTC will strive to not cut positions or lay-off staff. Therefore, the CORE and RTC will extend the existing terms and conditions of employment as described in the current Memorandum of Understanding (MOU) by one year. As part of the extension CORE and RTC agree to postpone the compensation study required in section 21.4 of the MOU by one year, such that the study would take place in 2011, instead of 2010. This action would delay any potential salary adjustments which could be a result of the study. The RTC agrees to maintain the current level of all benefits to employees and agrees to pay the same percentage of benefit premiums as outlined in the MOU using the 2010 premium cost for 2010 and the 2011 premium cost for 2011.

This agreement extends for one year the terms and conditions of the existing MOU. The new expiration date is November 13, 2011.

For the RTC

For the Union

George Dondero
Executive Director
RTC

Susan Strubbe
SEIU Local 521

Yesenia Parra
Administrative Services Officer
RTC

Grace Blakeslee
Negotiating Team

Nathan Luedtke
Negotiating Team

Rachel Moriconi
Negotiating Team

Date

Date

SIDE LETTER AGREEMENT
MEMORANDUM OF UNDERSTANDING BETWEEN
SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION (RTC)
AND RTC ASSOCIATION OF MIDDLE MANAGEMENT (RAMM)
EFFECTIVE NOVEMBER 21, 2010

The Santa Cruz County Regional Transportation Commission (RTC) and RTC Association of Middle Management (RAMM) hereby agree to amend the current Memorandum of Understanding with this side letter.

RTC and RAMM agree that, given the economic crisis facing our community and funding constraints at the RTC, employees are willing to temporarily forgo parity and cost of living adjustments and the RTC will strive to not cut positions or lay-off staff. Therefore, the RAMM and RTC will extend the existing terms and conditions of employment as described in the current Memorandum of Understanding (MOU) by one year. As part of the extension RAMM and RTC agree to postpone the compensation study required in Exhibit A of the MOU by one year, such that the study would take place in 2011, instead of 2010. This action would delay any potential salary adjustments which could be a result of the study. The RTC agrees to maintain the current level of all benefits to employees and agrees to pay the same percentage of benefit premiums as outlined in the MOU using the 2010 premium cost for 2010 and the 2011 premium cost for 2011.

This agreement extends for one year the terms and conditions of the existing MOU. The new expiration date is November 13, 2011.

For the RTC

For the RAMM

George Dondero
Executive Director
RTC

Luis Mendez
Negotiating Team

Yesenia Parra
Administrative Services Officer
RTC

Daniel Nikuna
Negotiating Team

Date

Date

AGENDA: June 17, 2010

TO: Transportation Policy Workshop of the Regional Transportation Commission
FROM: Kim Shultz, Senior Transportation Planner
RE: Early Mitigation Planning for Transportation Projects in Santa Cruz County

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC) authorize the Executive Director to sign a Memorandum of Understanding ([Attachment 1](#)) with local, state, and federal agencies responsible for coordinating watershed-based resource conservation with early mitigation planning for transportation projects in Santa Cruz County.

BACKGROUND

The Federal Transportation Act (SAFETEA-LU) requires Regional Transportation Plans (RTP) to be developed in consultation with resource agencies for the purpose of previewing mitigation needs, establishing a foundation for mitigation strategies, and potential mitigation areas. The goal of the regional mitigation planning effort is to broaden the perspective on traditional project specific mitigation efforts and increase the opportunity for advancing the highest priority ecological and infrastructure goals of a region. Early collaboration with resource agencies in the development of mitigation strategies and potential mitigation areas has the added benefit of facilitating the permitting process, frequently the critical path to constructing a project following environmental clearance.

A prototype agreement to facilitate early mitigation planning was recently approved for the Elkhorn Slough to address impacts associated with transportation projects in the Monterey County area. In addition to the Transportation Agency for Monterey County, the parties to this agreement included Monterey County, Caltrans and other responsible state and federal resource agencies.

A foundation for early mitigation planning in Santa Cruz County has been established through the work of the Resource Conservation District (RCD) of Santa Cruz County. In partnership with the Natural Resources Conservation Services (a division of the United States Department of Agriculture), the RCD works with willing landowners, farmers, and other groups and associations to implement conservation practices throughout the county. Assistance is provided with erosion control measures, drainage and runoff improvements, soil conservation, fire safety, riparian area restoration and similar activities.

In 2003, the RCD received a grant to develop the Integrated Watershed Restoration Program (IWRP) to identify and coordinate the improvement of wildlife habitat and water quality countywide. Working with local, state, and federal resource agencies, the RCD through the IWRP has been able to secure nearly \$14 million for the design, permitting, and construction of over 70 high priority conservation/restoration watershed projects throughout the county.

DISCUSSION

Prompted by relationships established through work on the Soquel/Morrissey Auxiliary Lanes project, RTC staff met with staff from Caltrans and the RCD to explore the benefits of establishing an early mitigation planning effort that would benefit a range of transportation projects throughout the county. Building on those discussions, RCD and RTC staff reviewed and amended as appropriate the Memorandum of Understanding (MOU) adopted for the Elkhorn Slough as a potential document to establish early mitigation planning efforts in Santa Cruz County ([Attachment 1](#)).

The agreement is intended to bring all interested agencies to the table to discuss mitigation efforts early-on in the planning process, establish a framework for coordinated mitigation planning including preliminary design and permitting of potential mitigation projects, and position all interested parties to take advantage of cost-effective mitigation strategies in a timely manner. The trust and experience established with state and federal resource agencies through development and implementation of the IWRP has led the RTC and RCD to consider the IWRP as a foundation to further mitigation planning work in Santa Cruz County.

This type of early and coordinated mitigation planning is consistent with the direction provided by SAFETEA-LU. Consistent with that guidance, the Metropolitan Transportation Plan (MTP) proposed by the Association of Monterey Bay Governments (AMBAG) includes an inventory of resource conservation efforts in the three county area. Staff believes it is desirable to initiate an early mitigation planning effort for the direct benefit of RTC and its member agencies, as a local initiative to develop a comprehensive conservation strategy that is cost-effective to implement.

RTC staff, along with representatives from Caltrans and the RCD, presented the MOU to the Interagency Technical Advisory Committee (ITAC) in March 2010. ITAC members unanimously supported the initiative proposed through the MOU ([Attachment 1](#)) as a positive step in assisting the project delivery process following completion of the environmental phase.

The MOU is not binding to the respective boards and commissions; rather it applies to the relationship of the respective agency staff working together to create a comprehensive approach to resource conservation. As such, board and commission decisions may be informed by the consensus approach promoted in the MOU, but are not legally bound by the consensus process promoted in the MOU.

Accordingly, the ITAC and staff recommend that the RTC authorize the Executive Director to sign a Memorandum of Understanding ([Attachment 1](#)) with local, state, and federal agencies responsible for coordinating watershed-based resource conservation with early mitigation planning for transportation projects in Santa Cruz County.

Karen Christensen, Executive Director of RCD, and staff will provide a presentation of the IWRP and how that planning effort provides a foundation for the early mitigation planning work proposed in the MOU.

SUMMARY

SAFETEA-LU requires that RTPs consider mitigation needs as part of the long range planning process. The work of the Resource Conservation District (RCD) in development of the Integrated Watershed Restoration Program (IWRP) provides a foundation for advancing early mitigation planning in Santa Cruz County. The ITAC and staff recommend that the RTC authorize the Executive Director to sign a Memorandum of Understanding (Attachment 1) with local, state, and federal agencies responsible for coordinating watershed-based resource conservation with early mitigation planning for transportation projects in Santa Cruz County. The MOU is not binding to the respective boards and commissions; rather it applies to the relationship of the respective agency staff working together to create a comprehensive approach to resource conservation.

Attachments:

1. DRAFT Memorandum of Understanding for Early Mitigation Planning for Transportation Projects in Santa Cruz County

DRAFT* MEMORANDUM OF UNDERSTANDING *DRAFT
Early Mitigation Planning for
Transportation Improvements in Santa Cruz County

California Coastal Commission
California Department of Fish and Game
California Department of Transportation
Central Coast Water Quality Control Board
Federal Highway Administration
National Marine Fisheries Service
United States Army Corp of Engineers
United States Environmental Protection Agency
United States Fish and Wildlife Service
Resource Conservation District of Santa Cruz County
Santa Cruz County Regional Transportation Commission

A. PREAMBLE

The Santa Cruz County Early Mitigation Partnership (SCCEMP) Memorandum of Understanding (MOU) recognizes the importance of thorough and coordinated planning for California's future, and the need to balance watershed-based protection of valuable resources with needed improvements in transportation development. Good transportation programming means supplying improvements which support the short and long-term economic, environmental and societal goals. Effectively planning for these goals necessitates early and frequent consultation with stakeholders, as is required under section 6001 of SAFETEA-LU.¹ Nine Federal resource agencies have further memorialized this commitment in a 2006 report that encourages ecosystem approaches to developing infrastructure projects.² In recognition of the delicate balance required to honor environmental, agricultural, economic, safety and social interests in transportation planning, and to implement the provisions of SAFETEA-LU at a local watershed level, the SCCEMP signatories are developing a collaborative advanced mitigation process to be available for transportation

¹ The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted in 2005. Section 6001 (codified as 23 USC 134 and 135) of the law requires transportation agencies to identify future mitigation needs and future mitigation sites in long-range transportation plans through coordination with State and Federal agencies early in the planning process as well as a requirement to consider any available conservation plans, land-use plans, maps, or resource inventories.

² "*Eco-logical: An Ecosystem Approach to Developing Infrastructure Projects*" (2006) encourages Federal, State, Tribal and Local partners involved in infrastructure planning, design, review, and construction to use flexibility in regulatory processes. Specifically, *Eco-Logical* puts forth the conceptual groundwork for integrating plans across agency boundaries, and endorses ecosystem-based mitigation - an innovative method of mitigating infrastructure impacts that cannot be avoided. The Steering Team for the report included Bureau of Land Management, Federal Highway Administration, National Marine Fisheries Service, National Park Service, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Forest Service and U.S. Fish and Wildlife Service.

projects in Santa Cruz County. The SCCEMP also holds out this effort as an example for other jurisdictions.

B. PURPOSE

The purpose of the SCCEMP is to support concerted, cooperative, effective and collaborative work among the transportation and resource/regulatory agencies in the transportation planning and environmental mitigation processes. This MOU builds upon the Santa Cruz County - Resource Conservation District's existing Integrated Watershed Restoration Program (IWRP) which, in collaboration with local, state, and federal resource agencies, has established a process for identification and evaluation of valuable biological resources, habitats and agricultural resources in the County. This MOU will help identify key resources at the earliest stage of transportation improvement planning, and provides a framework to implement coordinated mitigation planning at the beginning of the project development process. The MOU facilitates compliance with Local, State and Federal environmental regulations and requirements established for the protection of biological and agricultural resources, but does not replace the review of any action at the appropriate time as required by environmental laws or regulations, or assure permit issuance or project endorsement.

Early coordination should mean more efficient and effective planning, a high degree of cooperation among involved agencies, and successful resolution of conflicts. Some of the advantages of early coordination and mitigation planning for impacts to biological and agricultural resources include the opportunity to eliminate the lag time between loss and replacement of resource values; more efficient and effective conservation of ecological values; the establishment of more efficient and effective monitoring and evaluation procedures; the swift utilization of diminishing opportunities for habitat conservation and preservation; and fewer delays in project delivery due to permit processing.

The signatories recognize that avoiding and minimizing biological and agricultural impacts onsite are always the first priorities before compensating impacts due to transportation improvements. These priorities are in place from the earliest design and planning stages and continue to be in place as maintenance and monitoring occurs. As required under SAFETEA-LU, environmental compliance should be integrated into these early planning efforts.

Establishing early and continual coordination and cooperation among the signatories in developing mitigation plans should provide more cost effective and efficient mitigation, and ultimately, a higher level of protection and conservation of our valuable biological and agricultural resources.

C. GOALS

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working agreement among the respective signatories, we hereby commit to advancing the following goals of the SCCEMP:

1. Facilitate the delivery transportation projects that meet the identified transportation needs of the region;
2. Strive for the greatest ecosystem conservation possible within the watersheds of Santa Cruz County rather than regulatory minimums;

3. After avoidance and minimization of impacts, ensure compensatory mitigation efforts comply with Federal, State and Local regulations and where possible, include preservation and restoration opportunities;
4. Strive for the efficient use of agency and non-governmental organization resources to maximize mitigation efforts;
5. Create a long-term institutional framework for the Santa Cruz County Early Mitigation Partnership;
6. Address biological resource impacts as well as agricultural impacts;
7. Strive for no net loss of habitat resources and functions, and achieve the goal of no net loss of wetlands;
8. Protect biological resources and minimize habitat fragmentation;
9. Maintain and enhance habitat connectivity and biological diversity;
10. Conserve and maintain the values and functions of mitigation sites in perpetuity; and
11. Promote the concept of advance mitigation to Federal, State and Local resource agencies; transportation and regulatory agencies; and other stakeholders.

D. AUTHORITY / SIGNATORIES

This MOU is intended to enhance the individual signatories' abilities to meet their respective regulatory and/or administrative obligations through early and frequent collaborative discussions on the transportation, biological and agricultural resource concerns in the watersheds of Santa Cruz County. This MOU constitutes the entire understanding among the signatories for the purposes of interpreting the matters set forth herein, whether oral or written.

All provisions of this MOU are intended and shall be interpreted to be consistent with all applicable provisions of Federal, State and Local laws. Nothing in the MOU will be construed as binding any signatory agency beyond their respective authorities or to require the participants to obligate or expend funds in excess of available resources.³ This MOU does not eliminate or diminish in any manner, any and all immunities to which any signatory is entitled in any State, and/or Federal action. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are or are not a signatory party to this agreement against any signatory, their officers, their employees or any other person. This MOU does not direct nor apply to any person outside the signatories of this MOU. This MOU shall be governed by, and construed in accordance with the laws of the United States and the laws of the State of California as applicable.

³ As required by the Anti-Deficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by Federal signatories to this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates Federal signatories to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations.

This agreement does not delegate to any agency, or the collective group of agencies, the authority to: 1) control another agency's final decision on a project; 2) modify or halt an agency's project; or 3) limit the discretion of the signatory agencies in carrying out their statutory and regulatory obligations, including the agencies' discretion to pursue projects according to their individual legal authorities. It is further recognized that the decision to issue approvals or permits remains within the sole discretion of the appropriate resource/regulatory agency.

The signatories recognize that the MOU applies at the regional and staff level only. Signatories governed by an appointed body (including but not limited to California Coastal Commission, California Department of Fish and Game and Regional Water Quality Resource Control Board) recognize that the MOU is not binding as to their respective boards or commissions, and instead applies only to their staff. Furthermore, as noted in this section, this MOU does not alter, abridge or limit any authority of any signatory agency. This MOU has been jointly negotiated and drafted. The language of this MOU should be construed as a whole according to its fair meaning, and not strictly for or against any of the signatories. This MOU should be liberally construed to accomplish its purpose.

The following parties agree to the terms of this MOU:

The California Coastal Commission's (Commission) primary mission is to protect, conserve, restore and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. Guided by the policies⁴ of the Coastal Act of 1976 (PRC 30000 et seq.), the Commission plans and regulates the use of land and water in the coastal zone in partnership with coastal cities and counties. The Commission also implements the Coastal Zone Management Act (16 U.S.C. 1451 et. seq.) through its Federally-certified coastal program, including the regulation of activities inside or outside of the coastal zone that are funded, permitted or conducted by Federal entities and that have the potential to adversely affect coastal resources. The Commission is responsible for overseeing the implementation of Local Coastal Programs by local governments and for reviewing development projects applying for coastal development permits within its original and appeal jurisdictions.

The California Department of Fish and Game's (DFG) mission is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. This responsibility is accomplished, in part, by the review of projects in accordance with the California Environmental Quality Act (CEQA) and recommendations of avoidance, minimization, and mitigation measures to CEQA Lead Agencies; through implementation of the California Endangered Species Act (CESA) via Incidental Take Permits issued pursuant to Fish and Game Code Sections 2081(b), Consistency Determinations issued pursuant to Fish and Game Code Sections 2080.1, or through an adopted Natural Community Conservation Plan (NCCP) pursuant to Fish and Game Code Sections 2800 et seq.; and through measures developed to minimize impacts to biological resources agreed to a Lake and Streambed Alteration Agreement (LSSA) pursuant to Fish and Game Code Sections 1600 et seq. CESA requires that take of State endangered, threatened, or candidate species be incidental to an otherwise lawful activity, that the impacts are minimized and fully mitigated, that

⁴ As a general matter, Coastal Act policies and corresponding Local Coastal Program standards do not permit new roads in wetland areas and limited expansions of existing roads are permitted only where necessary to protect existing capacity.

the mitigation measures are roughly proportional to the taking, that adequate funding to implement the required monitoring and mitigation measures is insured, and that the continued existence of the covered species is not jeopardized by the permitted activity.

The California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA)⁵ have the primary mission to plan, develop, manage, and maintain a safe, effective, and efficient transportation system that provides safety and mobility to the general public. FHWA is responsible for administering the Federal-aid Highway Program. This is a contract-authority program where Caltrans is reimbursed from the Highway Trust Fund for expenses resulting from transportation projects. Statutory and regulatory authorities for the Federal-aid Highway Program are found in Title 23, United States Code and Title 23, Code of Federal Regulations. Associated with this is implementation of appropriate mitigation measures to offset unavoidable adverse impacts and to demonstrate committed environmental stewardship. This stewardship is reflected in strict adherence to environmental laws/regulations and extensive inter- and intra-agency guidance and policy.

The Central Coast Water Quality Control Board (Water Board) is a regulatory board within the California Environmental Protection Agency. The Water Board has the primary responsibility to protect surface, ground, and coastal waters throughout the Central Coast Region. The Water Board makes critical water quality decisions for the region, including setting standards, issuing permits which govern and restrict the amount of pollutants that can be discharged into the ground or a water body, determining compliance with those permits, and taking appropriate enforcement actions. The Water Board requires mitigation to compensate for loss of wetland habitat through its issuance of the Clean Water Act (CWA) Section 401 Water Quality Certifications and Waste Discharge Requirements for projects impacting wetlands.

The U.S. Fish and Wildlife Service (FWS) and NOAA's National Marine Fisheries Service (NMFS) provide regulatory oversight regarding the conservation, protection and enhancement of Federally threatened and endangered species, in accordance with the Endangered Species Act of 1973, as amended (ESA)(16 USC 1531-1544) and the Fish and Wildlife Coordination Act (16 USC 661-667e). This is accomplished, in part, through consultations with other Federal agencies on prospective agency actions, providing technical assistance on biological resources and their values, assessing the impacts of various projects on those resources and by providing terms and conditions to avoid or minimize unavoidable impacts to existing fish and wildlife habitat resulting from land and water developments.

The U.S. Environmental Protection Agency (EPA) has review authority of proposed actions of other federal agencies in accordance with the National Environmental Policy Act (NEPA) and makes those reviews public under Section 309 of the Clean Air Act. As a part of the Section 309 review process, EPA may recommend corrective and/or mitigation measures to reduce environmental impacts from proposed actions. With the U.S. Army Corps of Engineers (Corps), EPA co-administers the CWA Section 404 Program which regulates the discharges of dredged or fill material into waters of the United States, helping to protect wetlands and other aquatic resources. CWA Section 404 permit decisions must comply with the CWA Section 404(b)(1)

⁵ Pursuant to Sections 6004 and 6005 of SAFETEA-LU (23 USC 326 and 327), most National Environmental Policy Act and associated environmental responsibilities have been assigned to Caltrans. FHWA's role in the SCCEMP is limited to any remaining non-assigned projects. FHWA will, however, continue to be a full participant in developing programmatic processes and procedures.

Guidelines which require taking all appropriate and practicable steps to first avoid and then minimize adverse impacts to the aquatic ecosystem before considering compensatory mitigation to offset unavoidable adverse impacts to wetlands, streams, and other aquatic resources.

The Resource Conservation District of Santa Cruz County (RCD) helps people protect, conserve, and restore natural resources through information, education, and technical assistance programs. The RCD has completed numerous projects in watershed management, wildfire prevention, habitat restoration, and sustainable agriculture to benefit the residents and resources of Santa Cruz County. We offer technical, permitting and cost-share assistance to landowners, farmers, ranchers, non profits and municipalities for projects, as well as an array of workshops on habitat restoration, invasive species removal, rural road erosion control, wildfire prevention, and agricultural best management practices.

The Santa Cruz County Regional Transportation Commission (Transportation Commission), as the Regional Transportation Planning Agency, is responsible for planning a multimodal transportation system that enhances mobility, safety, access, environmental quality, and economic activities in Santa Cruz County. The Transportation Commission programs and distributes state and federal money for local and regional transportation projects and is responsible for distributing money for public transit, rail, local street and road maintenance, highway, bicycle and pedestrian facilities. As a responsible agency under CEQA, the Transportation Commission reviews, comments, and coordinates with land use jurisdictions on region-wide land use development activities to ensure that impacts to the regional transportation system are properly addressed and mitigated.

E. PRINCIPLES OF AGREEMENT

The signatory agencies agree to actively participate in a program that places high priority on early coordinated planning of transportation improvements to insure the protection of biological and agricultural resources and take advantage of opportunities for their conservation, restoration and enhancement while providing the needed transportation facilities. Furthermore, to the extent staff and resources are available, signatories agree to:

1. Attend regular meetings to accomplish the early planning and coordination goals of this MOU, and update one another on planning and project development activities;
2. Work together to evaluate potential impacts of future transportation improvement projects in Santa Cruz County during the early planning stages of the transportation project lifecycle;
3. Identify biological resources of concern within the area of potential impact and recommend measures to avoid impacts to these resources;
4. Identify agricultural resources of concern within the area of potential impact and recommend measures to avoid impacts to these resources;
5. Identify opportunities to minimize the unavoidable impacts to identified biological and agricultural resources of concern;
6. Use all feasible and reasonable features of project design which avoid and minimize adverse project impacts before employing compensation measures;

7. Where there are unavoidable impacts, achieve in-kind, in-watershed compensation whenever feasible unless alternatives are more beneficial to the biological and agricultural resources;
8. Address mitigation for unavoidable impacts to waters of the United States⁶ with the EPA and Corps through the Interagency Review Team (IRT) process⁷ and assure consistency with State and Federal programs regulating wetland resources. Consider the use of mitigation banks, in-lieu of fees program, and/or conservation banking as potential strategies that allow for multiple-project mitigation to occur in the region.
9. Explore opportunities for biological and agricultural resource enhancement during project development;
10. Resolve potential conflicts in a cooperative manner;
11. Utilize the best available data, information and watershed plans to evaluate mitigation needs and potential sites for compensatory mitigation;
12. Identify a tracking system to manage multiple compensatory mitigation sites;
13. Identify funding partnerships with clear parameters of how funding can be utilized;
14. Consider larger-sized properties or bundle multiple sites to meet mitigation needs and maximize success; and
15. Convey the success of this effort to others.

F. MITIGATION SITES

The following minimum criteria should be applied to any site identified as available to be a compensatory mitigation site for the SCCEMP:

1. A completed habitat/resource survey with an evaluation of mitigation values and appropriateness of the site;
2. A mitigation plan that supports the ecosystem functions and preservation/restoration goals/needs of current conservation plans for the watershed;
3. A management and monitoring plan with clear, realistic and measurable success standards and objectives. The plan also needs to identify adaptive management options to address any remedial actions that may need to be implemented;
4. Evaluation and determination that information for the site is consistent with best available information;
5. A program to capture/predict management costs;

⁶ Jurisdictional limits of the authority of the Corps of Engineers under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Appropriation Act of 1899 are identified at 33 CFR 328.3 and 40 CFR 230.3. Waters considered to be inside and outside the jurisdiction of the Corps of Engineers may still fall under the permitting jurisdiction of other regulatory agencies in California.

⁷ The April 10, 2008 Compensatory Mitigation for Losses of Aquatic Resources Final Rule establishes the title "Interagency Review Team (IRT)" for an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank or an in-lieu fee program.

6. An acceptable methodology for determining mitigation opportunities on the site; and
7. An identified site manager and Conservation Easement holder (when appropriate), and assurances of financial commitments for in-perpetuity monitoring and management of the mitigation sites.

G. DISPUTE RESOLUTION

As noted in Section E, decisions on mitigation for waters of the United States for transportation projects will be addressed through the IRT and Section 404 permitting process. These decisions are not subject to the consensus process of this MOU. Similarly, decisions on mitigation for fill of aquatic resources listed in Coastal Act Section 30233 associated with transportation projects will be addressed through the regulatory processes of the Coastal Act, and decisions on what specific elements are necessary to meet the full mitigation requirement of CESA will be addressed through DFG's CESA permitting process.

The decision-making process for the SCEMP is consensus. Consensus decisions shall be defined as decisions that all the meeting participants can live with, with no meeting participant adamantly opposed. Each person at the meetings agrees to make every reasonable effort to hear and accommodate the concerns of those not in agreement. Once a decision has been reached by consensus, each signatory agrees to abide by it to the full extent of the authority available to its representatives.

A consensus decision can later be revisited only through agreement of the signatories. If new information becomes available that was not available when consensus was previously reached, and would cast serious doubt on an agency's original decision to join the consensus opinion, there shall be an attempt to reach a new consensus. If a new consensus cannot be achieved, then each signatory agency has the right to withdraw from consensus decisions that were based on the older information. The signatory agencies agree to make good faith efforts to limit such withdrawals from consensus decisions.

If consensus is not reached on a decision, signatories agree first to work with each other informally to resolve the inability to reach consensus. If signatories cannot resolve the inability to reach consensus informally, the participants are encouraged to elevate the discussion to appropriate mid-level management who are authorized to speak for their respective agency, asking the mid-level staff person to review the dispute. As part of the elevation process, the participants agree to describe the context of the dispute.⁸ If the mid-level review fails to resolve the inability to reach consensus, the participants may raise the issue to senior management. This elevation process is intended to resolve issues quickly and to maintain constructive working relationships. In keeping with the spirit of the integration process, nothing in this section precludes any other

⁸ The steps in this dispute resolution process mirror those agreed to in the April, 2006 Memorandum of Understanding on the National Environmental Policy Act and Clean Water Act Section 404 Integrated Process for Federal Aid Surface Transportation Projects in California. Signatories to this MOU were the Federal Highway Administration, the California Department of Transportation, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service and the National Marine Fisheries Service. The MOU outlines the elevation process for dispute resolution in both the body of the MOU and more specifically in an appendix to the MOU.

traditional or nontraditional approaches to dispute resolution, such as having a facilitated meeting with participants who have been unable to reach consensus.

Consensus decisions reached under this MOU do not affect the jurisdictional authority of the signatory agencies. While signatory staff hereby commit to full participation in the consensus process of this MOU, on a good faith basis, governing boards of signatory staff are required by law to act on their own independent authority. Thus, such board decisions may be *informed* by the consensus process of this MOU, but are not legally *bound* by the consensus process of this MOU.

H. MODIFICATION AND TERMINATION OF THE MEMORANDUM OF UNDERSTANDING:

1. This agreement and the operating procedures may be modified, which must be in writing, with the written approval of all signatories to the Memorandum of Understanding.
2. A signatory may terminate its participation in this agreement upon written notice to all other signatories. This termination will be effective 30 days from the date of the written notice in order to provide an opportunity for discussion on any issues that may have led up to the termination decision.
3. This agreement is intended to supplement, not replace, any existing agreements between any of the parties.
4. Signatory agencies and entities may be added to this MOU. Additional signatory agencies and entities shall first be approved by all existing signatories.
5. The signatories can jointly modify the terms as needed for continuous improvement of this agreement. Review and associated revisions to the MOU shall occur at least every ten years or sooner upon consensus of the signatory representatives.
6. Should any term of this MOU be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid.
7. When all the signatories have signed this MOU, the MOU becomes effective as of the date of the most recent signature.

Signatories, Page 1

Peter Douglas, Executive Director
California Coastal Commission

Date

Jeffrey R. Single, Ph.D., Regional Manager
California Department of Fish and Game

Date

Richard Krumholz, District Director
California Department of Transportation

Date

Roger W. Briggs, Executive Director
California Regional Water Quality Control Board
Central Coast Region

Date

Walter C. Waidelich, Jr., Division Administrator
Federal Highway Administration

Date

Rodney R. McInnis, SWR Regional Administrator
National Marine Fisheries Service

Date

Signatories, page 2

Jan Hicks, Regulatory Section Chief
San Francisco District,
United States Army Corp of Engineers

Date

Enrique Manzanilla, Director of Communities &
Ecosystems Division
Environmental Protection Agency, Region 9

Date

Diane Noda, Field Supervisor, Ventura
U.S. Fish and Wildlife Service

Date

Karen Christensen, Executive Director
Resource Conservation District of Santa Cruz County

Date

George Dondero, Executive Director
Santa Cruz County Regional Transportation Commission

Date

Deferred from the June 3, 2010 meeting --- Commissioners: Please bring copies of the RTP documents distributed to you with the June 3, 2010 packet to this meeting.

AGENDA: June 17, 2010

TO: Regional Transportation Commission

FROM: Rachel Moriconi, Senior Transportation Planner

RE: Certification of the *Final Supplemental Environmental Impact Report* (FSEIR) and Adoption of the *2010 Regional Transportation Plan* (RTP)

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC) adopt a resolution ([Attachment 1](#)) to:

- a. Certify the *Final Supplemental Environmental Impact Report* for the *2010 Santa Cruz County Regional Transportation Plan* as compliant with the California Environmental Quality Act (CEQA);
 - b. Accept the Findings of the *EIR*, adopt a “Statement of Overriding Considerations” for significant environmental impacts identified in the *EIR*, and adopt a Mitigation Monitoring Program; and
 - c. Adopt the *2010 Santa Cruz County Regional Transportation Plan*.
-

BACKGROUND

As required by the state, the RTC has prepared an update of the *Regional Transportation Plan* (RTP). This minor update describes the existing transportation system, forecasts the amount of funding anticipated for transportation projects over the next 25 years, identifies transportation programs and projects to address the region’s needs, and includes a preliminary discussion of strategies to address greenhouse gas emissions. Projects identified in the RTP include maintenance of and improvements to local roadways, highways, bicycle and pedestrian facilities, transit service, rail, specialized transportation for seniors and people with disabilities, park and ride lot construction and transportation demand management programs.

The Santa Cruz County Regional Transportation Commission’s draft *2010 Regional Transportation Plan* (RTP) and the draft *Supplemental Environmental Impact Report* (SEIR) were released for public review on March 1, 2010. Comments on the draft documents were due April 19, 2010. The Commission held a public hearing on the draft documents on April 1, 2010. The RTC reviewed comments received and changes for the final document on May 6, 2010.

DISCUSSION

The Environmental Impact Report

The *Environmental Impact Report* (EIR) for the *Regional Transportation Plan* is a program level

environmental analysis that supplements the Environmental Impact Report prepared for the 2005 plan. It serves as the *EIR* for the *2010 Santa Cruz County RTP*, the Transportation Agency for Monterey County's (TAMC) *Monterey County RTP*, San Benito Council of Governments' *San Benito County RTP*, and the Association of Monterey Bay Area Governments' (AMBAG) *2010 Metropolitan Transportation Plan (MTP)*. The document was prepared by an environmental consulting firm.

Before adopting the *Santa Cruz County Regional Transportation Plan (RTP)*, the Commission must consider the findings in the *EIR*. While AMBAG is the *EIR* lead agency for the purposes of CEQA, since the document also serves as the CEQA document for the Santa Cruz County RTP, staff recommends that the RTC certify that the document was prepared in compliance with CEQA and adopt a "Statement of Overriding Considerations" for the potentially significant environmental impacts identified in the *EIR*.

The Final EIR

The *Final SEIR* (Attachment 2 - distributed separately to Commissioners) is comprised of the *Draft SEIR* (by reference); copies of comments on the *EIR* that were received during the public review period for the *Draft SEIR*; responses to those comments (prepared by the environmental consultant); and revisions to the *Draft SEIR*. In early May, responses to comments were distributed to those who commented on the draft. All of these documents comprise the Final SEIR (FSEIR) and can be found on the RTC website (<http://www.sccrtc.org/rtp.html>).

Since the initial release of the FSEIR, the Association of Monterey Bay Area Governments (AMBAG) prepared an additional response to the Monterey Bay Unified Air Pollution Control District's comments regarding differences between 2010 Travel Demand Model outputs and outputs from previous models. That supplemental information for the FSEIR is attached (Attachment 2a).

Findings and Statement of Overriding Consideration

The *EIR* finds several significant and unavoidable impacts that implementation of transportation plans might have on the environment. Because of the programmatic nature of the MTP and RTPs, the scope of projects included in the *Final SEIR* remain somewhat undefined until these projects are further developed and subjected to further CEQA analysis. These possible impacts include:

- Adverse Effects on Scenic Vistas
- Damage to Scenic Resources
- Degradation of Visual Character
- Conversion of Prime Farmland, Unique Farmland and Farmland of Statewide Importance
- Potential Conflicts with Williamson Act Contracts
- Fragmentation of Agricultural Lands and Changes in Land Uses Adjacent to Agricultural Lands
- Toxic Air Contaminant Emissions
- Increased Exposure to Diesel Exhaust Fumes

- Secondary Effects of Sea Level Rise
- Modification of Habitat
- Modification of Riparian Areas/Wetlands
- Interference with Wildlife Movement
- Conflicts with Protective Ordinances and Policies
- Increased Impervious Surface/Storm Water Runoff
- Conflict with Land Use Plans/Policies/Regulations
- Increased Noise Related to Increased Traffic Volumes
- Increased Noise Levels Along Rail Corridors
- Indirect Growth Inducement
- Deterioration in Traffic Operations
- Temporary Increase in Traffic Congestion during Construction;

Many of these impacts will likely be mitigated for specific projects, and may only apply to one project in the tri-county region. However, because the feasibility of mitigation cannot be determined for specific projects at this time, some of the effects of *2010 RTP* implementation are considered significant and unavoidable. When balanced against the benefits of the plan, these impacts are taken into consideration and benefits are considered to outweigh the potential impacts. Consequently, staff recommends that the RTC adopt a “Statement of Overriding Consideration” which has been incorporated within the adopting resolution.

Mitigating Environmental Impacts of the RTP

In an effort to minimize the environmental impacts of the types of projects included the *RTPs and MTP*, the *EIR* identifies a variety of mitigation measures. Those mitigations are compiled into a Mitigation Monitoring Program (MMP) prepared by the environmental consultant. While the Commission does not have the authority to impose the mitigation measures on all the specific projects and programs listed in the *RTP*, the agencies responsible for implementing individual projects will be encouraged to incorporate those mitigation measures into their projects prior to final construction or implementation.

Regional Transportation Plan

The RTP describes the existing transportation system, forecasts the amount of funding anticipated for transportation projects over the next 25 years, identifies transportation programs and projects to address the region’s needs, and includes a preliminary discussion of strategies to address greenhouse gas emissions. Changes have been made to the document based on comments received and additional staff review of the draft RTP, as approved at the May 6, 2010 RTC meeting. Since release of the proposed final document with the June 3, 2010 RTC packet, Figure 7 on Page 2-5 of the RTP has been updated to only include estimates from the current travel demand model. The replacement page is attached (Attachment 3a).

Staff recommends that the Regional Transportation Commission review and consider the findings of the *Final SEIR*, and, as part of the adopting resolution (Attachment 1), certify that the *Final SEIR* has been completed in compliance with CEQA, adopt the Statement of Overriding Considerations, adopt the Mitigation Monitoring Program and adopt the RTP.

Next Steps

Following Commission action, staff will input any final changes, reprint, and distribute the adopted *RTP* and *EIR* to the state, partner agencies, Commissioners, and libraries. The final documents will also be posted on the SCCRTC website.

SUMMARY

The RTC has prepared a 2010 Santa Cruz County Regional Transportation Plan which identifies long-range funding and transportation needs for the region. Staff recommends that the Regional Transportation Commission adopt a resolution (Attachment 1) certifying the *SEIR* and adopting the *2010 RTP*.

Attachments:

1. Resolution
2. Final SEIR* – http://www.sccrtc.org/pdf/2010/2010MTP_RTP_FSEIR.pdf
- 2a. Memorandum from AMBAG – addition to the Final SEIR
3. Recommended Final RTP* - www.sccrtc.org/rtp.html
- 3a. Replacement Page 2-5 of the RTP
4. Mitigation Monitoring Program (MMP)* - <http://www.sccrtc.org/rtp/2010/mmrp.pdf>

**Note on Attachments: In an effort to reduce paper use, the Final Supplemental Environmental Impact Report, Mitigation Monitoring Program, and proposed final 2010 Santa Cruz County Regional Transportation Plan were only distributed to Commissioners with the June 3, 2010 agenda packet. The documents are available for review at the Commission's office (1523 Pacific Avenue, Santa Cruz) and online at www.sccrtc.org/rtp.html.*

RESOLUTION NO.

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of June 17, 2010
on the motion of Commissioner
duly seconded by Commissioner

A RESOLUTION CERTIFYING THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT,
ADOPTING FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS, AND
ADOPTING THE 2010 SANTA CRUZ COUNTY REGIONAL TRANSPORTATION PLAN

WHEREAS, the Santa Cruz County Regional Transportation Commission (SCCRTC), as the state-designated Regional Transportation Planning Agency, is required to prepare and periodically update a long-range Regional Transportation Plan (RTP) for Santa Cruz County pursuant to State law;

WHEREAS, the Commission has prepared a 2010 Santa Cruz County Regional Transportation Plan which describes policies, financial projections, and programs and projects to be implemented by the Commission, local jurisdictions, and local, state and regional agencies through 2035;

WHEREAS, these policies, financial projections, and actions have been developed consistent with state and federal guidelines;

WHEREAS, the program-level Final Supplemental Environmental Impact Report (SEIR) for the Monterey Bay Area Metropolitan Transportation Plan, including the Santa Cruz County RTP, identifies, in general terms, the possible significant or potentially significant environmental effects of the RTP on a regional, system-wide basis;

WHEREAS, the Commission acknowledges that the future implementation of specific programs and projects included within the adopted RTP might result in significant or potentially significant environmental impacts, as identified on a regional, system-wide basis in the EIR;

WHEREAS, the nature of the action being taken would not, in and of itself, directly cause any of the significant environmental impacts noted, since the action of adopting the RTP alone does not enable programs and projects to proceed;

WHEREAS, the EIR assessed the environmental impacts of the financially constrained Action Element and the following alternatives: a No-Build, a Financially Constrained - No New Revenues; an Unconstrained - unlimited revenues alternative; and a conceptual Greenhouse Gas Reduction scenario;

WHEREAS, the EIR reports that the greenhouse gas reduction scenario is the environmentally superior alternative, yet is not fully defined;

WHEREAS, although the No-Build Alternative is also environmental superior to the other scenarios, the no-build alternative would not pursue the goals and strategies of the 2010 RTP and would provide the least efficient and most congested transportation system of all alternatives considered;

WHEREAS, although the Financially Constrained - No New Revenues Alternative has the type and magnitude of benefits and impacts associated with the financially constrained Action Element of the RTP, delays in project implementation will have greater negative effects on regional traffic congestion, related air quality benefits, and project cost increases;

WHEREAS, the Financially Unconstrained Alternative, despite offering enhanced opportunity to further the Commission's adopted goals and strategies, is neither economically nor environmentally feasible;

WHEREAS, the Commission selects the Financially Constrained Element for adoption as the RTP;

WHEREAS, the EIR reports that the following potential impacts related to implementation of some of the projects of this Financially Constrained Action Element may not be subject to feasible mitigation:

- IMPACT 3.1.1: Substantial Adverse Effects on Scenic Vistas
- IMPACT 3.1.2: Substantial Damage to Scenic Resources
- IMPACT 3.1.3: Substantial Degradation of Visual Character
- IMPACT 3.2.1: Conversion of Prime Farmland, Unique Farmland and Farmland of Statewide Importance
- IMPACT 3.2.3: Potential Conflicts with Williamson Act Contracts
- IMPACT 3.2.4: Fragmentation of Agricultural Lands and Changes in Land Uses Adjacent to Agricultural Lands
- IMPACT 3.3.3: Toxic Air Contaminant Emissions
- IMPACT 3.3.4: Increased Exposure to Diesel Exhaust Fumes
- IMPACT 3.3.7: Secondary Effect of Sea Level Rise
- IMPACT 3.4.1: Modification of Habitat
- IMPACT 3.4.2: Modification of Riparian Areas/Wetlands
- IMPACT 3.4.3: Interference with Wildlife Movement
- IMPACT 3.4.4: Conflicts with Protective Ordinances and Policies
- IMPACT 3.8.3: Increased Impervious Surface/Storm Water Runoff
- IMPACT 3.9.2: Conflict with Land Use Plans/Policies/Regulations
- IMPACT 3.11.1: Increased Noise Related to Increased Traffic

Volumes

- IMPACT 3.11.2: Increased Noise Levels Along Rail Corridors
- IMPACT 3.12.1: Indirect Growth Inducement
- IMPACT 3.15.1: Deterioration in Traffic Operations
- IMPACT 3.15.2: Temporary Increase in Traffic Congestion during Construction;

WHEREAS, the Monterey Bay region meets Federal Air Quality Attainment Standards and is therefore exempt from a conformity analysis; and

WHEREAS, the required consultation with other agencies was conducted and adequate opportunity for public review and comment was provided, in accordance with state and federal law;

WHEREAS, the Regional Transportation Plan and EIR have been widely circulated and reviewed by RTC advisory committees representing project sponsors and transportation stakeholders; representatives of State and Federal governmental agencies; representatives of special interest groups; representatives of the private business sector; and residents of Santa Cruz County consistent with the region's public participation plan;

WHEREAS, a public hearing was conducted on April 1, 2010 to hear and consider comments on the 2010 RTP and corresponding Environmental Impact Report;

NOW BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION:

1. The Commission does hereby accept and certify that:
 - a. The Final SEIR for the 2010 Monterey Bay Metropolitan Transportation Plan, consisting of the Santa Cruz County Regional Transportation Plan, which includes the Draft EIR (by reference), response to comments, and a list of revisions, has been completed in compliance with CEQA;
 - b. The Final SEIR was reviewed and considered by the Commission, as the decision-making body, and found it adequate and complete;
 - c. The Final SEIR represents the SCCRTC's independent judgment and analysis;
2. The Commission hereby adopts the following Statement of Overriding Considerations:
 - a. The Regional Transportation Plan update is required by state law;

- b. The RTP is needed to preserve and maintain the existing transportation system;
- c. Transportation projects included in the RTP are needed for the purpose of increasing public safety and efficiency of moving people and goods;
- d. Transportation projects included in the RTP are needed to increase mobility by providing an improved and integrated multi-modal transportation system;
- e. The RTP is needed to coordinate land use and transportation decisions to ensure that the region's social, cultural, and economic vitality is sustained for current and future generations;
- f. The RTP is needed to make the most efficient use of limited transportation funds;
- g. The RTP is needed as the appropriate forum to coordinate local and regional transportation plans, projects and funding;
- h. The RTP update reflects extensive public input supporting the need for various transportation facilities;
- i. Many of the potential significant and unavoidable impacts of the Financially Constrained Action Element adoption will likely be mitigated for specific projects, and may only apply to one project in the tri-county region. However, because the feasibility of mitigation cannot be determined for specific projects at this time, some of the effects of 2010 RTP implementation are considered significant and unavoidable;
- j. The potential significant and unavoidable impacts of the Financially Constrained Action Element adoption are acceptable when weighed against the safety, congestion reduction, multi-modal transportation needs, identified community priorities and other benefits resulting from the RTP, also finding that these overriding considerations apply to the selection of the Financially Constrained Action Element over the No-Build, Financially Constrained - No New Revenues and Financially Unconstrained Alternatives and further also recognizing that individual implementing agencies, when they review specific projects for implementation, may have to make findings of overriding considerations where project-specific, potentially significant unmitigated adverse impacts may be identified;

- k. For identified mitigation measures, the Commission finds that a mitigation monitoring/reporting program meeting the requirements of Section 21081.6 of the Public Resource Code either will be, or can and should be, adopted by other agencies responsible for specific programs and projects listed in the 2010 RTP, as needed, prior to final construction or implementation approval for such programs and projects; and
- l. The act of adopting the RTP itself will have no impact on the environment but that the future discretionary implementation of the transportation projects in the RTP by the applicable projects' lead agencies could potentially lead to one or more significant environmental effects and that these changes or alterations will be within the responsibility and jurisdiction of the applicable projects lead agencies who hold the responsibility for adequately mitigating identified impacts on the environment;
- 3. Consistent with the above certification of the Final SEIR and statement of overriding considerations, the 2010 Santa Cruz County Regional Transportation Plan is hereby adopted, authorized and approved.

AYES: COMMISSIONERS
 NOES: COMMISSIONERS
 ABSTAIN: COMMISSIONERS
 ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Distribution: AMBAG, Caltrans, CTC, SCMTD, Cities, County, FHWA

MEMORANDUM

Date: June 2, 2010

To: For 2010 Metropolitan Transportation Plan (MTP) /Supplemental Environmental Impact Report (SEIR) file

From: Bhupendra Patel, Senior Transportation Modeler

Subject: Technical Memorandum for AMBAG Regional Travel Demand Model (RTDM) Forecasting Methodology

This memorandum is prepared in response to the comments on the 2010 Metropolitan Transportation (MTP) / Draft Supplemental Environmental Impact Report (DSEIR). The purpose of this memorandum is to summarize the differences in the traffic modeling assumptions and methodology used for the development of the AMBAG 2005 Metropolitan Transportation Plan (MTP) and those used for the Draft 2010 MTP. There is interest in understanding the differences between the modeling assumptions because reviewers have noted that there is a difference in the estimated *base year* Vehicle Miles Travel (VMT) between the two MTP's.

Due to substantial changes in the RTDM methodology and assumptions, there is a significant difference in the model's estimated Vehicle Miles Travel (VMT) for the AMBAG region for the year 2000 and 2005, base years for the 2005 MTP and 2010 MTP respectively (for VMT statistics please see Attachment A).

The following describes the chain of events and methodology/assumptions used for the AMBAG RTDM:

- During the time of 2005 MTP development (fall 2004) AMBAG used a hybrid approach to carryout the conformity /EIR analysis since the new TransCAD model was under development and not ready to use for such analysis. The current AMBAG RTDM is developed in the TransCAD software to represent and manage a very detailed transportation network and analyze more complex travel demand forecast modeling process.
- The MINUTP and FORTRAN files for the 2000 and 2025 analysis years of the 1990 Calibrated AMBAG Model was used and Vehicle Miles Travel (VMT) estimation for the base year 2000 was post processed to include the share of total VMT on lower volume links that was not assigned by the model. These links VMT were estimated separately, as they were not included in the MINUTP model network. The extrapolation and post processing of the VMT for the base year 2000 was reported of 18,205,127 VMT which is 8.36% higher than that of the Federal Highway

Administration's certified Highway Performance Monitoring System (HPMS) reported VMT of 16, 801, 000 (Attachment A & C).

- Each year, the Federal Highway Administration (FHWA) certifies Highway Performance Monitoring System (HPMS) report's VMT statistics that are often used to compare with modeled VMT estimates. According to the HPMS data both the 2005 and 2010 MTP VMT estimates are well within the accepted 10% range of the HPMS values for the AMBAG region for the model base years 2000 and 2005.
- AMBAG staff and consultant worked on additional model refinements between 2004 and 2007, including development of an improved user interface, adding interim years of analysis, incorporating more time period assignments capabilities and carried out the validation of the entire new model. AMBAG did not finalize the model revisions until early 2007.

2010 Metropolitan Transportation Plan (MTP)

In conjunction with the 2010 MTP, the AMBAG model was updated to a 2005 base year. The recent model update, built upon the enhancements, added in the full base year 2000 TransCAD model. This is the first AMBAG MTP to use the TransCAD-based model. The 2005 base year AMBAG models have a number of advantages:

- Does not require off-model VMT adjustments because of added network and zonal details
- Calibrated to the 2001-02 household survey
- Uses 2000 Census demographic data
- Added trip generation details to be sensitive to income, age, auto ownership and household size
- Adds trucks as a separate vehicle class
- Adds Santa Clara County to the model

The 2005 base year model is performing well when compared to 527 count locations around the region. The model validation against counts shows 29.1% Root Mean Square Error (RMSE) and -1.9% count VMT error. Typically, complex large scale regional models (like the one for the AMBAG region) perform in the range from 35-40% RMSE. The system-wide modeled 2005 base year VMT estimate is consistent with the 2005 HPMS estimates (within -5%). The 2005 base year model also uses the latest AMBAG population and employment forecast, which is significantly different than that of previous model.

Conclusions

AMBAG has more confidence in the current version of the AMBG Regional Travel Demand Model and its results. It is more robust and has been superseded with more up to date assumptions and methods as demonstrated above and in the attached model validation summary report (Attachment B). The current overall model validation when compared to local count data and HPMS statistics is exceptionally good.

AMBAG is continuing working on the transit model enhancements and several other components of the current RTDM and expected to be completed by September 30, 2010. This effort will be peer reviewed and a final model validation and associated technical report will be released for model user as well as general public.

Attachments:

- Attachment 1 – AMBAG Region: VMT trends 1999 to 2008 and 2035
- Attachment 2 – Summary of AMBAG 2005 Base Year Model Update
- Attachment 3 – VMT forecasts trend line chart

Daily Vehicle Miles Traveled (DVMT)

Highway Performance Monitoring System (HPMS)

Jurisdiction	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	
MONTEREY	8,694,900	9,217,300	9,331,900	9,336,174	9,930,000	9,550,738	10,083,737	10,024,028	9,842,988	9,858,882	9,896,342	9,991,845	9,778,089	
SAN BENITO	1,139,600	1,164,600	1,244,100	1,236,084	1,462,000	1,450,965	1,440,795	1,499,057	1,448,116	1,445,072	1,483,230	1,394,031	1,387,044	
SANTA CRUZ	4,896,900	5,116,400	5,192,500	5,197,757	5,409,000	5,356,219	5,509,049	5,608,052	5,626,761	5,647,513	5,543,305	5,428,626	5,354,077	
AMBAG Region	14,731,400	15,498,300	15,768,500	15,770,014	16,801,000	16,357,923	17,033,581	17,131,137	16,917,864	16,951,467	16,922,877	16,814,502	16,519,209	
AMBAG Model Results					2000#					2005*				2035*
MONTEREY					10,474,977					9,228,000				14,998,565
SAN BENITO					1,670,631					1,555,000				3,229,073
SANTA CRUZ					6,059,519					5,292,000				7,451,192
AMBAG Region					18,205,127					16,075,000				25,678,830
% Difference					8.357					-5.170				

HPMS Data Source: California Department of Transportation, Transportation System Information Program, Office of Travel Forecasting & Analysis, Highway Inventory & Performance Branch

DVMT- estimated using AMBAG RTDM and reported in the 2005 Metropolitan Transportation Plan (MTP).

* DVMT- estimated using AMBAG RTDM and reported in the 2010 Metropolitan Transportation Plan (MTP)

Summary of AMBAG 2005 Base Year Model Update

During late 2009, the AMBAG model was updated, bringing the base year from 2000 to 2005. The primary motivation behind the update project was to incorporate AMBAG's latest land use forecast into the model assumptions, and to use the updated model to analyze capacity projects for the 2010 MTP. The new forecast employment methodology represented a change from the previous model, and a large amount of the work involved in the update was related to this change. The model's network, trip generation, trip distribution, external trips, and truck trips were updated to reflect the new base and horizon year of the model. Overall model validation against count data improved from previous versions. Also, the model validates well against other sources such as HPMS. The following discussion summarizes the update process.

Validation to Traffic Counts

After updating and calibrating each component of the model to match 2005 conditions, the model was validated against 2005 daily count data. The overall model validation achieved 29.03% Root Mean Square Error (RMSE), which is considered excellent, and represents an improved validation than in previous versions of the model. Results for both Monterey and Santa Cruz counties was better than the overall regional validation performance. Model validation was also checked by functional classification, by link type, by volume group, and by aggregate VMT and the model was found to be performing well. Those results are listed below.

VALIDATION BY FUNCTIONAL CLASS BY COUNTY, BASE YEAR 2005 - AMBAG REGION

SANTA CRUZ

	Functional Class						
Data	2	6	7	12	14	16	All
Number of Links	4	4	4	42	34	52	140
Avg. Pct. Loading Error	-6.3%	-18.7%	-29.9%	1.3%	-19.8%	-26.3%	-10.0%
Avg. Pct. VMT Error	-5.9%	-3.8%	-29.7%	0.3%	-18.4%	-16.9%	-3.4%
RMSE Error	6.7%	38.4%	45.1%	16.2%	30.7%	51.7%	27.8%

SAN BENITO

	Functional Class						
Data	2	6	7	12	14	16	All
Number of Links	7	11	3		2	7	30
Avg. Pct. Loading Error	1.0%	-30.5%	-19.8%		47.1%	-55.4%	-13.6%
Avg. Pct. VMT Error	-2.7%	-7.0%	-17.7%		145.5%	-70.4%	-5.8%
RMSE Error	34.7%	56.1%	23.4%		147.1%	86.5%	68.7%

MONTEREY

	Functional Class						
Data	2	6	7	12	14	16	All
Number of Links	92	58	29	45	66	46	336
Avg. Pct. Loading Error	-1.2%	3.9%	-49.3%	3.5%	-19.6%	-18.5%	-7.8%
Avg. Pct. VMT Error	-2.7%	2.0%	-50.7%	4.4%	-21.1%	-25.7%	-3.9%
RMSE Error	22.5%	40.5%	63.0%	14.2%	28.6%	33.3%	26.7%

AMBAG REGION

	Functional Class						
Data	2	6	7	12	14	16	All
Number of Links	111	74	36	89	105	112	527
Avg. Pct. Loading Error	1.4%	-3.5%	-45.0%	2.6%	-18.6%	-22.5%	-7.5%
Avg. Pct. VMT Error	0.4%	1.9%	-46.4%	2.5%	-19.0%	-22.1%	-1.9%
RMSE Error	26.0%	47.0%	60.7%	15.5%	31.1%	45.2%	29.1%

Table 3 – Validation by Functional Class by County

Functional Classification System:

- 2 Rural Other Principal Arterial
- 6 Rural Minor Arterial
- 7 Major Collector
- 12 Freeways & Expressways
- 14 Urban Other Principal Arterial
- 16 Urban Minor Arterial

VALIDATION BY LINK TYPE, BASE YEAR 2005 - AMBAG REGION

Data	LINK TYPE			
	FREEWAY	MULTILANE	TWO LANE	ALL
Number of Links	140	131	256	527
Avg. Pct. Loading Error	2.5%	-7.9%	-21.9%	-7.5%
Avg. Pct. VMT Error	1.7%	2.3%	-15.1%	-1.9%
RMSE Error	14.9%	29.5%	48.2%	29.1%

Table 4- Validation Results by Link Type

VALIDATION BY VOLUME GROUP, BASE YEAR 2005 - AMBAG REGION

Data	Volume Group							
	250	750	3000	7500	15000	35000	75000	ALL
Number of Links	4	15	82	91	141	184	10	527
Avg. Pct. Loading Error	130.7%	22.0%	-10.9%	-9.7%	-16.8%	-4.7%	2.6%	-7.5%
Avg. Pct. VMT Error	172.5%	14.2%	-13.5%	-2.6%	-10.8%	1.1%	3.7%	-1.9%
RMSE Error	146.7%	79.5%	77.6%	51.1%	30.7%	22.6%	5.8%	29.1%

Table 5 – Validation Results by Volume Group

**SUMMARY VMT VALIDATION STATISTICS - ONLY FOR LINKS WITH COUNTS
YEAR 2005**

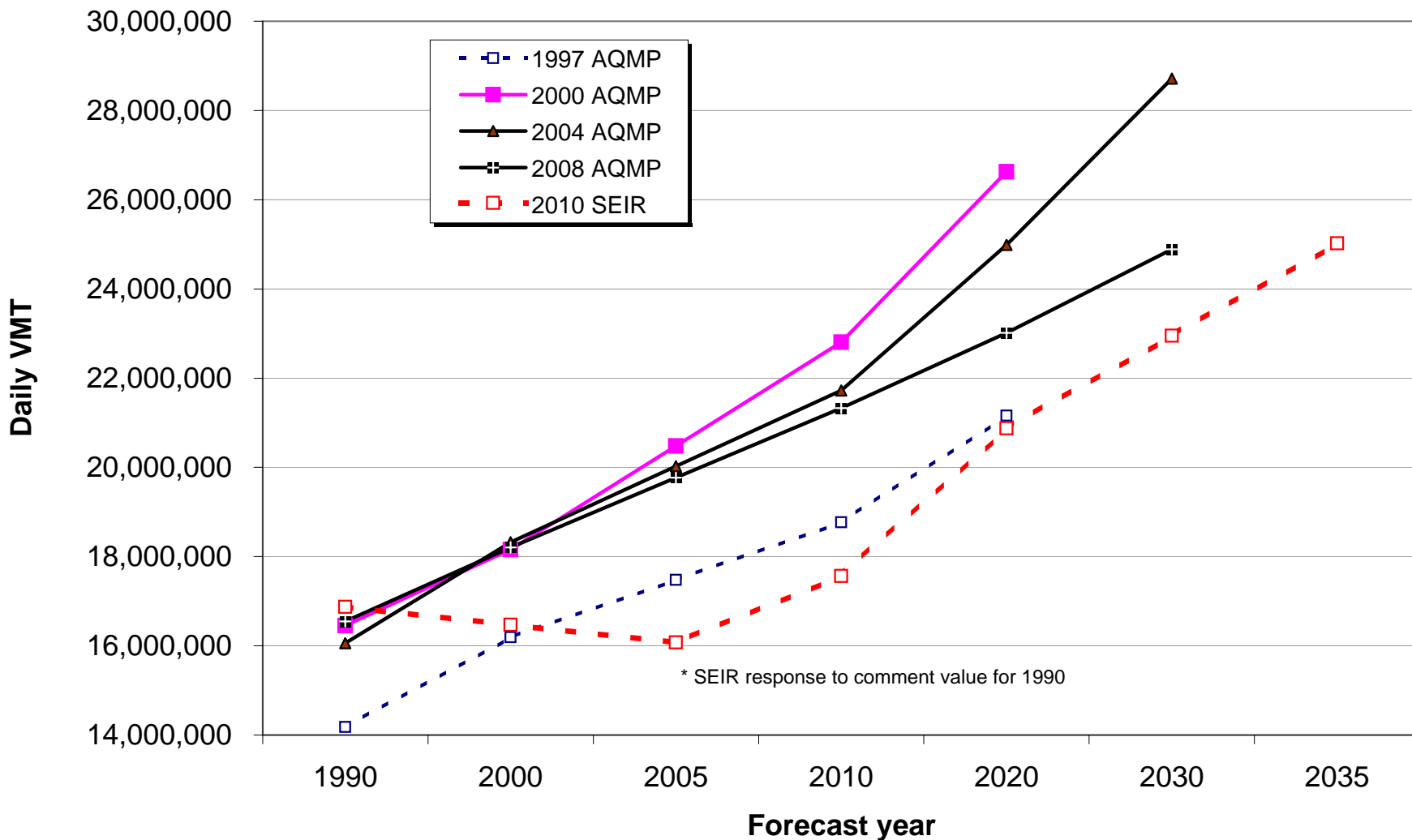
Data	COUNTY			
	MONTEREY	SAN BENITO	SANTA CRUZ	MODEL TOTAL
Sum of vmt model	3,446,396	164,900	1,300,103	4,911,398
Sum of vmt count	3,587,000	175,093	1,345,992	5,108,085
Error	(140,605)	(10,194)	(45,889)	(196,688)
Pct Error	-3.92%	-5.82%	-3.41%	-3.85%
Model/Count Ratio	96.1%	94.2%	96.6%	96.1%

Table 6 – Validation Results for VMT Error

Comparing VMT with HPMS

The AMBAG model is being used to estimate the impacts of various project scenarios in the development of the MTP. One of the major outputs from this process is an estimation of total VMT by county and for the region. Because these outputs are critical, the model was also subjected to a validation test against HPMS data. This VMT comparison is different that the one reported in Table 6 above. In Table 6, only links with traffic counts are used. In Table 7, the model was used to estimate all VMT in each of the three AMBAG counties. Table 7 shows that the updated AMBAG model is slightly underestimating VMT when compared to 2005 HPMS estimates, but results are within an acceptable level of error.

AMBAG Vehicle Miles Travel (VMT) Forecasts



trends. VMT estimates may change, for instance, if employment and population forecast or roadway and transit network data is updated. In addition, new information that may allow for further calibration could change current estimates.

Longer Commutes

While the majority of travel in Santa Cruz County stays within the county boundaries, about 20 percent of Santa Cruz County commuters travel to San Francisco Bay Area counties and about 5 percent to Monterey County.

Figure 8 shows 2005 and projected 2035 commute patterns between Santa Cruz, Monterey, San Benito, and Santa Clara Counties. Many people reside in Santa Cruz County and endure the commute in order to live in a coastal environment, while taking advantage of higher-paying jobs "over the hill".

Commute distances within the county can also be lengthy. Many residents living in the southern half and more remote corners of the county travel to job centers located in the northern portions of the county near urban developments, such as downtown Santa Cruz. Over 41 percent of Santa Cruz County commuters reported that they spent more than 15 minutes commuting one way with a greater portion of these individuals commuting from homes in the south county. (Santa Cruz County Community Assessment Report 2009, *Telephone Survey*.)

Combined, these conditions result in longer in-county commutes and commutes to neighboring counties.

Annual Vehicle Miles of Travel (VMT) in Santa Cruz County

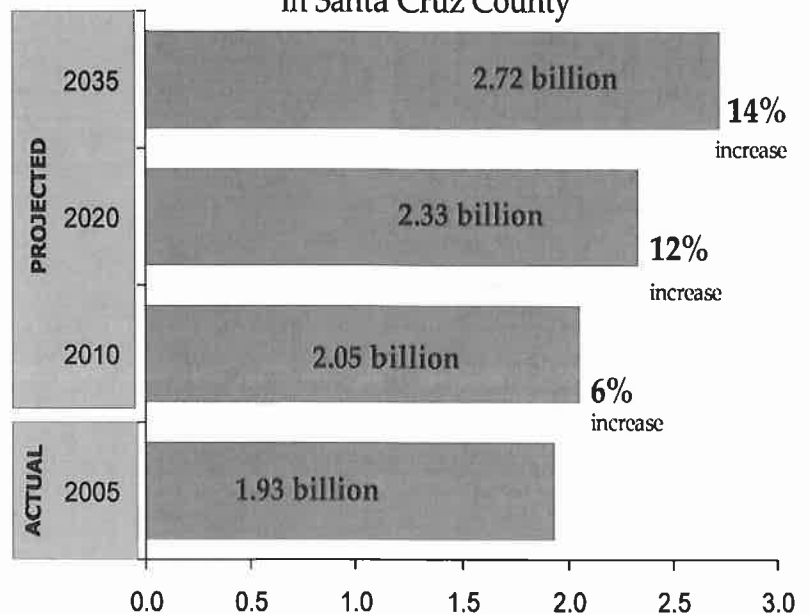


Figure 7
Source: AMBAG

The end result: more traffic and overflowing express buses on both Highway 1 and Highway 17 corridors.

Land-use Patterns that Encourage Driving

When Santa Cruz County residents speak out about traffic congestion, they often overestimate the "over-the-hill" commuter and truck traffic. "Over-the-hill" commuter traffic is substantial, but does not account

County-to-County Commute Patterns

2005		Destination			
		Santa Cruz	Monterey	San Benito	Santa Clara
Origin	Santa Cruz	143,896	14,475	355	19,742
	Monterey	13,720	239,687	2,006	14,327
	San Benito	1,217	5,609	14,432	15,538
	Santa Clara	5,641	6,150	2,241	933,881

2035		Destination			
		Santa Cruz	Monterey	San Benito	Santa Clara
Origin	Santa Cruz	162,808	9,358	298	22,646
	Monterey	20,178	285,442	2,828	22,973
	San Benito	2,328	6,666	16,943	24,870
	Santa Clara	4,941	4,522	1,553	1,210,726

Figure 8
SOURCE: AMBAG

AGENDA: June 17, 2010

TO: Regional Transportation Commission (RTC) Transportation Policy Workshop

FROM: Luis Pavel Mendez, Deputy Director

RE: Santa Cruz Branch Rail Line Acquisition – Administration, Coordination and License Agreement

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC) authorize the Executive Director to enter into an Administration, Coordination and Lease agreement ([Attachment 1](#)) with Sierra Northern Railway on behalf of the RTC for operation of the Santa Cruz Branch Rail Line contingent on non-substantive revisions that may still be made to the agreement.

BACKGROUND

On May 6, 2010 the Regional Transportation Commission (RTC) approved purchasing the Santa Cruz Branch Rail Line (Branch Line) for \$14.2 million and entering into a purchase and sale agreement with Union Pacific (UP). RTC staff and negotiators have been working to finalize the agreement with UP. RTC negotiators and staff have also been working to finalize an administration, coordination and lease agreement with Sierra Northern Railway for the operation of the rail line. In addition, the RTC has been working to complete all of the necessary preparations for funding consideration of the project by the California Transportation Commission (CTC) at its June 30th and July 1st meeting.

DISCUSSION

In April 2010, the RTC placed a draft of the administration, coordination and license agreement with Sierra Northern Railway on the RTC website. Attached is the most recent draft of the agreement. RTC staff and negotiators will have a negotiating session with Sierra Northern Railway prior to the June 17, 2010 meeting of the RTC. It is hoped that the RTC negotiators and Sierra Northern will reach agreement on the remaining items being negotiated. A revised agreement will be distributed at the meeting. Therefore, RTC staff recommends that if RTC negotiators and staff reach agreement with Sierra Northern, the RTC authorize the Executive Director to enter into an administration, coordination and license agreement ([Attachment 1](#)) with Sierra Northern Railway for operation of the Santa Cruz Branch Rail Line. The agreement will be subject to approval of project funding by the CTC.

SUMMARY

RTC staff and negotiators are working to complete negotiations on an administration, coordination and license agreement for operation of the Branch Line. Staff recommends authorizing the Executive Director to enter into the agreement, if agreement is reached with Sierra Northern Railway.

Attachments:

1. Draft Administration, Coordination and License Agreement with Sierra Northern Railway

\\Rtcserv2\shared\TPW\TPW 2010\TPW 0610\RailAcq\RailAcqAC&LA0610.doc

**NOTE: THIS DRAFT AGREEMENT IS SUBJECT TO FURTHER
NEGOTIATIONS BETWEEN THE PARTIES**

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated _____, 2010 and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Sierra Northern Railway, a California Corporation ("Sierra").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP"), via a _____ 2010 Purchase and Sale Agreement (the "Purchase and Sale Agreement"); and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the "Freight Easement"), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to Sierra and Sierra is the sole freight rail operator on the Freight Easement;

Sierra needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations; and

Sierra and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows:

1. Definitions

1.1 The term "Applicable Law" is defined as the laws, rules and regulations of the STB, the FRA, the California Public Utilities Commission, and any other federal, state, or local governmental agency other than the Commission.

1.2 The term "Commission" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.

- 1.3 The term “Coordination Committee” is defined as the committee established by the parties pursuant to Section 11.
- 1.4 The term “FRA” is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.5 The term “Freight Easement” is defined in the introductory paragraphs of this agreement.
- 1.6 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.7 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.4), transloading freight and dispatching.
- 1.8 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.9 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.10 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.11 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or

expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Sierra, and any property in the Commission's or Sierra's care or custody.

- 1.12 The term "Property" is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.
- 1.13 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.14 The term "Sierra" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.15 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.16 The term "Tourist Service" is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service.
- 1.17 The term "UP" is defined in the introductory paragraphs of this agreement.

2. **Commission Grants Rights**

- 2.1. Freight Service. The Commission grants Sierra the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Sierra's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. Sierra may not, in performing such Freight Service, exceed the maximum speeds authorized by Applicable Law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.

2.2. Trackage License. The Commission grants Sierra an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.

2.3. Tourist Service.

2.3.1. Sierra Tourist Service. The Commission grants Sierra a nonexclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and Milepost 31.39 in Davenport; provided that prior to the commencement of operations (a) the Commission has approved in writing a plan from Sierra describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Sierra has obtained any required governmental authorizations for such Tourist Service.

2.3.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Freight Service, (b) do not unreasonably conflict with any other license with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Sierra's costs (including labor costs, materials costs, equipment costs—using equivalent rental costs as a proxy for capital and maintenance costs—travel, fuel, contract labor, and appropriate overhead) to maintain the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Sierra in Section 9 and (ii) indemnify and hold harmless Sierra and the Commission as to any Loss arising out of or related to licensee's operations.

2.3.2.1. The licensee's proportionate share of Sierra's monthly costs shall be calculated in advance by Sierra (based on the prior year's monthly maintenance costs and the parties' relative usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by any

licensee. The licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Sierra shall reconcile the amounts paid to the actual costs incurred during the months of the licensee's operations at the end of each calendar year. If the actual costs exceed the amount charged to the licensee, the licensee will pay the additional amount to Sierra. If the actual costs are less than the amount charged to the licensee, Sierra will refund the balance to the licensee.

2.3.2.2. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of Sierra under Section 9, the Commission shall correspondingly lower the limits of coverage required of Sierra under Section 9, provided that if Sierra elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.3.2.3. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Sierra's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Sierra agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Sierra further agrees to maintain such Records for a period of three years.

2.4. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Sierra may enter into agreements with any party for temporary rail car storage or repairs. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent.

2.4.1. Unless otherwise expressly agreed by the Commission in writing, Sierra will not (i) store more than 100 rail cars, (ii)

store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Sierra may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

- 2.4.2. Following the earlier of (i) Sierra's institution of Tourist Service pursuant to Subsection 2.3.1, or (ii) three years after the effective date of this Agreement, Sierra's right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair (except for repairs incidental to Sierra's Freight Service operations) shall be subordinate to any third-party license for Tourist Service granted by the Commission.
- 2.4.3. The provisions of Subsections 2.4.1 and 2.4.2 apply to future storage agreements as well as storage agreements existing as of the date of this agreement.

2.5. Investigation.

- 2.5.1. Sierra hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Sierra's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.
- 2.5.2. The Commission acknowledges that Sierra cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties including trespassing, cause any significant economic or operational problems for

Sierra, Sierra may terminate this agreement, provided it complies with the provisions of Section 8.3.

- 2.6. As-Is, Where-Is. Sierra shall take the Freight Easement Property in an “as-is, where-is” condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.
- 2.7. Release. Sierra, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.
- 2.7.1. Sierra hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Sierra or Commission with respect to the operations of Sierra, a waiver of any right to subrogation which any such insurer of Sierra may acquire against Commission by virtue of the payment of any loss under such insurance.
- 2.7.2. If any Loss described in this 2.7 is caused by a third party under contract with the Commission, the Commission may, at its option, (i) pursue any claim it may have against the third-party contractor, or (ii) assign to Sierra any such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any relevant Freight Easement Property or Railroad Facilities. If Sierra commences abandonment proceedings under Section 8.3, the Commission will not assign any such claim to Sierra and neither party will have any further responsibility under this Subsection 2.7.2.
- 2.7.3. The provisions of this Section 2.7 shall survive the termination or expiration of this agreement.

3. **Limitation and Subordination of Rights Granted**

- 3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Sierra for compensation or damages; provided, however, that the Commission may not materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Sierra shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Sierra's assistance to transport materials or to perform other transportation or construction services for public projects, Sierra will provide such assistance at rates reasonably to be determined between the parties.
- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Sierra, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Sierra, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Sierra, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such

inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.

- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan, dated [____], specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost [___]. Sierra shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Sierra shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between Sierra and the applicable local government (which agreement shall become a Sierra Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. **Assignment of certain Contracts and Agreements**

- 4.1. Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to Sierra certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the “Sierra Agreements”). Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the “Commission Agreements”).
- 4.2. Any new Sierra Agreement is subject to the Commission’s prior written consent and is to be documented by Sierra using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. In addition to the general consent requirement of Section 4.2, Sierra is not, without the Commission’s prior written consent, to execute any new Sierra Agreements affecting the Freight Easement

Property or Railroad Facilities for a term exceeding the term of this agreement.

- 4.4. Sierra is not, without the Commission's prior written consent, to terminate or modify any Sierra Agreement.

5. **Maintenance and Operation of Railroad Facilities**

- 5.1. Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission's contracting policies, rules, and procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.

- 5.2. Maintenance of Freight Easement Property and Railroad Facilities.

- 5.2.1. Freight Easement Property and Railroad Facilities. Sierra, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Sierra (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with Applicable Law or any Sierra Agreement.

- 5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Sierra shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is responsible for such regular maintenance and clearance, and (ii) for weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by Applicable Law. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such maintenance; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. Except as required by Applicable Law, Sierra shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Sierra shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission, or by any third party authorized by the Commission, of any projects on or pertaining to the Property or related to any actions, omissions, or situations off or outside of the Property.

- 5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Sierra may, at its option, enter portions

of the Property outside the Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of Sierra's operations. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such work; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. The Commission shall have no liability to Sierra for maintenance of portions of the Property outside of the Freight Easement Property and Sierra's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or contractors.

5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Sierra include, as required by Applicable Law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, respiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. Sierra shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) Sierra's failure to perform such replacement programs or upgrades does not violate Applicable Law or Sierra's specific maintenance obligations under this agreement, and (f) Sierra uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.

5.2.5. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property.

As used in this subsection, the term “improvement” excludes improvements made to the Railroad Facilities.

- 5.3. Ownership of Track Materials. All track materials installed by Sierra as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission’s property. All materials removed by Sierra from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Sierra’s, become the property of Sierra. Sierra shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Sierra shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.
- 5.4. Clearing of Obstructions, Derailments, and Wrecks. Sierra shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment or Railroad Facilities.
- 5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Sierra shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.
- 5.4.2. If Sierra fails to comply with the provisions of this section, the Commission may perform the required action and charge Sierra the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Sierra for the restoration of any damage caused by any third party if (i) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, (ii) in the Commission’s reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and (iii) Sierra abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge Sierra for the restoration of any damage caused by the Commission’s contractors, or any third party granted access to the Property by written agreement with the Commission.

5.4.3. Nothing in this section is intended to preclude legal action by Sierra against any third party causing such obstruction, derailment, or wreck.

5.5. Responsibility for Repair or Replacement.

5.5.1. Damage Caused by Freight Operations. Sierra will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by or related to Sierra's operations.

5.5.2. Damage Caused by Commission. Sierra shall not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its employees, agents, or contractors.

5.5.3. Damage Caused by Acts of God or Other Factors beyond Sierra's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Sierra's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Sierra may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist Service or Freight Service over all or such portion of the Property as Sierra deems appropriate as set forth in Section 8.3.

6. **Construction, Relocation, or Removal of Railroad Facilities**

6.1. By the Commission.

6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Sierra's rights under this agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.

- 6.1.2. In the course of performing such work, the Commission may not materially reduce or otherwise materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB). The Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Sierra shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Sierra's quote and having Sierra perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Sierra's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Sierra shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this agreement and may not be sold to third parties or used elsewhere.
- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all Applicable Laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.
- 6.2. By Sierra. Sierra may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Sierra first obtains the Commission's written approval of Sierra's plans for such modifications and improvements, which approval may be granted or withheld in the Commission's sole and absolute discretion. Sierra's modification or improvement of the Freight Easement Property and Railroad

Facilities may not interfere with or impede any existing or future legal public use of the Property. Sierra may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Sierra, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.

6.3. The Commission understands that Sierra requires locations at which to store and maintain equipment and materials necessary for Sierra's Freight Operations including a locomotive pit. The parties agree that Sierra may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Sierra will need to identify and construct additional maintenance and storage locations on the Property, which Sierra may do as needed, subject to Applicable Law and the Commission's prior written consent, which consent may be granted or withheld in the Commission's sole and absolute discretion.

6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. **License Fees**

7.1. For consideration of the rights granted under this agreement, Sierra shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter: \$0.00;

7.1.1.2. Any additional carloads per quarter: 5% of Sierra's handling revenue for such carloads.

7.1.1.3. Storage: \$1.00 per day per car in storage.

7.1.2. Temporary Use of Laydown Space. Sierra may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space

next to railroad track). The parties agree that Sierra will need to identify such temporary laydown locations on the Property, which Sierra may do as needed, subject to Applicable Law and the Commission's prior written consent. Sierra shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Sierra or its shipper, Sierra shall as soon as practicable discontinue that use of such laydown space. Sierra shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Sierra by such shippers for such use of such laydown space.

7.1.3. Tourist Service: \$1.00 per passenger.

7.2. Sierra shall, on or before the last day of the month following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Sierra shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.

7.3. Sierra shall, on or before January 31 of each calendar year, pay the Commission all amounts due the Commission for the prior four calendar quarters.

8. **Term and Termination**

8.1. This agreement shall become effective when fully executed and delivered by the parties, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.

8.2. If (i) Sierra does not regularly use the Freight Service or Tourist Service rights (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the Commission's prior written approval, or (ii) Sierra remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Sierra specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not

terminate this agreement provided that Sierra begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Sierra shall proceed to abandon Freight Service in accordance with section 8.3. [Note: “Regular use” to be clarified.]

8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property or Railroad Facilities and that it may take time for Sierra to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the date of this agreement.

8.2.2. The Commission also agrees that it shall not terminate this agreement due to Sierra’s failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Sierra Right to Abandon.

8.3.1. Sierra may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Sierra deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Sierra deems appropriate. In the event that Sierra seeks to abandon Freight Service, Sierra shall provide the Commission with 90 days advance notice of Sierra’s intention and offer, at no cost to Sierra, to cooperate with the Commission’s efforts to take upon itself all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Sierra intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Sierra and the Commission agrees that it will cooperate with Sierra in Sierra’s efforts to so abandon any Tourist Service or Freight Service.

8.3.2. Any abandonment proceedings instituted by Sierra shall comply with the abandonment provisions set forth in the

Freight Easement, including the railbanking/OFA provisions thereof.

- 8.3.3. To the extent that Sierra abandons Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Sierra to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Sierra shall, if so requested by the Commission, (i) assign to the Commission any Sierra Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
- 8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if Sierra terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, Sierra shall thereafter have no liability to the Commission for the cost to perform any related obligations.
- 8.5. Upon the effective date of termination of this agreement, Sierra shall, if so requested by the Commission, (i) assign to the Commission all Sierra Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
9. **Insurance.** Sierra and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.
 - 9.1. Sierra Insurance: Sierra shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") and, as

applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"), insurance.

9.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed \$100,000 (as that value is periodically adjusted by the Consumer Price Index from and after the date of this agreement.) The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, Sierra shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Sierra shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

9.1.2. The CGL insurance policy must include the Commission as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form acceptable to the Commission providing reasonably equivalent coverage).

9.1.3. Required Provisions: The CGL insurance policy shall contain, or be endorsed to contain, the following provisions:

9.1.3.1. For any claims related to this agreement, Sierra's insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of Sierra's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the

Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission's insurance shall be primary and any insurance or self-insurance maintained by Sierra, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.

9.1.3.2. Any failure by Sierra to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.

9.1.3.3. Sierra's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.

9.1.4. Workers' Compensation or FELA insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

9.1.5. The fact that insurance is obtained by Sierra or by the Commission on behalf of Sierra will not be deemed to release or diminish Sierra's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from Sierra or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices.** All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to Sierra: President
Sierra Northern Railway
341 Industrial Way
Woodland, CA 95616
Fax: 530-666-2919

If to Commission: Executive Director
Santa Cruz County Regional Transportation
Commission
1523 Pacific Avenue
Santa Cruz, CA 95060
Fax: 831-460-3215

11. Coordination Committee

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Sierra and the Commission.

12. Claims and Liens for Labor and Material

12.1. Sierra agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by Sierra or at Sierra's request. Sierra shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. Property Taxes

13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of

whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. Sierra shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless Applicable Law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. **Indemnity**

14.1. Sierra shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Sierra's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Sierra's provision of Freight Service or Tourist Service; or (c) Sierra's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.

14.2. The Commission shall indemnify, defend and hold harmless Sierra from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, or employees. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of Sierra's equipment, rolling stock and any items being transported on behalf of Sierra's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.7. The provisions of this section shall survive the termination or expiration of the term of this agreement.

15. **Removal of Sierra Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Sierra shall, at its sole expense, remove its equipment,

personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Sierra to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Sierra fails to do the foregoing, the Commission may do such work at the cost and expense of Sierra. Sierra may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. Hazardous Substances and Wastes

16.1. Sierra shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to December 31, 2009, which is the commencement date of its operations under its lease agreement with Union Pacific Railroad, except to the extent Sierra's activities exacerbate the contamination of any such pre-existing Hazardous Materials.

16.2. Sierra shall comply with all Applicable Laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Sierra shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Sierra shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Sierra assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Sierra and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Sierra. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between December 31, 2009, and the expiration or sooner termination of this agreement, and related to Sierra's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.3. Sierra shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Sierra shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between December 31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Sierra shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates Applicable Law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Sierra knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Sierra shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.
- 16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Sierra.
17. **Trespassers and Dangerous Conditions.** Sierra shall not be required to take any action (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Sierra personnel. If Sierra becomes aware of any dangerous conditions on

or about the Property, Sierra shall promptly notify the Commission of such conditions.

18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.
19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party's intention to take any action as to which consent is required or permitted.
20. **Non-binding Mediation**
 - 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.
 - 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.
 - 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements,

arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.

22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.
23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.
24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
25. **Venue and Choice of Law**
 - 25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.
 - 25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.
26. **Acts of God and Other Disruptions of Service.** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.
27. **Miscellaneous**
 - 27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid

or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Sierra comply with applicable bridge safety management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra for the cost thereof, or (ii) terminate this Agreement.

- 27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.
- 27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.
- 27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SIERRA NORTHERN RAILWAY

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

By: _____
David Magaw
President

By: _____
George A. Dondero
Executive Director

Exhibit A

Map of Railroad Facilities

Railroad Facilities:

DRAFT